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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1924 and 1980

RIN 0575-AC56

Environmental Policies and Procedures; Corrections

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

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the final rule that appeared in the **Federal Register** of March 2, 2016, entitled “Environmental Policies and Procedures.” The rule replaced two existing rules relating to the Agency’s procedures for implementing NEPA.

DATES: This rule is effective May 4, 2016.

FOR FURTHER INFORMATION CONTACT: Kellie M. Kubena, Director, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, 1400 Independence Ave. SW., Washington, DC 20250-1571; email: Kellie.Kubena@wdc.usda.gov; telephone: (202) 720-1649.

SUPPLEMENTARY INFORMATION: In FR Doc. 2016-03433 of March 2, 2016 (81 FR 11000), make the following correcting amendments:

Exhibit I to Subpart A of Part 1924—[Corrected]

■ 1. On page 11029, in the third column, at the fourteenth line, in amendatory instruction 65, remove “300-1” and add “301-1” in its place.

§ 1980.451 [Corrected]

■ 2. On page 11047, in the third column, at the seventh line from the bottom, in amendatory instruction 101, remove “(h)(3)” and add “(i)(3)” in its place.

■ 3. On page 11048, in the first column, at the first line, remove “(h)” and add “(i)” in its place.

Appendix K to Subpart E of Part 1980—[Corrected]

■ 4. On page 11048, in the first column, at the 12th through 14th lines from the bottom, in amendatory instruction 104, remove “and paragraph C.12. of Section IX. Servicing”.

■ 5. On page 11048, in the second column, below the table, remove lines four (“IX. Servicing.”) through fourteen (“* * * *”).

Dated: April 20, 2016.

Lisa Mensah,

Under Secretary, Rural Development.

April 26, 2016.

Alexis Taylor,

Deputy Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2016-10381 Filed 5-3-16; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1955

RIN 0575-AC56

Environmental Policies and Procedures; Correction

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

ACTION: Correcting amendment.

SUMMARY: The Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, and Farm Service Agency published a document in the **Federal Register** on March 2, 2016 (81 FR 11000), entitled “Environmental Policies and Procedures.” The rule replaced two

existing rules related to the Agency’s procedures for implementing NEPA. This correction will replace the introductory text to paragraph (a) of § 1955.136.

DATES: This rule is effective May 4, 2016.

FOR FURTHER INFORMATION CONTACT:

Kellie M. Kubena, Director, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, 1400 Independence Ave. SW., Washington, DC 20250-1571; email: Kellie.Kubena@wdc.usda.gov; telephone: (202) 720-1649.

SUPPLEMENTARY INFORMATION: The Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, and Farm Service Agency published a document in the **Federal Register** on March 2, 2016 (81 FR 11000), entitled “Environmental Policies and Procedures.” This correction will replace the introductory text to paragraph (a) of § 1955.136.

List of Subjects in 7 CFR Part 1955

Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

For the reasons set forth in the preamble, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1955—PROPERTY MANAGEMENT

■ 1. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart C—Disposal of Inventory Property

■ 2. In § 1955.136, revise the section heading and the introductory text of paragraph (a) to read as follows:

§ 1955.136 Environmental review requirements.

(a) Prior to a final decision on some disposal actions, the action must comply with the environmental review requirements in accordance with each agency’s environmental policies and procedures. For Farm Service Agency actions the environmental policies and procedures are found in subpart G of part 1940 of this chapter and for Rural Development programs the

environmental policies and procedures are found in 7 CFR part 1970. Assessments must be made for those proposed conveyances that meet one of the following criteria:

* * * * *

April 20, 2016.

Lisa Mensah,

Under Secretary, Rural Development.

April 26, 2016.

Alexis Taylor,

Deputy Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2016-10377 Filed 5-3-16; 8:45 am]

BILLING CODE 3410-XV-P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

Enterprise Housing Goals and Mission

CFR Correction

In Title 12 of the Code of Federal Regulations, Part 1100 to End, revised as of January 1, 2016, on page 400, in § 1282.1, the definition of “Very low income” is reinstated to read as follows:

§ 1282.1 Definitions.

* * * * *

(b) * * *

Very low-income means:

- (i) In the case of owner-occupied units, income not in excess of 50 percent of area median income; and
- (ii) In the case of rental units, income not in excess of 50 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

[FR Doc. 2016-10521 Filed 5-3-16; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2016-1085; Special Conditions No. 25-618-SC]

Special Conditions: Gulfstream Aerospace Corporation Model GVII-G500 Airplane, Technical Criteria for Approving Side-Facing Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation (Gulfstream) Model GVII-

G500 airplane. This airplane will have a novel or unusual design feature associated with side-facing seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 4, 2016. We must receive your comments by June 20, 2016.

ADDRESSES: Send comments identified by docket number FAA-2016-1085 using any of the following methods:

Federal eRegulations Portal: Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC, 20590-0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

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

FOR FURTHER INFORMATION CONTACT: Dan Jacquet, Airframe and Cabin Safety, ANM-115, Transport Airplane

Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2676; facsimile 425-227-1149.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 29, 2012, Gulfstream Aerospace Corporation applied for a type certificate for their new Model GVII-G500 airplane. The Model GVII-G500 airplane will be a business jet capable of accommodating up to 19 passengers. It will incorporate a low, swept-wing design with winglets and a T-tail. The powerplant will consist of two aft-fuselage-mounted Pratt & Whitney turbofan engines.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Model GVII-G500 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-129.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25) do not contain adequate or appropriate safety standards for the Model GVII-G500 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, Model GVII-G500 airplanes

must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the “Noise Control Act of 1972.”

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

Novel or Unusual Design Features

The Model GVII–G500 airplane will incorporate the following novel or unusual design feature:

Gulfstream wants the option to include side-facing seats in their new Model GVII–G500 airplane. Side-facing seats (*i.e.*, seats positioned in the airplane with the occupant facing 90 degrees to the direction of airplane travel) are considered a novel design for transport-category airplanes that include Amendment 25–64 in their certification basis, and were not considered when those airworthiness standards were issued. The FAA has determined that the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. To provide a level of safety that is equivalent to that afforded to occupants of forward- and aft-facing seats, additional airworthiness standards in the form of special conditions are necessary.

Discussion

On June 16, 1988, 14 CFR part 25 was amended to revise the emergency-landing conditions that must be considered in the design of transport-category airplanes. Amendment 25–64 revised the static-load conditions in § 25.561, and added a new § 25.562 that required dynamic testing for all seats approved for occupancy during takeoff and landing. The intent of Amendment 25–64 was to provide an improved level of safety for occupants on transport-category airplanes. However, because most seating on transport-category airplanes is forward-facing, the pass/fail criteria developed in Amendment 25–64 focused primarily on these seats.

For some time, the FAA granted exemptions for the multiple-place side-facing-seat installations because the existing test methods and acceptance criteria did not produce a level of safety equivalent to the level of safety provided for forward- and aft-facing seats. These exemptions were subject to many conditions that reflected the injury-evaluation criteria and mitigation strategies available at the time of the

exemption issuance. The FAA also issued special conditions to address single-place side-facing seats because we believed that those conditions provided the same level of safety as for forward- and aft-facing seats.

Continuing concerns regarding the safety of side-facing seats prompted the FAA to conduct research to develop an acceptable method of compliance with §§ 25.562 and 25.785(b) for side-facing seat installations. That research has identified injury considerations and evaluation criteria in addition to those previously used to approve side-facing seats (see published report DOT/FAA/AR–09/41, July 2011). One particular concern that was identified during the FAA’s research program, but not addressed in the previous special conditions, was the significant leg injuries that can occur to occupants of both single- and multiple-place side-facing seats. Because this type of injury does not occur on forward- and aft-facing seats, the FAA determined that, to achieve the level of safety envisioned in Amendment 25–64, additional requirements would be needed as compared to previously issued special conditions. Nonetheless, the research has now allowed the development of a single set of special conditions that is applicable to all fully side-facing seats.

On November 5, 2012, the FAA released PS–ANM–25–03–R1, “Technical Criteria for Approving Side-Facing Seats,” to update existing FAA certification policy on §§ 25.562 and 25.785(a) at Amendment 25–64 for single- and multiple-place side-facing seats. This policy addresses both the technical criteria for approving side-facing seats and the implementation of those criteria. The FAA methodology detailed in PS–ANM–25–03–R1 has been used in establishing a new set of proposed special conditions. Some of the conditions issued for previous exemptions are still relevant and are included in these new special conditions. However, others have been replaced by different criteria that reflect current research findings.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model GVII–G500 airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one

model series of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**.

The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Gulfstream Aerospace Corporation Model GVII–G500 airplane.

In addition to the airworthiness standards in §§ 25.562 and 25.785, the FAA issues the following special conditions (based on Policy Statement PS–ANM–25–03–R1) as part of the type certification basis for the Gulfstream Model GVII series airplanes. Items 1 and 2 are applicable to all side-facing seat installations, whereas items 3 through 16 represent additional requirements applicable to side-facing seats equipped with an airbag system in the shoulder belt.

1. Additional requirements applicable to tests or rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

a. The longitudinal test(s) conducted in accordance with § 25.562(b)(2), to show compliance with the seat-strength requirements of § 25.562(c)(7) and (8) and these special conditions, must have an ES–2re anthropomorphic test dummy (ATD) (49 CFR part 572 subpart U) or equivalent, or a Hybrid II ATD (49 CFR part 572, subpart B as specified in § 25.562) or equivalent, occupying each seat position and including all items (*e.g.*, armrest, interior wall, or furnishing) contactable by the occupant if those items are necessary to restrain

the occupant. If included, the floor representation and contactable items must be located such that their relative position, with respect to the center of the nearest seat place, is the same at the start of the test as before floor misalignment is applied. For example, if floor misalignment rotates the centerline of the seat place nearest the contactable

item 8 degrees clockwise about the airplane x-axis, then the item and floor representations must be rotated by 8 degrees clockwise also, to maintain the same relative position to the seat place, as shown in Figure 1. Each ATD's relative position to the seat after application of floor misalignment must be the same as before misalignment is

applied. To ensure proper occupant seat loading, the ATD pelvis must remain supported by the seat pan, and the restraint system must remain on the pelvis and shoulder of the ATD until rebound begins. No injury-criteria evaluation is necessary for tests conducted only to assess seat-strength requirements.

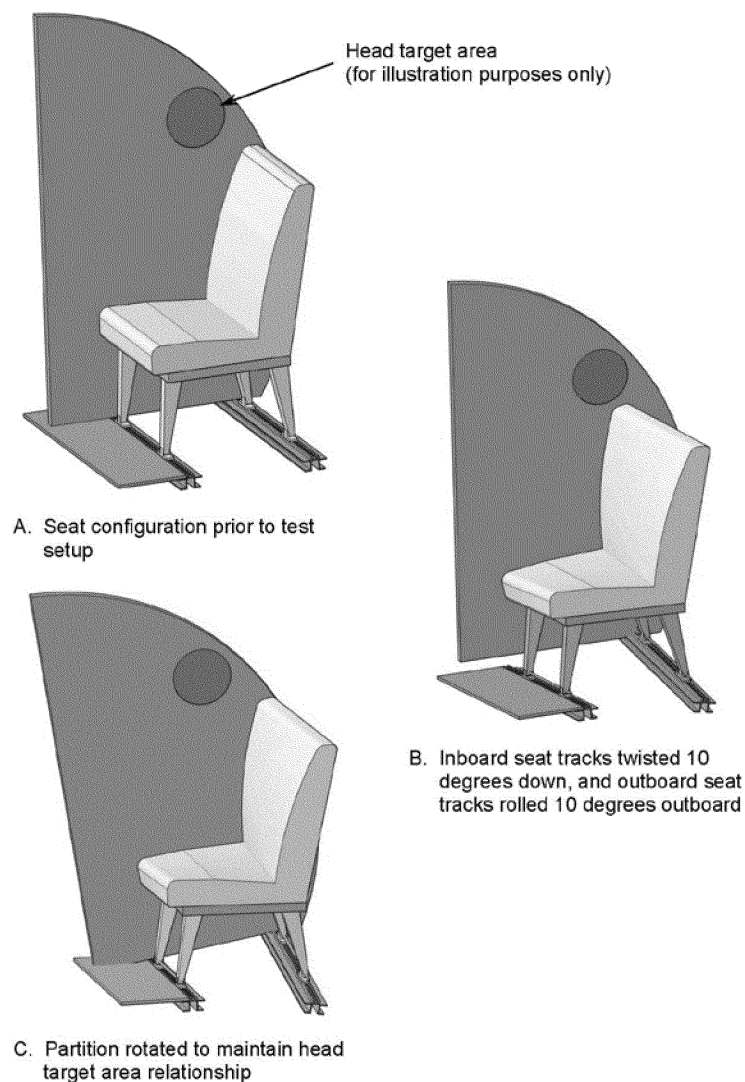


Figure 1

b. The longitudinal test(s) conducted in accordance with § 25.562(b)(2), to show compliance with the injury assessments required by § 25.562(c) and these special conditions, may be conducted separately from the test(s) to show structural integrity. In this case, structural-assessment tests must be conducted as specified in paragraph 1a, above, and the injury-assessment test must be conducted without yaw or floor misalignment. Injury assessments may be accomplished by testing with ES-2re ATD (49 CFR part 572 subpart U) or

equivalent at all places. Alternatively, these assessments may be accomplished by multiple tests that use an ES-2re ATD at the seat place being evaluated, and a Hybrid II ATD (49 CFR part 572, subpart B, as specified in § 25.562) or equivalent used in all seat places forward of the one being assessed, to evaluate occupant interaction. In this case, seat places aft of the one being assessed may be unoccupied. If a seat installation includes adjacent items that are contactable by the occupant, the injury potential of that contact must be

assessed. To make this assessment, tests may be conducted that include the actual item, located and attached in a representative fashion. Alternatively, the injury potential may be assessed by a combination of tests with items having the same geometry as the actual item, but having stiffness characteristics that would create the worst case for injury (injuries due to both contact with the item and lack of support from the item).

c. If a seat is installed aft of structure (e.g., an interior wall or furnishing) that does not have a homogeneous surface

contactable by the occupant, additional analysis and/or test(s) may be required to demonstrate that the injury criteria are met for the area that an occupant could contact. For example, different yaw angles could result in different injury considerations and may require additional analysis or separate test(s) to evaluate.

d. To accommodate a range of occupant heights (5th percentile female to 95th percentile male), the surface of items contactable by the occupant must be homogenous 7.3 inches (185 mm) above and 7.9 inches (200 mm) below the point (center of area) that is contacted by the 50th percentile male size ATD's head during the longitudinal test(s) conducted in accordance with paragraphs a, b, and c, above. Otherwise, additional head-injury

criteria (HIC) assessment tests may be necessary. Any surface (inflatable or otherwise) that provides support for the occupant of any seat place must provide that support in a consistent manner regardless of occupant stature. For example, if an inflatable shoulder belt is used to mitigate injury risk, then it must be demonstrated by inspection to bear against the range of occupants in a similar manner before and after inflation. Likewise, the means of limiting lower-leg flail must be demonstrated by inspection to provide protection for the range of occupants in a similar manner.

e. For longitudinal test(s) conducted in accordance with § 25.562(b)(2) and these special conditions, the ATDs must be positioned, clothed, and have lateral instrumentation configured as follows:

(1) ATD positioning:

Lower the ATD vertically into the seat while simultaneously (see Figure 2 for illustration):

(a) Aligning the midsagittal plane (a vertical plane through the midline of the body; dividing the body into right and left halves) with approximately the middle of the seat place.

(b) Applying a horizontal x-axis direction (in the ATD coordinate system) force of about 20 lb (89 N) to the torso at approximately the intersection of the midsagittal plane and the bottom rib of the ES-2re or lower sternum of the Hybrid II at the midsagittal plane, to compress the seat back cushion.

(c) Keeping the upper legs nearly horizontal by supporting them just behind the knees.

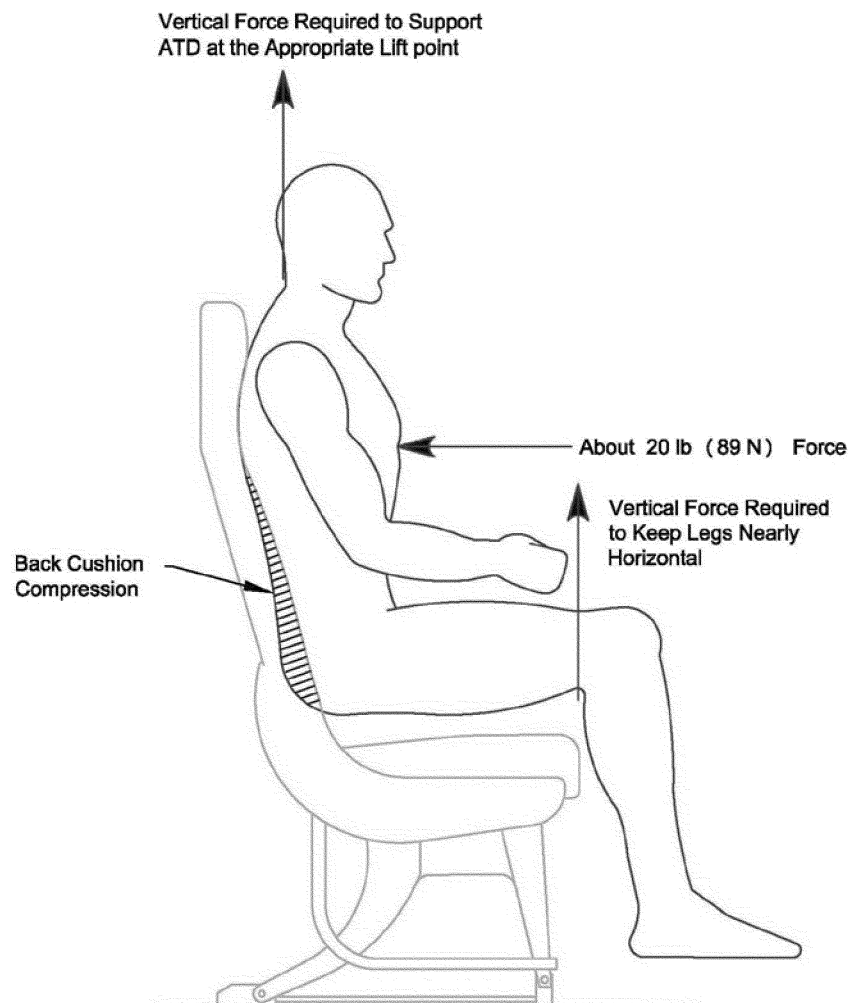


Figure 2

(d) After all lifting devices have been removed from the ATD:

(i) Rock it slightly to settle it into the seat.

(ii) Separate the knees by about 4 inches (100 mm).

(iii) Set the ES-2re ATD's head at approximately the midpoint of the available range of z-axis rotation (to align the head and torso midsagittal planes).

(iv) Position the ES-2re ATD's arms at the joint's mechanical detent that puts them at approximately a 40-degree angle with respect to the torso. Position the Hybrid II ATD hands on top of its upper legs.

(v) Position the feet such that the centerlines of the lower legs are approximately parallel to a lateral vertical plane (in the airplane coordinate system).

(2) ATD clothing: Clothe each ATD in form-fitting, mid-calf-length (minimum) pants and shoes (size 11E) weighing about 2.5 lb (1.1 Kg) total. The color of the clothing should be in contrast to the color of the restraint system. The ES-2re jacket is sufficient for torso clothing, although a form-fitting shirt may be used in addition if desired.

(3) ES-2re ATD lateral instrumentation: The rib-module linear slides are directional, *i.e.*, deflection occurs in either a positive or negative ATD y-axis direction. The modules must be installed such that the moving end of the rib module is toward the front of the airplane. The three abdominal-force sensors must be installed such that they are on the side of the ATD toward the front of the airplane.

f. The combined horizontal/vertical test, required by § 25.562(b)(1) and these special conditions, must be conducted with a Hybrid II ATD (49 CFR part 572 subpart B as specified in § 25.562), or equivalent, occupying each seat position.

g. Restraint systems:

(1) If inflatable restraint systems are used, they must be active during all dynamic tests conducted to show compliance with § 25.562.

(2) The design and installation of seat-belt buckles must prevent unbuckling due to applied inertial forces or impact of the hands or arms of the occupant during an emergency landing.

2. Additional performance measures applicable to tests and rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

a. Body-to-body contact: Contact between the head, pelvis, torso, or shoulder area of one ATD with the adjacent-seated ATD's head, pelvis, torso, or shoulder area is not allowed. Contact during rebound is allowed.

b. Thoracic: The deflection of any of the ES-2re ATD upper, middle, and lower ribs must not exceed 1.73 inches (44 mm). Data must be processed as

defined in Federal Motor Vehicle Safety Standards (FMVSS) 571.214.

c. Abdominal: The sum of the measured ES-2re ATD front, middle, and rear abdominal forces must not exceed 562 lbs (2,500 N). Data must be processed as defined in FMVSS 571.214.

d. Pelvic: The pubic symphysis force measured by the ES-2re ATD must not exceed 1,350 lbs (6,000 N). Data must be processed as defined in FMVSS 571.214.

e. Leg: Axial rotation of the upper-leg (femur) must be limited to 35 degrees in either direction from the nominal seated position.

f. Neck: As measured by the ES-2re ATD and filtered at Channel Frequency Class 600 as defined in SAE J211, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation."

(1) The upper-neck tension force at the occipital condyle (O.C.) location must be less than 405 lb (1,800 N).

(2) The upper-neck compression force at the O.C. location must be less than 405 lb (1,800 N).

(3) The upper-neck bending torque about the ATD x-axis at the O.C. location must be less than 1,018 in-lb (115 Nm).

(4) The upper-neck resultant shear force at the O.C. location must be less than 186 lb (825 N).

g. Occupant (ES-2re ATD) retention: The pelvic restraint must remain on the ES-2re ATD's pelvis during the impact and rebound phases of the test. The upper-torso restraint straps (if present) must remain on the ATD's shoulder during the impact.

h. Occupant (ES-2re ATD) support:

(1) Pelvis excursion: The load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of its seat's bottom seat-cushion supporting structure.

(2) Upper-torso support: The lateral flexion of the ATD torso must not exceed 40 degrees from the normal upright position during the impact.

3. For seats with an airbag system in the shoulder belts, show that the airbag system in the shoulder belt will deploy and provide protection under crash conditions where it is necessary to prevent serious injury. The means of protection must take into consideration a range of stature from a 2-year-old child to a 95th percentile male. The airbag system in the shoulder belt must provide a consistent approach to energy absorption throughout that range of occupants. When the seat system includes an airbag system, that system must be included in each of the certification tests as it would be

installed in the airplane. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a pregnant woman.

4. The airbag system in the shoulder belt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have an active airbag system in the shoulder belt.

5. The design must prevent the airbag system in the shoulder belt from being either incorrectly buckled or incorrectly installed, such that the airbag system in the shoulder belt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required injury protection.

6. It must be shown that the airbag system in the shoulder belt is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), and other operating and environmental conditions (vibrations, moisture, etc.) likely to occur in service.

7. Deployment of the airbag system in the shoulder belt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant whose belt is loosely fastened.

8. It must be shown that inadvertent deployment of the airbag system in the shoulder belt, during the most critical part of the flight, will either meet the requirement of § 25.1309(b) or not cause a hazard to the airplane or its occupants.

9. It must be shown that the airbag system in the shoulder belt will not impede rapid egress of occupants 10 seconds after airbag deployment.

10. The airbag system must be protected from lightning and high-intensity radiated fields (HIRF). The threats to the airplane specified in existing regulations regarding lighting, § 25.1316, and HIRF, § 25.1317, are incorporated by reference for the purpose of measuring lightning and HIRF protection.

11. The airbag system in the shoulder belt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the airbag system in the shoulder belt does not have to be considered.

12. It must be shown that the airbag system in the shoulder belt will not release hazardous quantities of gas or particulate matter into the cabin.

13. The airbag system in the shoulder-belt installation must be protected from the effects of fire such that no hazard to occupants will result.

14. A means must be available for a crewmember to verify the integrity of the airbag system in the shoulder-belt activation system prior to each flight, or it must be demonstrated to reliably operate between inspection intervals. The FAA considers that the loss of the airbag-system deployment function alone (*i.e.*, independent of the conditional event that requires the airbag-system deployment) is a major-failure condition.

15. The inflatable material may not have an average burn rate of greater than 2.5 inches/minute when tested using the horizontal flammability test defined in part 25, appendix F, part I, paragraph (b)(5).

16. The airbag system in the shoulder belt, once deployed, must not adversely affect the emergency-lighting system (*i.e.*, block floor proximity lights to the extent that the lights no longer meet their intended function).

Issued in Renton, Washington, on April 27, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-10440 Filed 5-3-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-3982; Directorate Identifier 2015-NM-098-AD; Amendment 39-18503; AD 2016-09-05]

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 717-200 airplanes. This AD was prompted by multiple reports of the vertical stabilizer leading edge showing signs of fastener distress. This AD requires a detailed inspection for any distress of the vertical stabilizer leading edge skin, and related investigative and corrective actions if necessary. This AD also requires, for certain airplanes, repetitive detailed inspections of the spar cap for any loose and missing fasteners,

repetitive eddy current testing high frequency (ETHF) and radiographic testing (RT) inspections of the spar cap for any crack, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct any crack in the vertical stabilizer leading edge and front spar cap, which may result in the structure becoming unable to support limit load, and may lead to the loss of the vertical stabilizer.

DATES: This AD is effective June 8, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 8, 2016.

ADDRESSES: For service information identified in this final rule, 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-2015-3982.

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-2015-3982; 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: Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5348; fax: 562-627-5210; email: Eric.Schrieber@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 717-200 airplanes. The NPRM published in the **Federal Register** on October 6, 2015 (80 FR 60307) (“the NPRM”). The NPRM was prompted by multiple reports of the vertical stabilizer leading edge showing signs of fastener distress. The NPRM proposed to require a detailed inspection for any distress of the vertical stabilizer leading edge skin, and related investigative and corrective actions if necessary. The NPRM also proposed to require, for certain airplanes, repetitive detailed inspections of the spar cap for any loose and missing fasteners, repetitive ETHF and RT inspections of the spar cap for any crack, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct any crack in the vertical stabilizer leading edge and front spar cap, which may result in the structure becoming unable to support limit load, and may lead to the loss of the vertical stabilizer.

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. Boeing and an anonymous commenter indicated their support for the NPRM.

Request To Add Credit for Previous Actions

Boeing requested that we add a “Credit for Previous Actions” paragraph to the proposed AD that would give credit for prior accomplishment of the initial inspection in paragraph (g) of the NPRM. Boeing stated that operator structural inspection credit has been incorporated as a precedent in previous ADs.

We agree with the commenter’s request. Boeing MOM-MOM-14-0437-01B(R1), dated July 3, 2014, provides the same action and level of safety for the initial inspection specified in this AD. We have revised this AD by adding new paragraph (j) of this AD to give credit for the initial inspection in paragraph (g) of this AD, if that inspection was performed before the effective date of this AD using Boeing MOM-MOM-14-0437-01B(R1), dated July 3, 2014. We have redesignated the remaining paragraphs accordingly.

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 change 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 Alert Service Bulletin 717–55A0012, dated June 12, 2015. The service information describes procedures for a detailed inspection for any distress of the vertical stabilizer leading edge skin, a detailed inspection for any loose and missing fasteners of the spar cap, ETHF and RT inspections of the spar cap for any crack, and related

investigative 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 106 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 for distress	11 work-hours × \$85 per hour = \$935 per inspection cycle.	\$0	\$935 per inspection cycle.	\$99,110 per inspection cycle.
Repetitive inspections for cracking and loose and missing fasteners.	7 work-hours × \$85 per hour = \$595 per inspection cycle.	0	595 per inspection cycle.	63,070 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 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):

2016–09–05 The Boeing Company:
Amendment 39–18503; Docket No. FAA–2015–3982; Directorate Identifier 2015–NM–098–AD.

(a) Effective Date

This AD is effective June 8, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 717–200 airplanes, certificated in any

category, as specified in Boeing Alert Service Bulletin 717–55A0012, dated June 12, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by multiple reports of the vertical stabilizer leading edge showing signs of fastener distress. We are issuing this AD to detect and correct any crack in the vertical stabilizer leading edge and front spar cap, which may result in the structure becoming unable to support limit load, and may lead to the loss of the vertical stabilizer.

(f) Compliance

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

(g) Initial Inspection

Except as required by paragraph (i)(1) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 717–55A0012, dated June 12, 2015: Do a detailed inspection for any distress of the vertical stabilizer leading edge skin and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–55A0012, dated June 12, 2015, except as required by paragraph (i)(2) of this AD. Do all applicable related investigative and corrective actions before further flight.

(h) Repetitive Inspections

For all airplanes on which no cracking was found during any related investigative action required by paragraph (g) of this AD: At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 717–55A0012, dated June 12, 2015, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin

717–55A0012, dated June 12, 2015, except as required by paragraph (i)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspection thereafter at the intervals specified in paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 717–55A0012, dated June 12, 2015.

(1) Do detailed inspections for any loose and missing fasteners of the vertical stabilizer leading edge as specified in “Part 4” of Boeing Alert Service Bulletin 717–55A0012, dated June 12, 2015.

(2) Do eddy current testing high frequency (ETHF) and radiographic testing (RT) inspections for any crack of the vertical stabilizer spar cap as specified in “Part 2” of Boeing Alert Service Bulletin 717–55A0012, dated June 12, 2015; or do ETHF inspections for any crack of the vertical stabilizer spar cap as specified in “Part 3” of Boeing Alert Service Bulletin 717–55A0012, dated June 12, 2015.

(i) Exceptions to the Service Information

(1) Where Boeing Alert Service Bulletin 717–55A0012, dated June 12, 2015 specifies a compliance time “after the original issue date of this service bulletin,” this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 717–55A0012, dated June 12, 2015, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for the initial inspection specified in paragraph (g) of this AD, if that inspection was performed before the effective date of this AD using Boeing MOM–MOM–14–0437–01B(R1), dated July 3, 2014, which is not incorporated by reference in this AD.

(k) 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 (l) 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 Organization Designation Authorization (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.

(l) Related Information

For more information about this AD, contact Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: Eric.Schrieber@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 717–55A0012, dated June 12, 2015.

(ii) Reserved.

(3) 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>.

(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 April 20, 2016.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–10160 Filed 5–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7490; Directorate Identifier 2015–NE–40–AD; Amendment 39–18500; AD 2016–09–02]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshift Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Turbomeca S.A. Astazou XIV B and H turboshaft engines. This AD requires a one-time inspection of the front surface of the 3rd stage turbine for a groove. This AD was prompted by a report of a crack on the 3rd stage turbine wheel. We are issuing this AD to prevent cracks in the 3rd stage turbine wheel, failure of the engine, in-flight shutdown, and loss of control of the helicopter.

DATES: This AD becomes effective June 8, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 8, 2016.

ADDRESSES: For service information identified in this final rule, 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. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2015–7490.

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–2015–7490; 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 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 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:

Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: wego.wang@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 the specified products. The

NPRM was published in the **Federal Register** on February 2, 2016 (81 FR 5395). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During the overhaul of an ASTAZOU XIV engine, a crack was detected on the front face of the third stage turbine wheel between two balancing lugs. The cause of the crack is probably linked to a geometric singularity, likely caused by the transformation operation aimed at introducing expansion slots between the blades during embodiment of Turbomeca mod AB 173. Although there is only one known case of this type of crack, and although it was detected, the possibility exists that additional parts have the same geometric singularity.

This condition, if not detected and corrected, may lead to failure of a turbine blade and its associated piece of rim, possibly resulting in an uncommanded in-flight shut-down and/or release of high energy debris.

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–2015–7490.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 5395, February 2, 2016).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information Under 14 CFR Part 51

Turbomeca S.A. has issued Service Bulletin (SB) No. 283 72 0811, Version A, dated August 25, 2015. The SB describes procedures for inspection of the 3rd stage turbine wheel. 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 9 engines installed on helicopters of U.S. registry. We also estimate that it will take about 5 hours per engine to comply with this AD. The average labor rate is \$85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$3,825.

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 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 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.

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):

2016–09–02 Turbomeca S.A.: Amendment 39–18500; Docket No. FAA–2015–7490; Directorate Identifier 2015–NE–40–AD.

(a) Effective Date

This AD becomes effective June 8, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Astazou XIV B and XIV H turboshaft engines with 3rd stage turbine wheel, part number (P/N) 0 265 25 700 0 or P/N 0 265 25 706 0, installed, if the engine incorporates Turbomeca modification AB–173 or AB–208.

(d) Reason

This AD was prompted by a report of a crack on the 3rd stage turbine wheel. We are issuing this AD to prevent cracks in the 3rd stage turbine wheel, failure of the 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) At the next piece part exposure of the 3rd stage turbine wheel or within 1,000 engine hours after the effective date of this AD whichever comes first, perform a one-time inspection for a groove on the front surface of the 3rd stage turbine wheel. Use Accomplishment Instructions, paragraph 4.4.2, of Turbomeca S.A. Service Bulletin (SB) No. 283 72 0811, Version A, dated August 25, 2015 to perform the inspection.

(2) If the 3rd stage turbine wheel passes inspection required by paragraph (e)(1) of this AD, no further action is required.

(3) If the 3rd stage turbine wheel fails inspection required by paragraph (e)(1) of this AD, remove the part and replace with a part eligible for installation.

(f) Installation Prohibition

After the effective date of this AD, do not install any 3rd stage turbine wheel, P/N 0 265 25 700 0 or P/N 0 265 25 706 0, unless it was inspected per the Accomplishment Instructions, paragraph 4.4.2, of Turbomeca S.A. SB No. 283 72 0811, Version A, dated August 25, 2015.

(g) 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.

(h) Related Information

(1) For more information about this AD, contact Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: wego.wang@faa.gov.

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0223, dated November 16, 2015, for more information. You may examine the MCAI in the AD

docket on the Internet at <http://www.regulations.gov/>
#!documentDetail;D=FAA-2015-7490-0001.

(i) 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) Turbomeca S.A. Service Bulletin No. 283 72 0811, Version A, dated August 25, 2015.

(ii) Reserved.

(3) For Turbomeca S.A. service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; fax: 33 (0)5 59 74 45 15.

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

(5) You may view this service information 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 Burlington, Massachusetts, on April 21, 2016.

Colleen M. D'Alessandro,

*Manager, Engine & Propeller Directorate,
Aircraft Certification Service.*

[FR Doc. 2016-10279 Filed 5-3-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-5811; Directorate Identifier 2014-NM-158-AD; Amendment 39-18489; AD 2016-08-13]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2004-19-11 for certain Airbus Model A320 series airplanes. AD 2004-19-11 required modification of the inner rear spar web of the wing, cold expansion of the attachment holes of the forward pintle fitting and the actuating cylinder anchorage of the main landing gear (MLG), repetitive ultrasonic inspections for cracking of the rear spar of the wing,

and corrective action if necessary. AD 2004-19-11 also provided optional terminating action for the repetitive inspections. This new AD retains the requirements of AD 2004-19-11, and requires the previously optional terminating action. This AD was prompted by a determination that the previously optional terminating action is necessary to address the unsafe condition. We are issuing this AD to prevent fatigue cracking of the inner rear spar, which may lead to reduced structural integrity of the wing and the MLG.

DATES: This AD becomes effective June 8, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 8, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 5, 2004 (69 FR 58828, October 1, 2004).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of June 30, 2000 (65 FR 34069, May 26, 2000).

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 14, 1994 (59 FR 1903, January 13, 1994).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 11, 1993 (58 FR 27923, May 12, 1993).

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—ELAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-5811.

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-2015-5811; 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 (telephone 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:

Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1405; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2004-19-11, Amendment 39-13805 (69 FR 58828, October 1, 2004) ("AD 2004-19-11"). AD 2004-19-11 applied to certain Airbus Model 320 series airplanes. The NPRM published in the **Federal Register** on November 27, 2015 (80 FR 74058) ("the NPRM"). The NPRM was prompted by a determination that the previously optional terminating action is necessary to address the unsafe condition. The NPRM proposed to retain the requirements of AD 2004-19-11, and requires the previously optional terminating action. We are issuing this AD to prevent fatigue cracking of the inner rear spar, which may lead to reduced structural integrity of the wing and the MLG.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014-0169, dated July 17, 2014, corrected July 22, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition on certain Airbus Model 320 series airplanes. The MCAI states:

During centre fuselage certification full scale fatigue test, cracks were found on the inner rear spar at holes position 52 on the right hand wing due to fatigue aspects.

This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.

To prevent such cracks, Airbus developed modifications, which were introduced in production and in service through several Airbus Service Bulletins (SB).

DGAC France issued * * * [an earlier AD], which was subsequently superseded by [DGAC] AD 2001-249 [which corresponds with FAA AD 2004-19-11, Amendment 39-13805 (69 FR 58828, October 1, 2004)], to require modification of the rear spar on some

aeroplanes, post-modification repetitive inspections and, depending on findings, accomplishment of a repair. DGAC France AD 2001–249 also specified that modification in accordance with Airbus SB A320–57–1089 (in-service equivalent to Airbus mod 24591) constituted (optional) terminating action for the repetitive inspections.

Since that [DGAC] AD [2001–249] was issued, in the framework of the A320 Extended Service Goal (ESG), it has been determined that Airbus mod 24591 is necessary to allow aeroplanes to operate up to the new ESG limit.

For the reasons described above, this [EASA] AD retains the requirements of DGAC France AD 2001–249, which is superseded, and requires modification of all pre-mod 24591 aeroplanes.

The modification includes modifying all specified fastener holes in the inner rear spar of the wing. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2015–5811.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. United Airlines provided its support for the content of the NPRM.

Explanation of Changes Made to This AD

We have added a new paragraph (l)(1) to this AD to provide credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–57–1060, Revision 1, dated April 26, 1993. We have redesignated paragraphs (l)(1) and (l)(2) of the proposed AD as paragraphs (l)(2) and (l)(3) 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 for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 14 CFR Part 51

Airbus has issued Airbus Service Bulletin A320–57–1089, Revision 03, dated February 9, 2001. This service information describes procedures for modification of the airplane by accomplishing cold re-expansion of the holes in the inner rear spar for the

attachment of gear rib 5, forward pintle fitting, and actuating cylinder anchorage; and the installation of interference fit fasteners in the rear spar and gear rib 5. 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 84 airplanes of U.S. registry.

The actions required by AD 2004–19–11, and retained in this AD take about 684 work-hours per product, at an average labor rate of \$85 per work-hour. Required parts cost about \$13,644 per product. Based on these figures, the estimated cost of the actions that were required by AD 2004–19–11 is \$71,784 per product.

We also estimate that it takes about 980 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 \$32,727 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$9,746,268, or \$116,027 per product.

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 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.

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) 2004–19–11, Amendment 39–13805 (69 FR 58828, October 1, 2004), and adding the following new AD:

2016–08–13 Airbus: Amendment 39–18489. Docket No. FAA–2015–5811; Directorate Identifier 2014–NM–158–AD.

(a) Effective Date

This AD becomes effective June 8, 2016.

(b) Affected ADs

This AD replaces AD 2004–19–11, Amendment 39–13805 (69 FR 58828, October 1, 2004) ("AD 2004–19–11").

(c) Applicability

This AD applies to Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes, certificated in any category, all manufacturer serial numbers, except those on which Airbus modification (mod) 24591 has been embodied in production.

(d) Subject

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

(e) Reason

This AD was prompted by reports of fatigue cracking of the inner rear spar of the wing and also by a determination that the modification of the inner rear spar is necessary to address the unsafe condition.

We are issuing this AD to prevent fatigue cracking of the inner rear spar, which may lead to reduced structural integrity of the wing and the main landing gear (MLG).

(f) Compliance

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

(g) Retained Modification of Inner Rear Spar Web of the Wing, With Change to Acceptable Service Information

This paragraph restates the requirements of paragraph (a) of AD 2004–19–11, with a change to acceptable service information. For airplanes having manufacturer's serial numbers (MSNs) 003 through 008 inclusive, and 010 through 021 inclusive, except airplanes modified as specified in Airbus Service Bulletin A320–57–1089, dated December 22, 1996; Revision 01, dated April 17, 1997; Revision 02, dated November 6, 1998; or Revision 03, dated February 9, 2001: Prior to the accumulation of 12,000 total flight cycles, or within 500 flight cycles after June 11, 1993 (the effective date of AD 93–08–15, Amendment 39–8563 (58 FR 27923, May 12, 1993)), whichever occurs later, modify the inner rear spar web of the wing in accordance with Airbus Service Bulletin A320–57–1004, Revision 1, dated September 24, 1992; or Revision 2, dated June 14, 1993. As of the effective date of this AD, only Airbus Service Bulletin A320–57–1004, Revision 2, dated June 14, 1993, may be used for the actions required by this paragraph.

(h) Retained Cold Expansion of Holes at Forward Pintle Fitting and Actuating Cylinder Anchorage of the Main Landing Gear, With Change to Acceptable Service Information

This paragraph restates the requirements of paragraph (b) of AD 2004–19–11, with a change to acceptable service information. For airplanes having MSNs 002 through 051 inclusive, except airplanes modified as specified in Airbus Service Bulletin A320–57–1089, dated December 22, 1996; Revision 01, dated April 17, 1997; Revision 02, dated November 6, 1998; or Revision 03, dated February 9, 2001: Prior to the accumulation of 12,000 total flight cycles, or within 2,000 flight cycles after February 14, 1994 (the effective date of AD 93–25–13, Amendment 39–8777 (59 FR 1903, January 13, 1994)), whichever occurs later, accomplish the requirements of paragraphs (h)(1) and (h)(2) of this AD in accordance with Airbus Service Bulletin A320–57–1060, dated December 8, 1992; Revision 1, dated April 26, 1993; or Revision 2, dated December 16, 1994. As of the effective date of this AD, only Airbus Service Bulletin A320–57–1060, Revision 2, dated December 16, 1994, may be used for the actions required by this paragraph.

(1) Perform a cold expansion of all the attachment holes for the forward pintle fitting of the main landing gear (MLG), except for the holes that are for taper-lok bolts.

(2) Perform a cold expansion of the holes at the actuating cylinder anchorage of the MLG.

(i) Retained Repetitive Ultrasonic Inspections for Cracking of the Rear Spar of the Wing, With No Changes

This paragraph restates the requirements of paragraphs (c), (d), and (e) of AD 2004–19–11, with no changes. Except for airplanes modified as specified in Airbus Service Bulletin A320–57–1089, dated December 22, 1996; Revision 01, dated April 17, 1997; Revision 02, dated November 6, 1998; or Revision 03, dated February 9, 2001: Do the actions specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Do an ultrasonic inspection for cracking of the rear spar of the wing, in accordance with Airbus Service Bulletin A320–57–1088, Revision 04, dated August 6, 2001. Inspect at the applicable time specified in paragraph 1.E. of Airbus Service Bulletin A320–57–1088, Revision 04, dated August 6, 2001, except as required by paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(i) For any airplane that has not been inspected but has exceeded the applicable specified compliance time in paragraph 1.E. of Airbus Service Bulletin A320–57–1088, Revision 04, dated August 6, 2001, as of November 5, 2004 (the effective date of AD 2004–19–11): Inspect within 18 months after November 5, 2004.

(ii) For any airplane that has been inspected before November 5, 2004 (the effective date of AD 2004–19–11): Repeat the inspection within 3,600 flight cycles after the most recent inspection.

(2) Repeat the inspection required by paragraph (i)(1) of this AD at intervals not to exceed 3,600 flight cycles or 6,700 flight hours, whichever occurs first, until the requirements of paragraph (k) of this AD have been done.

(j) Retained Corrective Action for Inspections Required by Paragraphs (i)(1) and (i)(2) of This AD, With Specific Delegation Approval Language

This paragraph restates the requirements of paragraph (f) of AD 2004–19–11, with specific delegation approval language. If any crack is found during any inspection required by paragraph (i)(1) or (i)(2) of this AD: Before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent); or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). Accomplishment of a repair as required by this paragraph does not constitute terminating action for the repetitive inspections required by paragraph (i)(2) of this AD.

(k) New Requirement of This AD: Modification of the Inner Rear Spar

Before exceeding 48,000 flight cycles or 96,000 flight hours, whichever occurs first since first flight of the airplane: Modify all specified fastener holes in the inner rear spar of the wing, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1089, Revision 03, dated February 9, 2001; except, where Airbus

Service Bulletin A320–57–1089, Revision 03, dated February 9, 2001, specifies to contact Airbus for certain conditions, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. Modification of all specified fastener holes in the rear spar of the wing terminates the initial and repetitive inspections required by paragraphs (i)(1) and (i)(2) of this AD. If the modification is done both before the airplane accumulates 12,000 total flight cycles and before the effective date of this AD, the modification also terminates the actions required by paragraphs (g) and (h) of this AD.

(l) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–57–1060, Revision 1, dated April 26, 1993. This service information is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–57–1088, Revision 02, dated July 29, 1999; or Revision 03, dated February 9, 2001. This service information is not incorporated by reference in this AD.

(3) This paragraph provides credit for actions required by paragraph (k) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–57–1089, Revision 02, dated November 6, 1998. This service information is not incorporated by reference in this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov.

(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 in accordance with AD 2004–19–11 are approved as AMOCs for the corresponding provisions of paragraphs (g) through (j) of 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.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014-0169, dated July 17, 2014, corrected July 22, 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-2015-5811.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(8) and (o)(9) of this AD.

(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 this AD specifies otherwise.

(3) The following service information was approved for IBR on June 8, 2016.

(i) Airbus Service Bulletin A320-57-1089, Revision 03, dated February 9, 2001.

(ii) Reserved.

(4) The following service information was approved for IBR on November 5, 2004 (69 FR 58828, October 1, 2004).

(i) Airbus Service Bulletin A320-57-1088, Revision 04, dated August 6, 2001.

(ii) Reserved.

(5) The following service information was approved for IBR on June 30, 2000 (65 FR 34069, May 26, 2000).

(i) Airbus Service Bulletin A320-57-1004, Revision 2, dated June 14, 1993. This service bulletin contains the following list of effective pages: Pages 1, 4, 12, 14, 17 through 20, 22, 23, 28, 29, Revision 2, dated June 14, 1993; page 15, Revision 1, dated September 24, 1992; and pages 2, 3, 5 through 11, 13, 16, 21, 24 through 27, 30, Original Issue, dated July 9, 1991.

(ii) Airbus Service Bulletin A320-57-1060, Revision 2, dated December 16, 1994.

(6) The following service information was approved for IBR on February 14, 1994 (59 FR 1903, January 13, 1994).

(i) Airbus Service Bulletin A320-57-1060, dated December 8, 1992.

(ii) Reserved.

(7) The following service information was approved for IBR on June 11, 1993 (58 FR 27923, May 12, 1993).

(i) Airbus Service Bulletin A320-57-1004, Revision 1, dated September 24, 1992. This service bulletin contains the following list of effective pages: Pages 1, 4, 12, 14 through 15, 17 through 18, 20, Revision 1, dated September 24, 1992; and pages 2 through 3, 5 through 11, 13, 16, 19, 21 through 30, Original Issue, dated July 9, 1991.

(ii) Reserved.

(8) For service information identified in this AD, contact Airbus, Airworthiness

Office—ELAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>.

(9) 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.

(10) 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 April 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-08956 Filed 5-3-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-3990; Directorate Identifier 2014-NM-255-AD; Amendment 39-18478; AD 2016-08-02]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A320-214, -232, and -233 airplanes; and Airbus Model A321-211 and -231 airplanes. This AD was prompted by reports of incorrect installation of jiffy joint connectors on cables connected to certain passenger service units (PSUs), which could cause the passenger oxygen container to malfunction if the connector becomes disengaged during flight due to vibration. This AD requires identification of the affected PSUs, and depending on findings, doing applicable related investigative and corrective actions. We are issuing this AD to prevent failure of the door of the passenger oxygen container to open in the event of airplane decompression, resulting in lack of oxygen supply and consequent injury to occupants.

DATES: This AD becomes effective June 8, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 8, 2016.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov/> #!docketDetail;D=FAA-2015-3990; 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 Airbus service information identified in this final rule, contact Airbus, Airworthiness Office—ELAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>.

For Airbus Operations GmbH service information identified in this final rule, contact Airbus Operations GmbH, Cabin Electronics, Lueneburger Schanze 30, 21614 Buxtehude, Germany; telephone +49 40 7437 46 32; telefax +49 40 7437 16 80; email ruediger.jansen@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. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-3990.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1405; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A320-214, -232, and -233 airplanes; and Airbus Model A321-211 and -231 airplanes. The NPRM published in the **Federal Register** on October 19, 2015 (80 FR 63134) ("the NPRM").

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014-0256, dated November 26, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus

Model A320-214, -232, and -233 airplanes; and Airbus Model A321-211 and -231 airplanes. The MCAI states:

A quality issue was reported regarding incorrect installation of jiffy joint connectors on cables connected to certain Passenger Service Units (PSU), which may lead to a malfunction of the passenger oxygen container in case of connector disengagement during flight due to vibrations. All the aeroplanes that had a potentially affected PSU installed were identified. Most of those aeroplanes were corrected during a specific quality inspection on the final assembly line prior to customer delivery. Unfortunately, a limited number of aeroplanes were delivered before the quality inspection was implemented.

This condition, if not detected and corrected, could lead to failure of the door of the passenger oxygen container and open in case of aeroplane decompression, possibly resulting in lack of oxygen supply and consequent injury to occupants.

For the reasons described above, this [EASA] AD requires identification of the affected PSU and, depending on the findings, * * * related investigative and corrective actions.

Related investigative actions include a detailed inspection to determine if the jiffy joint connector works properly. Corrective actions include rework or replacement of the jiffy joint connectors.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-3990.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information.

- Airbus Service Bulletin A320-25-1B20, dated October 9, 2014. This service information describes procedures for inspecting for affected PSU part numbers and serial numbers, and depending on findings, doing

applicable related investigative and corrective actions. Related investigative actions include a detailed inspection to determine if the jiffy joint connector works properly. Corrective actions include rework or replacement of the jiffy joint connectors.

- Airbus Operations GmbH Vendor Service Bulletin Z315H-25-004, dated September 26, 2014, including Attachment 1, "List of affected PSU PNR and S/N" (the attachment is not numbered or dated). This service information describes procedures for inspecting for the connection of the jiffy joint connectors, and depending on findings, doing rework or replacement of the jiffy joint connectors.

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 7 airplanes of U.S. registry.

We also estimate that it takes about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost \$0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$2,975, or \$425 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-2015-3990; 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):

2016-08-02 Airbus: Amendment 39-18478. Docket No. FAA-2015-3990; Directorate Identifier 2014-NM-255-AD.

(a) Effective Date

This AD becomes effective June 8, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A320-214, -232, and -233 airplanes; and Airbus Model A321-211 and -231 airplanes, certificated in any category, having

manufacturer serial numbers (MSNs) 5583, 5598, 5602, 5604, 5608, 5610, 5613 through 5622 inclusive, 5624 through 5627 inclusive, 5629 through 5632 inclusive, 5634 through 5636 inclusive, 5638, 5640 through 5644 inclusive, 5646 through 5649 inclusive, 5651 through 5653 inclusive, 5655, 5657 through 5661 inclusive, 5663, 5665, 5667, 5670, 5672, 5673, and 5675.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by reports of incorrect installation of jiffy joint connectors on cables connected to certain passenger service units (PSU), which could cause the passenger oxygen container to malfunction if the connector becomes disengaged during flight due to vibration. We are issuing this AD to prevent failure of the door of the passenger oxygen container to open in the event of airplane decompression, resulting in lack of oxygen supply and consequent injury to occupants.

(f) Compliance

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

(g) Inspection and Related Investigative and Corrective Actions

Within 7,500 flight hours or 26 months after the effective date of this AD, whichever occurs first, do an inspection to identify the part number and serial number of each PSU, and if an affected part number or serial number is found, do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-25-1B20, dated October 9, 2014. Do all applicable related investigative and corrective actions within 7,500 flight hours or 26 months after the effective date of this AD, whichever occurs first. An affected PSU part number or serial number is one listed in Attachment 1, "List of affected PSU PNR and S/N," of Airbus Operations GmbH Vendor Service Bulletin Z315H-25-004, dated September 26, 2014. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the PSU can be conclusively determined from that review.

(h) Clarification of Vendor Service Information

On page 13 of Airbus Operations GmbH Vendor Service Bulletin Z315H-25-004, dated September 26, 2014, Table 4 ("List of Attachments") under the heading "APPENDIX" identifies "Attachment 1, 'List of affected PSU PNR and S/N.'" The attachment is not numbered or dated.

(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: Sanjay Raihan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1405; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the 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

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014-0256, dated November 26, 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-2015-3990.

(k) Material Incorporated by Reference

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

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

(i) Airbus Operations GmbH Vendor Service Bulletin Z315H-25-004, dated September 26, 2014, including Attachment 1, "List of affected PSU PNR and S/N." No page of the attachment to this document provides a document number, revision level, or date.

(ii) Airbus Service Bulletin A320-25-1B20, dated October 9, 2014.

(3) For Airbus service information identified in this final rule, contact Airbus,

Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>.

(4) For Airbus Operations GmbH service information identified in this final rule, contact Airbus Operations GmbH, Cabin Electronics, Lueneburger Schanze 30, 21614 Buxtehude, Germany; telephone +49 40 7437 46 32; telefax +49 40 7437 16 80; email ruediger.jansen@airbus.com.

(5) 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.

(6) 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 March 31, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-08532 Filed 5-3-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-6147; Directorate Identifier 2016-NM-021-AD; Amendment 39-18506; AD 2016-09-08]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747-8 series airplanes. This AD requires a detailed inspection for correct installation of the flex hose clamp of the occupant backup air supply and a general visual inspection for damage of the flex hose, and related investigative and corrective actions if necessary. This AD was prompted by a report indicating that flex hoses of the occupant backup air supply were found disconnected from the adjacent fiberglass duct on two airplanes. We are issuing this AD to detect and correct an incorrect clamp installation on the inboard end of the

flex hose, which allows the flex hose to slowly become disconnected from the adjacent fiberglass duct, and damage to the hose. This condition, in conjunction with a cargo fire event, can potentially lead to decreased airflow to the main deck, possibly resulting in smoke and/or toxic fumes penetrating into the main deck passenger compartment, which could result in injury to the passengers or cabin crew.

DATES: This AD is effective May 19, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 19, 2016.

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

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-2016-6147.

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-2016-6147; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory

evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6585; fax: 425-917-6590; email: stanley.chen@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report indicating that an operator, while on a maintenance visit, found a flex hose of the occupant backup air supply disconnected from the adjacent fiberglass duct on two airplanes. One of the flex hoses had a tear on the disconnected edge. A Boeing investigation found that these incidents were caused by the incorrect clamp installation on the inboard end of the flex hose, which is a quality control problem that allowed the flex hose to slowly become disconnected from the adjacent fiberglass duct. No related system faults were reported. We are issuing this AD to detect and correct an incorrect clamp installation on the inboard end of the flex hose, which allows the flex hose to slowly become disconnected from the adjacent fiberglass duct, and damage to the hose. This condition, in conjunction with a cargo fire event, can potentially lead to decreased airflow to the main deck, possibly resulting in smoke and/or toxic fumes penetrating into the main deck passenger compartment, which could result in injury to the passengers or cabin crew.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747-21A2571, dated December 4, 2015. The service information describes procedures for a detailed visual inspection of the clamp installation on the inboard end of the flex hose and general visual inspection of the flex hose for damage, 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.

FAA's Determination

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

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously.

The phrase "related investigative actions" is used in this AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase "corrective actions" is used in this AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

FAA's Justification and Determination of the Effective Date

There are currently no domestic operators of this product. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA-2016-6147 and Directorate Identifier 2016-NM-021-AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

Currently, there are no affected airplanes on the U.S. Register. However, if an affected airplane is imported and

placed on the U.S. Register in the future, we estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product
Inspection of inboard end of the flex hose.	3 work-hours × \$85 per hour = \$255 per inspection cycle ...	\$255 per inspection cycle

We estimate the following costs to do any necessary repairs that would be

required based on the results of the inspection. We have no way of

determining the number of aircraft that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair or replacement of inboard end of the flex hose.	Up to 3 work-hours × \$85 per hour = \$255.	\$65 per flex hose	\$320

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):

2016-09-08 The Boeing Company:
Amendment 39-18506; Docket No. FAA-2016-6147; Directorate Identifier 2016-NM-021-AD.

(a) Effective Date

This AD is effective May 19, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747-8 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747-21A2571, dated December 4, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by a report indicating that flex hoses of the occupant backup air supply were found disconnected from the adjacent fiberglass duct on two airplanes. We are issuing this AD to detect and correct an incorrect clamp installation on the inboard end of the flex hose, which allows the flex hose to slowly become disconnected from the adjacent fiberglass duct, and damage to the hose. This condition, in conjunction with a cargo fire event, can potentially lead to decreased airflow to the main deck, possibly resulting in smoke and/or toxic fumes penetrating into the main deck passenger compartment, which could result in injury to the passengers or cabin crew.

(f) Compliance

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

(g) Inspection and Repair of Backup Air Supply Clamp and Flex Hose

Except as required by paragraph (h) of this AD, at the applicable time in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-21A2571, dated December 4, 2015, do a detailed inspection for correct installation of the backup air supply clamp, and before further flight, do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-21A2571, dated December 4, 2015.

(h) Exception to the Service Information

Where paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-21A2571, dated December 4, 2015, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if

requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) 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) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) 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.

(j) Related Information

For more information about this AD, contact Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6585; fax: 425-917-6590; email: stanley.chen@faa.gov.

(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 the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 747-21A2571, dated December 4, 2015.

(ii) Reserved.

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

(4) You may view this service information at the FAA, Transport Airplane Directorate,

1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

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

Issued in Renton, Washington, on April 21, 2016.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-10158 Filed 5-3-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2015-3675; Airspace Docket No. 15-ANM-19]

Amendment of Class D and Class E Airspace; Walla Walla, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace, Class E surface area airspace, Class E surface area airspace designated as an extension, and Class E airspace extending upward from 700 feet above the surface at Walla Walla Regional Airport, Walla Walla, WA. After a review of the airspace, the FAA found it necessary to amend the airspace areas for the safety and management of Instrument Flight Rules (IFR) operations for arriving and departing aircraft at the airport. This action also updates the geographic coordinates of Walla Walla Regional Airport in the respective Class D and E airspace areas above.

DATES: Effective 0901 UTC, July 21, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: 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 20591; 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: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4511.

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 establishes controlled airspace at Walla Walla, WA.

History

On November 27, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class D airspace, Class E surface area airspace, Class E surface area airspace designated as an extension, and Class E airspace extending upward from 700 feet above the surface at Walla Walla Regional Airport, Walla Walla, WA, (80 FR 74063) Docket No. FAA-2015-3675. The FAA found these modifications necessary to ensure the safety and management of Instrument Flight Rules (IFR) operations for arriving and departing aircraft at the airport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is

incorporated by reference in 14 CFR part 71.1.

Availability and Summary of Documents for Incorporation by Reference

This document amends 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 Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class D airspace, Class E surface area airspace, Class E surface area airspace designated as an extension, and Class E airspace extending upward from 700 feet above the surface at Walla Walla Regional Airport, Walla Walla, WA. Class D airspace and all Class E airspace areas are modified to correct geographic latitude and longitude (lat./long.) errors in the legal description. Class E airspace designated as an extension is modified to include that area within 2.7 miles each side of the Walla Walla Airport 215° bearing extending from the 4.3-mile radius to 7.5 miles southwest of the airport, and that airspace within 4.1 miles each side of the airport 035° bearing extending from the 4.3-mile radius to 13.4 miles northeast of the airport. Class E airspace extending upward from 700 feet above the surface is modified to include that area bounded by a line beginning at lat. 45°52'29" N., long. 118°23'027" W.; to lat. 45°49'51" N., long. 118°26'02" W.; to lat. 45°57'17" N., long. 118°40'49" W.; to lat. 46°10'22" N., long. 118°27'48" W.; to lat. 46°08'46" N., long. 118°24'32" W.; to lat. 46°14'38" N., long. 118°18'44" W.; to lat. 46°16'07" N., long. 118°21'47" W.; to lat. 46°29'20" N., long. 118°08'35" W.; to lat. 46°22'02" N., long. 117°53'24" W.; to lat. 46°14'25" N., long. 118°01'11" W.; and that airspace within a 13.4-mile radius of point in space coordinates at lat. 46°03'27" N., long. 118°12'20" W., from the 052° bearing from the Walla Walla Regional Airport clockwise to the 198° bearing.

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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM WA D Walla Walla, WA

Walla Walla Regional Airport, WA
(Lat. 46°05'43" N., long. 118°17'09" W.)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.3-mile radius of the Walla Walla Regional Airport. This Class D airspace area is effective during the specific dates and

times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Walla Walla, WA

Walla Walla Regional Airport, WA
(Lat. 46°05'43" N., long. 118°17'09" W.)

That airspace extending upward from the surface within a 4.3-mile radius of the Walla Walla Regional Airport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM WA E4 Walla Walla, WA

Walla Walla Regional Airport, WA
(Lat. 46°05'43" N., long. 118°17'09" W.)

That airspace extending upward from the surface within 2.7 miles each side of the Walla Walla 215° bearing from the airport extending from the 4.3-mile radius of Walla Walla Regional Airport to 7.5 miles southwest of the airport, and within 4.1 miles each side of the Walla Walla 35° bearing from the airport extending from the 4.3-mile radius of Walla Walla Regional Airport to 13.4 miles northeast of the airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WA E5 Walla Walla, WA

Walla Walla Regional Airport, WA
(Lat. 46°05'43" N., long. 118°17'09" W.)

Walla Walla Regional Airport, point in space coordinates

(Lat. 46°03'27" N., long. 118°12'20" W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 45°52'29" N., long. 118°23'027" W.; to lat. 45°49'51" N., long. 118°26'02" W.; to lat. 45°57'17" N., long. 118°40'49" W.; to lat. 46°10'22" N., long. 118°27'48" W.; to lat. 46°08'46" N., long. 118°24'32" W.; to lat. 46°14'38" N., long. 118°18'44" W.; to lat. 46°16'07" N., long. 118°21'47" W.; to lat. 46°29'20" N., long. 118°08'35" W.; to lat. 46°22'02" N., long. 117°53'24" W.; to lat. 46°14'25" N., long. 118°01'11" W.; and that airspace within a 13.4-mile radius of point in space coordinates at lat. 46°03'27" N., long. 118°12'20" W., from the 052° bearing from the Walla Walla Regional Airport clockwise to the 198° bearing.

Issued in Seattle, Washington, on April 21, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–10179 Filed 5–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 610****[Docket No. FDA-2016-N-1170]****Standard Preparations, Limits of Potency, and Dating Period Limitations for Biological Products****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Direct final rule.

SUMMARY: The Food and Drug Administration (FDA or Agency or we) is amending the general biological products standards relating to dating periods and also removing certain standards relating to standard preparations and limits of potency. FDA is taking this action to update outdated requirements, and accommodate new and evolving technology and testing capabilities, without diminishing public health protections. This action is part of FDA's retrospective review of its regulations in response to an Executive order. FDA is issuing these amendments directly as a final rule because the Agency believes they are noncontroversial and FDA anticipates no significant adverse comments.

DATES: This rule is effective September 16, 2016. Submit either electronic or written comments on this direct final rule or its companion proposed rule by July 18, 2016. If FDA receives no significant adverse comments within the specified comment period, the Agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the Agency will publish a document in the **Federal Register** withdrawing this direct final rule within 30 days after the comment period on this direct final rule ends.

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-1170 for "Standard Preparations, Limits of Potency, and Dating Period Limitations for Biological Products." 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: Tami Belouin, 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. Executive Summary****A. Purpose of Direct Final Rule**

FDA is issuing this direct final rule because revision and removal of certain general biological products standards will update outdated requirements and accommodate new and evolving technology and testing capabilities without diminishing public health protections. FDA is taking this action because the existing codified requirements are duplicative of requirements that are also specified in biologics license applications (BLAs) or are no longer necessary or appropriate to help ensure the safety, purity, and potency of licensed biological products.

B. Summary of the Major Provisions of the Direct Final Rule

This direct final rule removes the requirements contained in § 610.20 (21 CFR 610.20) from the regulations. FDA is taking this action because the standard preparations listed in the regulation are obsolete, no longer available, or described on a product specific basis in BLAs. In addition, FDA believes that it is no longer necessary to restrict the source of standard preparations to the Center for Biologics Evaluation and Research (CBER), since

appropriate standard preparations can often be obtained from other sources. Section 610.21 is removed because these potency limits are either obsolete or best described on a product specific basis in the BLA. Section 610.50 is amended to remove references to §§ 610.20 and 610.21 and official potency tests and to reflect FDA's updated approach to establishing dates of manufacture. Section 610.53 is amended to remove products no longer manufactured and products for which dating information is identified in the BLA of each individual product, and to reflect updated practices for the remaining products.

C. Legal Authority

FDA is taking this action under the biological products provisions of the Public Health Service Act (PHS Act), and the drugs and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

D. Costs and Benefits

Because this direct final rule does not impose any additional regulatory burdens, this regulation is not anticipated to result in any compliance costs and the economic impact is expected to be minimal.

II. Direct Final Rulemaking

In the document entitled "Guidance for FDA and Industry: Direct Final Rule Procedures," announced and provided in the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how the Agency will employ direct final rulemaking. The guidance may be accessed at: <http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm>. We have determined that this rule is appropriate for direct final rulemaking because we believe that it includes only noncontroversial amendments and we anticipate no significant adverse comments. Consistent with our procedures on direct final rulemaking, FDA is also publishing elsewhere in this issue of the **Federal Register** a companion proposed rule proposing to amend the general biological products standards relating to dating periods and to remove those relating to standard preparations and limits of potency. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event that the direct final rule is withdrawn because of any significant adverse comments. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments received

in response to the companion proposed rule will be considered as comments regarding the direct final rule.

We are providing a comment period on the direct final rule of 75 days after the date of publication in the **Federal Register**. If we receive any significant adverse comments, we intend to withdraw this direct final rule before its effective date by publication of a notice in the **Federal Register**. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in this direct final rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of this rule and that part can be severed from the remainder of the rule (e.g., where, as here, a direct final rule deletes several unrelated regulations), we may adopt as final those provisions of the rule that are not the subject of the significant adverse comment.

If any significant adverse comments are received during the comment period, FDA will publish, before the effective date of this direct final rule, a document withdrawing the direct final rule. If we withdraw the direct final rule, any comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a document confirming the effective date within 30 days after the comment period ends.

III. Background

On January 18, 2011, President Barack Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review" (76 FR 3821, January 21, 2011). One of the provisions in the Executive Order requires Agencies to consider how best to promote the retrospective

analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned (76 FR 3821 at 3822). As one step in implementing the Executive Order, FDA published a notice in the **Federal Register** of April 27, 2011 (76 FR 23520) entitled "Periodic Review of Existing Regulations; Retrospective Review Under E.O. 13563." In that notice, FDA announced that it was conducting a review of existing regulations to determine, in part, whether they can be made more effective in light of current public health needs and to take advantage of, and support, advances in innovation that have occurred since those regulations took effect. As part of this initiative, FDA is updating outdated regulations as specified in this rule.

FDA's general biological products standards in part 610 are intended to help ensure the safety, purity, and potency of biological products administered to humans. The revision and removal of certain general biological products standards are designed to update outdated requirements and accommodate new and evolving manufacturing and control testing technology. The rule provides manufacturers of biological products with flexibility, as appropriate, to employ advances in science and technology as they become available, without diminishing public health protections.

A. Sections 610.20 and 610.21

Standard preparations are generally used to perform lot release testing or other specific product characterization assays. Under the current standard preparations, § 610.20, FDA requires specific standard preparations to be used for a small number of the biological products FDA regulates unless a modification is permitted under § 610.9. Specifically, according to current § 610.20 *Standard preparations*, standard preparations, made available by CBER, are required to be used in the testing of potency or opacity of certain biological products, mostly biological products that were initially licensed several decades ago. Most of these standard preparations requirements are now obsolete, because either CBER no longer provides the listed standard preparations, or the specific biological products are no longer manufactured, or both. In addition, standard preparations to help ensure the safety, purity, and potency of particular biological products can often be obtained from sources other than CBER now, including international sources, or can be

developed internally by the applicant. Thus, FDA believes it is no longer necessary to specify CBER as the source of standard preparations in § 610.20. For these reasons, FDA is removing § 610.20. Consistent with current practice and BLAs, CBER will continue to make and supply standard preparations when appropriate, as well as continue to collaborate with external organizations in the development and assessment of physical standard preparations for biological products.

Under the current § 610.21 *Limits of potency*, FDA specifies minimal potency limits to be met for the antibodies and antigens listed. However, most of the biological products subject to the specified potency limits are no longer manufactured. In addition, for those that are still manufactured, or for anyone wanting to manufacture the listed products, FDA's updated practice is to have the potency limit also be specified in the BLA. For this reason, FDA is removing § 610.21. As a result of removing §§ 610.20 and 610.21, part 610, subpart C is removed and reserved.

In addition to sometimes being duplicative of information provided in the BLA and unnecessarily restrictive regarding the source of standard preparations, the codification by regulation of many of the standard preparations and limits of potency for certain biological products sometimes does not keep abreast of technological advances in science related to manufacturing and testing. For many years, because of the potential for impeding scientific progress, FDA has not codified additional specific standard preparations and limits of potency for licensed biological products, but instead the standards are established in the BLA. Failure to conform to applicable standards established in the license is grounds for revocation under § 601.5(b)(1)(iv) (21 CFR 601.5(b)(1)(iv)). Notwithstanding the changes in this rule, FDA will continue to require that each biological product meet standards to assure that the product is safe, pure, and potent, and will continue to require that each lot demonstrate conformance with the standards applicable to that product (see § 610.1) through appropriate testing. Therefore, we expect that standard preparations and potency limits will be established in the BLA and may be changed only in accordance with regulations for reporting post-approval changes (see § 601.12). Furthermore, no lot of any licensed product may be released by the manufacturer prior to the completion of tests for conformity with standards applicable to such product (see § 610.1).

FDA is therefore amending its regulations to remove §§ 610.20 and 610.21 because appropriate standard preparations and potency limits for any listed product are specified during the licensing process on a product specific basis. The removal of §§ 610.20 and 610.21 will also increase regulatory flexibility by allowing industry and FDA to more readily use and incorporate current scientific technology and other appropriate reference materials in the manufacture and regulation of licensed biological products.

B. Sections 610.50 and 610.53

A biological product is expected to remain stable and retain its identity, strength, quality, and purity for a period of time after manufacture when it is properly stored. The dating period limitations regulations provided at §§ 610.50 and 610.53 specify how the date of manufacture for biological products will be determined, when the dating begins, and dating periods for certain biological products. The existing § 610.50 prescribes how the date of manufacture is determined for biological products and relies in part upon §§ 610.20 and 610.21 or official standards of potency (*i.e.*, a specific test method described in regulation). With the removal of §§ 610.20 and 610.21 for reasons described in this document, FDA is revising § 610.50 to reflect FDA's updated approach to establishing dates of manufacture.

In addition, current § 610.50(b) does not provide FDA or applicants with flexibility to consider the variety of manufacturing situations and technologies that exist today and which may occur in the future. Since 1977, when the regulation was last amended, new methods of manufacture and testing often associated with new biological products have been developed. The revisions to § 610.50 provided in this direct final rule therefore allow additional manufacturing activities other than those currently listed to be used to determine the date of manufacture.

Under the revised regulation, the date of manufacture must be identified in the approved BLA. FDA recommends that applicants discuss a suitable date of manufacture with FDA during late clinical development and propose a date of manufacture in the BLA. We consider the underlying science and manufacturing process testing methods in determining the date of manufacture for each specific product. The approved BLA will specify how the date of manufacture is determined. A paragraph is being added, § 610.50(c), specifying

how the date of manufacture for Whole Blood and blood components is determined. This will assist in complying with the dating periods prescribed for Whole Blood and blood components in the revised table in redesignated § 610.53(b).

The current table at § 610.53(c) lists dating periods, manufacturer's storage periods, and storage conditions for many biological products. The table in § 610.53(c) (which is redesignated as § 610.53(b)) is revised to remove products where storage conditions and dating periods are established to help ensure the continued safety, potency, and purity of each individual product, based upon information submitted in the relevant BLA. The dating period and storage conditions for these products will be identified in the BLA. The table in § 610.53(c) is also revised to delete those products that are no longer manufactured. We are retaining those products, specifically Whole Blood and blood components, whose dating periods are based upon data relating to the anticoagulant or preservative solution in the product, usage, clinical experience, laboratory testing, or further processing. The list is updated to include currently licensed Whole Blood and blood component products with their applicable storage temperatures and dating periods.

In listing the dating periods for Whole Blood and blood component products, we took into account existing regulations, guidance documents, package inserts for solutions used for manufacture or storage of Whole Blood and blood components, and operator instruction manuals for devices used in the manufacture of Whole Blood and blood component products. Because we understand from these materials that these dating periods are in current use, and because blood establishments can request an exception under § 640.120 (21 CFR 640.120), we do not anticipate significant objections to codifying this information. Similarly, we are removing § 610.53(d) because it is duplicative of § 640.120. In addition, we recognize that future scientific understanding and new technology, such as the implementation of pathogen reduction technology or the approval of extended storage systems, could affect what dating periods would be necessary, as a scientific matter, for Whole Blood and blood components. For this reason, the rule allows for changes to the dating periods specified in § 610.53(b) when the dating period is otherwise specified in the instructions for use by the blood collection, processing, and storage system approved or cleared for such use by FDA.

In conclusion, the amendments to the regulations provided by this rule are designed to be consistent with updated practices in the biological product industry and to remove unnecessary or outdated requirements. FDA is taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations to provide flexibility without diminishing public health protection. Given the additional flexibility provided by these revised regulations, FDA does not anticipate that applicants for licensed biological products will need to revise information in BLAs in order to conform to the revised regulations.

IV. Highlights of the Direct Final Rule

FDA is revising the general biological products standards relating to dating periods and removing certain standard preparations and limits of potency. These changes are designed to remove unnecessary or outdated requirements, and accommodate new and evolving technology and testing capabilities without diminishing public health protections. FDA is issuing these revisions directly as a final rule because the Agency believes they include only noncontroversial amendments and FDA anticipates no significant adverse comments.

FDA is removing § 610.20 because the standard preparations listed are obsolete or no longer available; standard preparations to ensure the safety, purity, and potency of a product can best be determined on a product specific basis; and standard preparations may be obtained from other sources. Applicants for biological product licenses currently identify standard preparations in the BLA, and the proposed standard preparations and their purpose are reviewed by FDA during the regulatory process. The standard preparations may include standard preparations developed by the applicant as well as appropriate standard preparations that can be obtained from other sources. Consistent with current practice, CBER will continue to make and supply standard preparations when appropriate, as well as continue to collaborate with external organizations in the development and assessment of physical standard preparations for licensed biological products.

We are removing § 610.21 because these potency limits are best described in the BLAs on a product specific basis. Applicants for biological product licenses already identify standards for potency to help ensure the safety, purity, and potency of the product within their BLA, and the proposed

standards are reviewed by FDA during the regulatory process. The use of a potency limit is suitably described in the specific product's BLA and allows for its continued and appropriate use in the absence of § 610.21.

We are revising § 610.50 by making a minor amendment to the section heading, removing the current language, redesignating § 610.53(b) as § 610.50(a) with edits, revising § 610.50(b), and adding new § 610.50(c). Current § 610.53(b), which applies to all biological products, has been moved to § 610.50(a) and edits have been made for better organization and clarification. Section 610.50(b) is being revised and § 610.50(c) is being added to clarify how the date of manufacture is set for purposes of determining the dating period for general biological products and for Whole Blood and blood components, respectively.

We are amending the section heading of § 610.53 to reflect that it only addresses dating periods for Whole Blood and blood components. We are revising § 610.53(a) since this section only applies to the dating periods for Whole Blood and blood components. We are redesignating § 610.53(c) as § 610.53(b) and revising the text to provide an explanation on using the table and to correspond with 21 CFR 606.121(c)(7). We are revising the text and table to eliminate those products for which storage periods, storage conditions, and dating periods are better established by data submitted in the BLA, and to delete those products which are no longer manufactured. The dating period and storage conditions for these products are identified in the BLA. We are including an updated list of Whole Blood and blood component products with their applicable storage temperatures and dating periods, which are based upon available information, including data relating to the anticoagulant or preservative solution in the product, usage, clinical experience, laboratory testing, or further processing. The table contains a list of storage temperatures and dating periods for Whole Blood and blood components that FDA has reviewed and determined to be necessary to help ensure the safety, potency, and purity of these products. In listing the dating periods for the Whole Blood and blood component products, we took into account existing guidance documents, package inserts for solutions used for manufacture or storage of Whole Blood and blood components, and operator instruction manuals for devices used in the manufacture of Whole Blood and blood component products. We are redesignating § 610.53(c) as § 610.53(b)

and removing all products regulated by FDA's Center for Drug Evaluation and Research (CDER) from the table. Finally, we are removing § 610.53(d) because it is duplicative of § 640.120.

V. Legal Authority

FDA is issuing this rule under the biological products provisions of the PHS Act (42 U.S.C. 216, 262, 263, 263a and 264) and the drugs and general administrative provisions of the FD&C Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, and 381). Under these provisions of the PHS Act and the FD&C Act, we have the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, and potent, and prevent the introduction, transmission, and spread of communicable disease.

VI. Economic Analysis of Impacts

We have examined the impacts of the direct final rule under Executive Order 12866, Executive Order 13563, and 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 direct final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the direct final rule is removing regulations and revising regulations to be consistent with updated practice, we certify that this direct final 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 issuing “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 direct final rule would not result

in an expenditure in any year that meets or exceeds this amount.

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.31(h) 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.

VIII. Federalism

We have analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Paperwork Reduction Act of 1995

This direct final rule contains 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 part 610 have been approved under OMB control number 0910–0338. The removal of § 610.53(d) impacts OMB control number 0910–0338. We are removing § 610.53(d) because it is duplicative of § 640.120, which is also approved under the same collection of information. While there is no net change in the burden estimate, the current approved collection of information will be updated to reflect this removal. The actions taken by this direct final rule do not create a substantive or material modification to this approved collection of information. Therefore, FDA concludes that OMB has already approved this information collection and the requirements in this document are not subject to additional review by OMB.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 1. The authority citation for part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

Subpart C [Removed and Reserved]

■ 2. Remove and reserve subpart C, consisting of §§ 610.20 and 610.21.

■ 3. Revise § 610.50 to read as follows:

§ 610.50 Date of manufacture for biological products.

(a) *When the dating period begins.* The dating period for a product must begin on the date of manufacture as described in paragraphs (b) and (c) of this section. The dating period for a combination of two or more products must be no longer than the dating period of the component with the shortest dating period.

(b) *Determining the date of manufacture for biological products other than Whole Blood and blood components.* The date of manufacture for biological products, other than Whole Blood and blood components, must be identified in the approved biologics license application as one of the following, whichever is applicable: The date of:

- (1) Potency test or other specific test as described in a biologics license application or supplement to the application;
- (2) Removal from animals or humans;
- (3) Extraction;
- (4) Solution;
- (5) Cessation of growth;
- (6) Final sterile filtration of a bulk solution;
- (7) Manufacture as described in part 660 of this chapter; or

(8) Other specific manufacturing activity described in a biologics license application or supplement to the biologics license application.

(c) *Determining the date of manufacture for Whole Blood and blood components.* (1) The date of manufacture for Whole Blood and blood components must be one of the following, whichever is applicable:

- (i) Collection date and/or time;
- (ii) Irradiation date;
- (iii) The time the red blood cell product was removed from frozen storage for deglycerolization;
- (iv) The time the additive or rejuvenation solution was added;
- (v) The time the product was entered for washing or removing plasma (if prepared in an open system);
- (vi) As specified in the instructions for use by the blood collection, processing, and storage system approved or cleared for such use by FDA; or
- (vii) As approved by the Director, Center for Biologics Evaluation and Research, in a biologics license application or supplement to the application.

(2) For licensed Whole Blood and blood components, the date of manufacture must be identified in the approved biologics license application or supplement to the application.

■ 4. Revise § 610.53 to read as follows:

§ 610.53 Dating periods for Whole Blood and blood components.

(a) *General.* Dating periods for Whole Blood and blood components are specified in the table in paragraph (b) of this section.

(b) *Table of dating periods.* In using the table in this paragraph, when a product in column A is stored at the storage temperature prescribed in column B, storage of a product must not exceed the dating period specified in column C, unless a different dating period is specified in the instructions for use by the blood collection, processing and storage system approved or cleared for such use by FDA. Container labels for each product must include the recommended storage temperatures.

WHOLE BLOOD AND BLOOD COMPONENTS STORAGE TEMPERATURES AND DATING PERIODS

A	B	C
Product	Storage temperature	Dating period
Whole Blood		
ACD, CPD, CP2D	Between 1 and 6 °C	21 days from date of collection.

WHOLE BLOOD AND BLOOD COMPONENTS STORAGE TEMPERATURES AND DATING PERIODS—Continued

A	B	C
Product	Storage temperature	Dating period
CPDA-1	do ¹	35 days from date of collection.
Red Blood Cells		
ACD, CPD, CP2D	Between 1 and 6 °C	21 days from date of collection.
CPDA-1	do	35 days from date of collection.
Additive solutions	do	42 days from date of collection.
Open system	do	24 hours after entering bag.
(e.g., deglycerolized, washed)	do	14 days after entering bag.
Deglycerolized in closed system with additive solution added.	do	28 days from date of irradiation or original dating, whichever is shorter.
Irradiated	do	10 years from date of collection.
Frozen	–65 °C or colder	
Platelets		
Platelets	Between 20 and 24 °C	5 days from date of collection.
Platelets	Other temperatures according to storage bag instructions.	As specified in the instructions for use by the blood collection, processing and storage system approved or cleared for such use by FDA.
Plasma		
Fresh Frozen Plasma	–18 °C or colder	1 year from date of collection.
Plasma Frozen Within 24 Hours After Phlebotomy.	do	1 year from date of collection.
Plasma Frozen Within 24 Hours After Phlebotomy Held at Room Temperature Up To 24 Hours After Phlebotomy.	do	1 year from date of collection.
Plasma Cryoprecipitate Reduced	do	1 year from date of collection.
Plasma	do	5 years from date of collection.
Liquid Plasma	Between 1 and 6 °C	5 days from end of Whole Blood dating period.
Source Plasma (frozen injectable)	–20 °C or colder	10 years from date of collection.
Source Plasma Liquid (injectable)	10 °C or colder	According to approved biologics license application.
Source Plasma (noninjectable)	Temperature appropriate for final product	10 years from date of collection.
Therapeutic Exchange Plasma	–20 °C or colder	10 years from date of collection.
Cryoprecipitated AHF		
Cryoprecipitated AHF	–18 °C or colder	1 year from date of collection of source blood or from date of collection of oldest source blood in pre-storage pool.
Source Leukocytes		
Source Leukocytes	Temperature appropriate for final product	In lieu of expiration date, the collection date must appear on the label.

¹ The abbreviation “do.” for ditto is used in the table to indicate that the previous line is being repeated.

Dated: April 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–10385 Filed 5–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/
AOA501010.999900 253G]

25 CFR Part 20

RIN 1076–AF29

Financial Assistance and Social Services Programs; Burial Assistance

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Final rule; confirmation.

SUMMARY: The Bureau of Indian Affairs (BIA) is confirming the interim final rule published on March 1, 2016, extending the deadline for filing an application for burial assistance to 180 days to address hardships resulting from the current short timeframe. The Department of the Interior (Department) did not receive any significant adverse comments during the public comment period on the interim final rule, and

therefore confirms the rule without change.

DATES: Effective May 4, 2016.

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: On March 1, 2016, the Department published an interim final rule (81 FR 10475) to extend 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.

The Department received three comments on the rule, all of which were supportive of the rule. None of the comments requested changes to the rule. Consequently, the Department did not make any change to the interim final rule as a result of this comment. For these reasons, the Department confirms the interim rule published March 1, 2016 (81 FR 10475), as final without change.

Dated: April 26, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016-10409 Filed 5-3-16; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9766]

RIN 1545-BM87

Self-Employment Tax Treatment of Partners in a Partnership That Owns a Disregarded Entity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that clarify the employment tax treatment of partners in a partnership that owns a disregarded entity. These regulations affect partners in a partnership that owns a disregarded entity. The text of these temporary regulations serves as the text of proposed regulations (REG-114307-15) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective date:* These regulations are effective on May 4, 2016.

Applicability date: For date of applicability, see § 301-7701-2T(e)(8).

FOR FURTHER INFORMATION CONTACT:

Andrew K. Holubeck at (202) 317-4774 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 301.7701-2(c)(2)(i) states that, except as otherwise provided, a business entity that has a single owner and is not a corporation under § 301.7701-2(b) is disregarded as an entity separate from its owner (a disregarded entity). However, § 301.7701-2(c)(2)(iv)(B) provides that an entity that is a disregarded entity is treated as a corporation for purposes of employment taxes imposed under subtitle C of the Internal Revenue Code (Code). Therefore, the disregarded entity, rather than the owner, is considered to be the employer of the entity's employees for purposes of employment taxes imposed by subtitle C.

While § 301.7701-2(c)(2)(iv)(B) treats a disregarded entity as a corporation for employment tax purposes, this rule does not apply for self-employment tax purposes. Specifically, § 301.7701-2(c)(2)(iv)(C)(2) provides that the general rule of § 301.7701-2(c)(2)(i) applies for self-employment tax purposes. After setting forth this general rule, the regulation applies this rule in the context of a single individual owner by stating that the owner of an entity that is treated in the same manner as a sole proprietorship is subject to tax on self-employment income. The regulation, at § 301.7701-2(c)(2)(iv)(D), also includes an example that specifically illustrates the mechanics of the rule. In the example, the disregarded entity is subject to employment tax with respect to employees of the disregarded entity. The individual owner, however, is subject to self-employment tax on the net earnings from self-employment resulting from the disregarded entity's activities. The regulations do not include a separate example in which the disregarded entity is owned by a partnership.

It has come to the attention of the Treasury Department and the IRS that even though the regulations set forth a general rule that an entity is disregarded as a separate entity from the owner for self-employment tax purposes, some taxpayers may have read the current regulations to permit the treatment of individual partners in a partnership that owns a disregarded entity as employees of the disregarded entity because the regulations did not include a specific example applying the general rule in the

partnership context. Under this reading, which was not intended, some taxpayers have permitted partners to participate in certain tax-favored employee benefit plans. The Treasury Department and the IRS note that the regulations did not create a distinction between a disregarded entity owned by an individual (that is, a sole proprietorship) and a disregarded entity owned by a partnership in the application of the self-employment tax rule. Rather, § 301.7701-2(c)(2)(iv)(C)(2) provides that the general rule of § 301.7701-2(c)(2)(i) applies for self-employment tax purposes for any owner of a disregarded entity without carving out an exception regarding a partnership that owns such a disregarded entity. In addition, the Treasury Department and the IRS do not believe that the regulations alter the holding of Rev. Rul. 69-184, 1969-1 CB 256, which provides that: (1) Bona fide members of a partnership are not employees of the partnership within the meaning of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Collection of Income Tax at Source on Wages (chapters 21, 23, and 24, respectively, subtitle C, Internal Revenue Code of 1954), and (2) such a partner who devotes time and energy in the conduct of the trade or business of the partnership, or in providing services to the partnership as an independent contractor, is, in either event, a self-employed individual rather than an individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

To address this issue, the Treasury Department and the IRS clarify in these temporary regulations that the rule that a disregarded entity is treated as a corporation for employment tax purposes does not apply to the self-employment tax treatment of any individuals who are partners in a partnership that owns a disregarded entity. The rule that the entity is disregarded for self-employment tax purposes applies to partners in the same way that it applies to a sole proprietor owner. Accordingly, the partners are subject to the same self-employment tax rules as partners in a partnership that does not own a disregarded entity.

Explanation of Provisions

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 7701 of the Code to clarify that a disregarded entity that is treated as a corporation for purposes of employment taxes imposed under subtitle C of the

Code is not treated as a corporation for purposes of employing its individual owner, who is treated as a sole proprietor, or employing an individual that is a partner in a partnership that owns the disregarded entity. Rather, the entity is disregarded as an entity separate from its owner for this purpose. Existing regulations already provide that the entity is disregarded for self-employment tax purposes and specifically note that the owner of an entity treated in the same manner as a sole proprietorship under § 301.7701–2(a) is subject to tax on self-employment income. These temporary regulations apply this existing general rule to illustrate that, if a partnership is the owner of a disregarded entity, the partners in the partnership are subject to the same self-employment tax rules as partners in a partnership that does not own a disregarded entity.

While these temporary regulations provide that a disregarded entity owned by a partnership is not treated as a corporation for purposes of employing any partner of the partnership, these regulations do not address the application of Rev. Rul. 69–184 in tiered partnership situations. Several commenters have requested that the IRS provide additional guidance on the application of Rev. Rul. 69–184 to tiered partnership situations, and have also suggested modifying the holding of Rev. Rul. 69–184 to allow partnerships to treat partners as employees in certain circumstances, such as, for example, employees in a partnership who obtain a small ownership interest in the partnership as an employee compensatory award or incentive. However, these commenters have not provided detailed analyses and suggestions as to how the employee benefit and employment tax rules would apply in such situations. The Treasury Department and the IRS request comments on the appropriate application of the principles of Rev. Rul. 69–184 to tiered partnership situations, the circumstances in which it may be appropriate to permit partners to also be employees of the partnership, and the impact on employee benefit plans (including, but not limited to, qualified retirement plans, health and welfare plans, and fringe benefit plans) and on employment taxes if Rev. Rul. 69–184 were to be modified to permit partners to also be employees in certain circumstances.

In order to allow adequate time for partnerships to make necessary payroll and benefit plan adjustments, these temporary regulations will apply on the later of: (1) August 1, 2016, or (2) the first day of the latest-starting plan year

following May 4, 2016, of an affected plan (based on the plans adopted before, and the plan years in effect as of, May 4, 2016) sponsored by an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2. For these purposes, an affected plan includes any qualified plan, health plan, or section 125 cafeteria plan if the plan benefits participants whose employment status is affected by these regulations. For rules that apply before the applicability date of these regulations, see 26 CFR part 301 revised as of April 1, 2016.

Special Analysis

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analysis section in the preamble to the cross-referenced notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Andrew Holubeck of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

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 301.7701–2 is amended by:

- 1. Revising paragraph (c)(2)(iv)(C)(2).
- 2. Adding paragraph (e)(8).

The revision and addition reads as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(C) * * *

(2) [Reserved]. For further guidance, see § 301.7701–2T(c)(2)(iv)(C)(2).

* * * * *

(e)(8) [Reserved]. For further guidance, see § 301.7701–2T(e)(8).

■ **Par. 3.** Section 301.7701–2T is added to read as follows:

§ 301.7701–2T Business entities; definitions (temporary).

(a) through (c)(2)(iv)(C)(1) [Reserved]. For further guidance, see § 301.7701–2(a) through (c)(2)(iv)(C)(1).

(2) Section 301.7701–2(c)(2)(i) applies to taxes imposed under subtitle A, including Chapter 2—Tax on Self-Employment Income. Thus, an entity that is treated in the same manner as a sole proprietorship under § 301.7701–2(a) is not treated as a corporation for purposes of employing its owner; instead, the entity is disregarded as an entity separate from its owner for this purpose and is not the employer of its owner. The owner will be subject to self-employment tax on self-employment income with respect to the entity's activities. Also, if a partnership is the owner of an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2, the entity is not treated as a corporation for purposes of employing a partner of the partnership that owns the entity; instead, the entity is disregarded as an entity separate from the partnership for this purpose and is not the employer of any partner of the partnership that owns the entity. A partner of a partnership that owns an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2 is subject to the same self-employment tax rules as a partner of a partnership that does not own an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2.

(c)(2)(iv)(D) through (e)(7) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(D) through (e)(7).

(8)(i) *Effective/applicability date.*

Paragraph (c)(2)(iv)(C)(2) of this section applies on the later of—

(A) August 1, 2016, or

(B) The first day of the latest-starting plan year following May 4, 2016, of an affected plan (based on the plans adopted before, and the plan years in effect as of, May 4, 2016) sponsored by an entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2. For rules that apply before the applicability date of these regulations, see 26 CFR part 301 revised as of April 1, 2016. For these purposes—

(1) An affected plan includes any qualified plan, health plan, or section 125 cafeteria plan if the plan benefits participants whose employment status is affected by paragraph (c)(2)(iv)(C)(2),

(2) A qualified plan means a plan, contract, pension, or trust described in paragraph (A) or (B) of section 219(g)(5) (other than paragraph (A)(iii)), and

(3) A health plan means an arrangement described under § 1.105–5 of this chapter.

(ii) *Expiration date.* The applicability of paragraph (c)(2)(iv)(C)(2) of this section expires on or before May 3, 2016, or such earlier date as may be determined under amendments to the regulations issued after May 3, 2016.

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: April 20, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–10383 Filed 5–3–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0306]

RIN 1625–AA00

Safety Zone, Cape Fear River; Southport, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Cape Fear River near Southport, North Carolina. This temporary safety zone is intended to restrict vessels from a portion of the Cape Fear River during the Barrier Island Challenge Stand Up Paddle Board Race. This action is necessary to protect the safety of race participants when they cross the Lower Swash Channel of the Cape Fear River. Entry

into or movement within the safety zone during the enforcement period is prohibited without approval of the Captain of the Port.

DATES: This rule is effective on May 7, 2016, from 9:30 a.m. through 11:30 a.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2016–0306 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 LCDR Derek J. Burrill, Waterways Management Division Chief, Sector North Carolina, Coast Guard; telephone (910) 772–2230, email Derek.J.Burrill@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because final details of this event were not provided until April 12, 2016, making it impracticable to publish an NPRM.

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 protect race participants and spectators from the hazards associated with a paddleboard race.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The

Captain of the Port North Carolina (COTP) has determined that potential hazards associated with the Barrier Island Challenge Paddle Board Race on May 07, 2016 will be a safety concern when race participants cross the Lower Swash Channel on the Cape Fear River, Southport, North Carolina, a major shipping channel. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Swash Channel on the Cape Fear River. The safety zone will encompass all waters within a shape bounded by the following coordinates: 33°55′05″ N., 078°00′04″ W.; 33°54′57″ N., 078°00′04″ W.; 33°54′56″ N., 078°00′54″ W.; 33°55′04″ N., 078°00′54″ W.; thence back to the point of origin (NAD 83) in Southport, North Carolina. This safety zone will be established in the interest of public safety due to the participants crossing the Cape Fear River. This rule will be enforced on May 07, 2016 during the times of 9:30 a.m. through 11:30 a.m., unless otherwise cancelled earlier by the COTP.

Except for vessels authorized by the Captain of the Port or her Representative, no person or vessel may enter or remain in the safety zone during the time frame listed. The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts.

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 a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This 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 primary impact of these regulations will be on limiting all vessels wishing to transit the affected waterways during enforcement of the safety zone on the Cape Fear River within all waters within a shape bounded by the following coordinates: 33°55'05" N., 078°00'04" W.; 33°54'57" N., 078°00'04" W.; 33°54'56" N., 078°00'54" W.; 33°55'04" N., 078°00'54" W.; thence back to the point of origin (NAD 83) in Southport, North Carolina on May 07, 2016 from 9:30 a.m. through 11:30 a.m., unless otherwise cancelled by the COTP. Although these regulations prevent traffic from transiting a portion of the Cape Fear River during this event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, 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 the establishment of a safety zone to limit vessels within all waters within a shape bounded by the following coordinates: 33°55'05" N., 078°00'04" W.; 33°54'57" N., 078°00'04" W.; 33°54'56" N., 078°00'54" W.; 33°55'04" N., 078°00'54" W.; thence back to the point of origin (NAD 83) in Southport, North Carolina on May 07, 2016 from 9:30 a.m. through 11:30 a.m. to protect life and property of mariners from the hazards associated with the event. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233

■ 2. Add § 100.35–T05–0306 to read as follows:

§ 100.35–T05–0306 Safety Zone, Cape Fear River; Southport, North Carolina

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: Specified waters of the Captain of the Port Sector North Carolina zone, as defined in 33 CFR 3.25–10, all waters of the Cape Fear

River within a shape bounded by the following coordinates: 33°55'05" N., 078°00'04" W.; 33°54'57" N., 078°00'04" W.; 33°54'56" N., 078°00'54" W.; 33°55'04" N., 078°00'54" W.; thence back to the point of origin (NAD 83) in Southport, North Carolina.

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

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) If on scene proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, North Carolina can be reached through the Sector North Carolina Command Duty Officer at Sector North Carolina in Wilmington, North Carolina at telephone number (910) 343-3882.

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

(d) *Enforcement period.* This section will be enforced on May 07, 2016, from 9:30 a.m. through 11:30 a.m., unless otherwise cancelled by the COTP.

Dated: April 19, 2016.

J.S. Dufresne,

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

[FR Doc. 2016-10310 Filed 5-3-16; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-HQ-OAR-2015-0468; FRL-9945-17-OAR]

Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on three separate and independent types of determinations for each of the 36 areas that are currently classified as "Marginal" for the 2008 ozone National Ambient Air Quality Standards

(NAAQS). First, the EPA is determining that 17 areas attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015, based on complete, quality-assured and certified ozone monitoring data for 2012–2014. Second, the EPA is granting 1-year attainment date extensions for eight areas on the basis that the requirements for such extensions under the Clean Air Act (CAA) and the EPA's implementing regulations have been met. Third, the EPA is determining that 11 areas failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015, and thus are reclassified by operation of law as "Moderate" for the 2008 ozone NAAQS. States containing any or any portion of these new Moderate areas must submit State Implementation Plan (SIP) revisions that meet the statutory and regulatory requirements that apply to 2008 ozone nonattainment areas classified as Moderate by January 1, 2017.

DATES: This rule is effective on June 3, 2016.

ADDRESSES: The EPA has established docket number EPA-HQ-OAR-2015-0468 for this action. All documents in the docket are listed on <http://www.regulation.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Cecil (Butch) Stackhouse or Mr. H. Lynn Dail, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-01, Research Triangle Park, NC 27711. Telephone Mr. Stackhouse at (919) 541-5208 or Mr. Dail at (919) 541-2363; or both at fax number: (919) 541-5315; email addresses: stackhouse.butch@epa.gov, or dail.lynn@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Proposed Actions

On August 27, 2015, the EPA proposed to find that 17 Marginal areas attained the 2008 NAAQS by the applicable attainment date of July 20, 2015, based on complete, quality-assured and certified ozone monitoring data for 2012–2014. *See* 80 FR 51992. The EPA also proposed to find that eight areas met the criteria, as provided in CAA section 181(a)(5) and 40 Code of Federal Regulations (CFR) 51.1107, to qualify for a 1-year attainment date extension for the 2008 ozone NAAQS even though they did not attain the NAAQS by the applicable deadline. Finally, the EPA proposed to find that 11 areas failed to attain the 2008 ozone NAAQS by the applicable Marginal attainment date and that they did not qualify for a 1-year attainment date extension. Under CAA section 181(b)(2)(A), if the EPA determines that an area failed to attain a given NAAQS by the applicable attainment date, the area shall be reclassified to a higher classification. In the EPA's August 2015 proposal, the EPA specified those 11 areas would be reclassified to Moderate.

The reclassified areas must attain the standard as expeditiously as practicable, but in any event no later than July 20, 2018.

The EPA proposed two options for establishing a deadline for states to submit the SIP revisions required for Moderate areas once their areas are reclassified from Marginal. The first option would have required state air agencies to submit the required SIP revisions as expeditiously as practicable, but no later than the beginning of the ozone season in 2017 for each respective area. The second option would have required state air agencies to submit the required SIP revisions as expeditiously as practicable, but no later than January 1, 2017. After consideration of the comments received on these proposed options, the EPA is finalizing a due date of no later than January 1, 2017, for all Moderate area SIP requirements that apply to newly reclassified areas.

A. Determinations of Attainment

In the proposal, the EPA evaluated data from air quality monitors in the 36 areas classified as Marginal for the 2008 ozone NAAQS in order to determine each area's attainment status as of the applicable attainment date of July 20, 2015. Seventeen of the 36 nonattainment areas' monitoring sites with valid data had a design value¹ equal to or less than 0.075 parts per million (ppm) based on 2012–2014 monitoring period.² Thus, the EPA proposed to determine, in accordance with section 181(b)(2)(A) of the CAA and the EPA's implementing regulations

at 40 CFR 51.1103, that the 17 areas listed in the following Table 1 attained the standard by the applicable attainment date for Marginal areas for the 2008 ozone NAAQS.

TABLE 1—MARGINAL NONATTAINMENT AREAS THAT ATTAINED THE 2008 OZONE NAAQS BY THE JULY 20, 2015, ATTAINMENT DATE

2008 ozone NAAQS nonattainment area	2012–2014 design value (ppm)
Allentown-Bethlehem-Easton, PA	0.070
Baton Rouge, LA	0.072
Calaveras County, CA	0.071
Charlotte-Rock Hill, NC-SC ..	0.073
Chico (Butte County), CA	0.074
Cincinnati, OH-KY-IN	0.075
Columbus, OH	0.075
Dukes County, MA	0.068
Jamestown, NY	0.071
Knoxville, TN	0.067
Lancaster, PA	0.071
Memphis, TN-MS-AR	0.073
Reading, PA	0.071
San Francisco Bay Area, CA ..	0.072
Seaford, DE	0.074
Tuscan Buttes, CA	0.075
Upper Green River Basin Area, WY	0.064

B. Extensions of Marginal Area Attainment Dates

Of the 36 Marginal nonattainment areas for the 2008 ozone NAAQS, there are eight areas for which the EPA proposed to grant a 1-year attainment date extension based on determinations that these areas met the requirements for an extension under CAA section

181(a)(5), including compliance with all commitments and requirements in the applicable implementation plan and “clean” data in the year preceding the attainment year. In addition, for each of these areas, at least one state with jurisdiction over all or part of the area requested such an extension.

The EPA proposed that eight Marginal nonattainment areas for the 2008 ozone NAAQS failed to attain the NAAQS by July 20, 2015, but met the attainment date extension criteria of CAA section 181(a)(5), as interpreted in 40 CFR 51.1107. The EPA proposed to find that all implicated states were meeting the obligations and commitments of their applicable implementation plans, in accordance with CAA section 181(a)(5)(A), and that, per CAA section 181(a)(5)(B) and the implementing regulations, the 4th highest daily maximum 8-hour average concentrations for all monitors in each area were not greater than 0.075 ppm for 2014, the year preceding the attainment year (*see* 40 CFR 51.1107). The EPA, therefore, proposed to grant a 1-year extension of the applicable Marginal area attainment date from July 20, 2015, to July 20, 2016, for the nonattainment areas listed in Table 2.

TABLE 2—MARGINAL NONATTAINMENT AREAS THAT QUALIFY FOR A 1-YEAR ATTAINMENT DATE EXTENSION FOR THE 2008 OZONE NAAQS

2008 ozone NAAQS nonattainment area	2012–2014 design value (ppm)	2014 4th highest daily maximum 8-hr average (ppm)
Cleveland-Akron-Lorain, OH	0.078	0.075
Houston-Galveston-Brazoria, TX	0.080	0.072
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE	0.077	0.074
Pittsburgh-Beaver Valley, PA	0.077	0.071
San Luis Obispo (Eastern San Luis Obispo), CA	0.076	0.073
Sheboygan County, WI	0.081	0.072
St. Louis-St. Charles-Farmington, MO-IL	0.078	0.072
Washington, DC-MD-VA	0.076	0.069

¹ Design value is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. Design values for a site are the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentrations.

² These determinations were based upon 3 years of complete, quality-assured and certified 2012–2014 data, in accordance with 40 CFR part 58 and recorded in EPA's Air Quality Statistics (AQS) database. Some areas attained the standard earlier

with 2011, 2012 and 2013 data and maintained the standard in 2014, *i.e.*, Knoxville, TX attained the standard with 2011–2013 ozone data and continued to attain with 2012–2014 data.

C. Determinations of Failure To Attain and Reclassification

Lastly, the EPA proposed to determine that 11 areas (listed in Table 3) failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015 and were not

eligible for a 1-year attainment date extension. For each of these areas, the 4th highest daily maximum 8-hour average for at least one monitor in each area was greater than 0.075 ppm for 2014. CAA section 181(b)(2)(A) provides that a Marginal nonattainment area shall be reclassified by operation of law upon

a determination by the EPA that such area failed to attain the relevant NAAQS by the applicable attainment date. The new classification proposed for each of these 11 areas would be the next higher classification of “Moderate” under the CAA statutory scheme.³

TABLE 3—MARGINAL NONATTAINMENT AREAS TO BE RECLASSIFIED AS MODERATE BECAUSE THEY DID NOT ATTAIN THE 2008 OZONE NAAQS BY THE JULY 20, 2015, ATTAINMENT DATE

2008 ozone NAAQS nonattainment area	2012–2014 design value (ppm)	2014 4th highest daily maximum 8-hr average (ppm)
Atlanta, GA	0.077	0.079
Chicago-Naperville, IL-IN-WI	0.081	0.076
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO	0.082	0.077
Greater Connecticut, CT	0.080	0.077
Imperial County, CA	0.080	0.078
Kern County (Eastern Kern), CA	0.084	0.089
Mariposa County, CA	0.078	0.077
Nevada County (Western part), CA	0.079	0.082
New York-N. New Jersey-Long Island, NY-NJ-CT	0.085	0.081
Phoenix-Mesa, AZ	0.080	0.080
San Diego County, CA	0.079	0.079

D. Moderate Area SIP Revision Submission Deadline

The EPA also proposed to apply the Administrator’s discretion, per CAA section 182(i), to adjust the statutory deadlines for submitting required SIP revisions for reclassified Moderate ozone nonattainment areas. CAA section 182(i) requires that reclassified areas meet the applicable plan submission requirements “according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” Under the Moderate area plan requirements of CAA section 182(b)(1) and 40 CFR 51.1108, states with ozone nonattainment areas classified as Moderate are provided 3 years (or 36 months) from the date of designation to submit a SIP revision complying with the Moderate ozone nonattainment plan requirements. For areas designated nonattainment for the 2008 ozone NAAQS and originally classified as Moderate, that deadline was July 20, 2015, a date that has already passed. The EPA, therefore, interpreted CAA section 182(i) as providing the authority to adjust the applicable deadlines “as

necessary or appropriate to assure consistency among the required submissions” for the 11 reclassified 2008 Marginal ozone nonattainment areas. The CAA neither provides authority for the EPA to adjust the deadline to provide the full 3 years from the date of reclassification nor provides that the EPA may adjust the attainment date. In determining an appropriate deadline for the states with jurisdiction for these 11 reclassified nonattainment areas to submit their Moderate area SIP revisions, the EPA proposed two options for deadlines. The first proposed option would require that states submit the required SIP revisions as expeditiously as practicable, but no later than the beginning of the ozone season in 2017 for each state. We believed that this option would provide states additional time that may be needed to accomplish planning, administrative and SIP revision processes. Of the 11 areas proposed for reclassification to Moderate, four areas have ozone seasons that begin later than January 1 (based on ozone monitoring season changes finalized with the 2015 ozone NAAQS)⁴ and this option would provide 2 additional months past January 2017 for those four areas. The second proposed option would require states submit the SIP revisions as expeditiously as practicable, but no later than January 1, 2017. We believed that

setting a single specific submittal date would establish a consistent deadline for all 11 nonattainment areas, similar to the single uniform SIP submission deadline that would have applied to all areas if they had been initially classified as Moderate. This option would provide states with approximately 9 months after these reclassifications are finalized to develop complete SIP submissions and it is the latest SIP submittal date that would be compatible with the date by when Moderate area reasonably available control measures (RACM) and reasonably available control technology (RACT) must be in place (*i.e.*, begin no later than January 1 of the 5th year after the effective date of designation for the 2008 ozone NAAQS, which is, in this case, January 1, 2017).

E. Rescission of Clean Data Determination and Proposed SIP Call for the 1997 8-Hour Ozone NAAQS for New York-N. New Jersey-Long Island (NY-NJ-CT) Nonattainment Area

On June 18, 2012, the EPA issued a clean data determination (CDD) for the NY-NJ-CT nonattainment area, suspending the three states’ obligations to submit attainment-related planning requirements, including the obligation to submit attainment demonstrations, RACM and reasonable further progress (RFP) plans, and contingency measures, with respect to the 1997 8-hour ozone

³ The 2012–2014 design values for the 11 areas did not exceed 0.100 ppm, which is the threshold

for reclassifying an area to Serious per CAA section 181(b)(2)(A)(ii) and 40 CFR 51.1103.

⁴ See Table D–3 of appendix D to 40 CFR part 58.

standard. On May 15, 2014 (79 FR 27830), the EPA proposed to rescind the CDD for the area based on the fact that the area was no longer attaining the 1997 8-hour ozone standard, and the EPA proposed a SIP Call for submittal of a new ozone attainment demonstration for the NY-NJ-CT area for the 1997 ozone NAAQS. As an alternative to submitting a new attainment demonstration for the 1997 ozone NAAQS, the EPA proposed to permit the relevant states to respond to the SIP Call by voluntarily requesting to be reclassified to Moderate for the 2008 ozone standard (see CAA section 181(b)(3)) and to prepare SIP revisions demonstrating how they would attain the more stringent 2008 standard as expeditiously as practicable, but no later than the Moderate area attainment date in 2018. The EPA explained in the May 2014 proposal that, because the 2008 standard is more stringent than the 1997 standard, the area would necessarily attain the 1997 standard once the area adopted a control strategy designed to achieve the tighter standard. Moreover, where state planning resources were constrained, those resources were better used focused on attaining the more stringent standard.

In the agency's August 27, 2015, proposal regarding determinations of attainment of the 2008 Marginal ozone

areas, the EPA discussed how its proposed actions affected the May 2014 proposed options for responding to a SIP Call for the 1997 8-hour ozone NAAQS. Specifically, the proposed option to permit the relevant states to respond to the final SIP Call by requesting reclassification to Moderate for the 2008 ozone standard [see CAA section 181(b)(3)] would consequently require that the states submit SIPs demonstrating how they would attain the more stringent 2008 standard as expeditiously as practicable. We explicitly noted in the August 2015 proposal that, if we were to finalize the determination that the NY-NJ-CT area failed to attain the 2008 ozone NAAQS by the Marginal area attainment date, the area would be reclassified by operation of law, and thus effectively eliminating the need for the three states to voluntarily request reclassification. The area would then be subject to Moderate nonattainment area planning requirements, and the subsequent submission of Moderate area attainment plans for the 2008 ozone standard would necessarily satisfy a final SIP Call for the NY-NJ-CT area on the 1997 ozone standard, because an approvable plan would demonstrate attainment of a more stringent NAAQS. We also noted that either of the proposed 2008 ozone attainment plan due dates would meet

the statutory timeframe for the SIP revision due subsequent to a SIP Call for the 1997 ozone NAAQS for the area.

II. Final Actions

The publication of the EPA's proposed rule on August 27, 2015, (80 FR 51992) started a public comment period that ended on September 28, 2015.⁵ The comments received during this period may be found in the electronic docket for this action. A majority of commenters supported the EPA's actions as proposed to determine that certain areas attained the 2008 ozone NAAQS by the applicable attainment date, to provide 1-year attainment date extensions to the identified areas, and to reclassify to Moderate the non-attaining areas that do not qualify for an attainment date extension. Additional significant comments pertinent to each proposed action are addressed in the following appropriate sections. Included in the docket for this action is a full summary of significant comments received on the EPA's proposal and our responses to those comments. To access comments and the Response to Comment document, please go to <http://www.regulations.gov> and search for Docket No. EPA-HQ-OAR-2015-0468, or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

TABLE 4—2008 OZONE MARGINAL NONATTAINMENT AREA FINAL ACTION SUMMARY

Nonattainment area	Determination of attainment by the attainment date	Determination of failure to attain by the attainment date	Extension of the marginal area attainment date to July 20, 2016
Allentown-Bethlehem-Easton, PA	X		
Atlanta, GA		X	
Baton Rouge, LA	X		
Calaveras County, CA	X		
Charlotte-Rock Hill, NC-SC ^a	X		
Chicago-Naperville, IL-IN-WI		X	
Chico (Butte County), CA	X		
Cincinnati, OH-KY-IN	X		
Cleveland-Akron-Lorain, OH			X
Columbus, OH	X		
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO		X	
Dukes County, MA	X		
Greater Connecticut, CT		X	
Houston-Galveston-Brazoria, TX			X
Imperial County, CA		X	
Jamestown, NY	X		
Kern County (Eastern Kern), CA		X	
Knoxville, TN ^b	X		
Lancaster, PA	X		
Mariposa County, CA		X	
Memphis, TN-MS-AR ^c	X		
Nevada County (Western part), CA		X	
New York, N. New Jersey-Long Island, NY-NJ-CT		X	
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE			X

⁵ The EPA offered to hold a public hearing on the proposed actions, but no one requested such a hearing.

TABLE 4—2008 OZONE MARGINAL NONATTAINMENT AREA FINAL ACTION SUMMARY—Continued

Nonattainment area	Determination of attainment by the attainment date	Determination of failure to attain by the attainment date	Extension of the marginal area attainment date to July 20, 2016
Phoenix-Mesa, AZ .....	.....	X	.....
Pittsburgh-Beaver Valley, PA .....	.....	.....	X
Reading, PA	X	.....	.....
San Diego County, CA .....	.....	X	.....
San Francisco Bay Area, CA	X	.....	.....
San Luis Obispo (Eastern San Luis Obispo), CA .....	.....	.....	X
Seaford, DE	X	.....	.....
Sheboygan County, WI .....	.....	.....	X
St. Louis-St. Charles-Farmington, MO-IL .....	.....	.....	X
Tuscan Buttes, CA	X	.....	.....
Upper Green River Basin Area, WY	X	.....	.....
Washington, DC-MD-VA .....	.....	.....	X

^aOn July 28, 2015, the EPA redesignated to attainment the North Carolina portion of the Charlotte-Rock Hill, NC-SC, nonattainment area for the 2008 8-hour ozone NAAQS, effective August 27, 2015. See 80 FR 44873. On December 11, 2015, the EPA redesignated to attainment the South Carolina portion of the Charlotte-Rock Hill, NC-SC, nonattainment area for the 2008 8-hour ozone NAAQS, effective January 11, 2016. See 80 FR 76865. The EPA is herein determining that this area attained the 2008 ozone NAAQS by the applicable attainment date in order to satisfy the agency's obligation under CAA section 181(b)(2)(A).

^bOn July 13, 2015, the EPA redesignated to attainment the Knoxville, TN, nonattainment area for the 2008 8-hour ozone NAAQS, effective August 12, 2015. See 80 FR 39970. Given that this area was still designated nonattainment as of July 20, 2015, the EPA is herein determining that this area attained the 2008 ozone NAAQS by the applicable attainment date in order to satisfy the agency's obligation under CAA section 181(b)(2)(A).

^cOn February 10, 2016, the EPA proposed to redesignate to attainment the Arkansas portion of the Memphis, TN-MS-AR, nonattainment area for the 2008 8-hour ozone NAAQS. See 81 FR 7046. On February 11, 2016, the EPA proposed to redesignate to attainment the Mississippi portion of the Memphis, TN-MS-AR, nonattainment area for the 2008 8-hour ozone NAAQS. See 81 FR 7269.

A. Determinations of Attainment

Pursuant to section 181(b)(2)(A) of the CAA and 40 CFR 51.1103, the EPA is making a final determination that the 17 Marginal nonattainment areas listed in Table 1 attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2105. We received no adverse comments on this proposal.

Once effective, this action satisfies the EPA's obligation pursuant to CAA section 181(b)(2)(A) to determine, based on an area's air quality as of the attainment date, whether the area attained the standard by that date. The effect of a final determination of attainment by the area's attainment date is to discharge the EPA's obligation under CAA section 181(b)(2)(A), and to establish that, in accordance with CAA section 181(b)(2)(A), the areas will not be reclassified for failure to attain by the applicable attainment date. These determinations of attainment do not constitute a redesignation to attainment. Redesignations require states to meet a number of additional statutory criteria, including the EPA approval of a state plan demonstrating maintenance of the air quality standard for 10 years after redesignation. As for all NAAQS, the EPA is committed to working with states that choose to submit redesignation requests for the 2008 ozone NAAQS.

B. Extensions of Marginal Area Attainment Dates

Pursuant to CAA section 181(a)(5), the EPA is making a final determination to grant 1-year attainment date extensions of the applicable attainment date from July 20, 2015, to July 20, 2016, for the 8 Marginal nonattainment areas listed in Table 2. The EPA received a number of comments on its proposal to extend the Marginal area attainment dates for the areas listed in Table 2. We summarize and respond to some of the key comments. The docket for this action contains a more detailed Response to Comment document.

Comment: One commenter claimed that the EPA's proposed 1-year extension of the attainment date for the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area is unlawful and arbitrary because the state of Delaware did not request an extension of the attainment date. The commenter argued that granting an attainment date extension to a multi-state area when all states have not requested the extension is inconsistent with the EPA's failure to grant the state of New York's most recent voluntary reclassification request with regard to the 1997 8-hour ozone NAAQS.⁶ The commenter stated that there, the EPA refused to grant New York's request because the agency's

position was that voluntarily reclassifying the area required all states with jurisdiction over the multi-state area to request the reclassification. The commenter noted that in that case the EPA interpreted CAA section 182(j)(1) "to require coordination and unanimity among the affected states," and the commenter stated that the provision "seemingly has equal bearing" on a request to extend the attainment date.

Response: The EPA disagrees with the commenter that a request for voluntary reclassification under CAA section 181(b)(3) and a request for an extension of the attainment date under CAA section 181(a)(5) both require "unanimity" among the affected states. The EPA also does not agree that granting an extension of the attainment date to all states with jurisdiction over the Philadelphia multi-state nonattainment area is inconsistent with its prior reading of CAA section 182(j)(1).

The statutory provisions governing voluntary reclassifications and requests for 1-year attainment date extensions differ in key respects regarding the question of whether all states in a nonattainment area need to request the action before the EPA may grant such requests. CAA section 181(b)(3), which governs voluntary reclassifications, states that "the Administrator shall grant the request of any State to reclassify a nonattainment area *in that State* [in accordance with the area's

⁶ Letter from Joseph J. Martens, Commissioner, New York Department of Environmental Conservation, addressed to the EPA Administrator Lisa Jackson. June 20, 2012.

design value] to a higher classification” (emphasis added). The EPA reads that provision, and specifically the words “in that state,” to mean that although any state may request a reclassification, it can only do so on behalf of its own state. The same limiting phrase does not appear in the statutory provision governing 1-year attainment date extensions. That provision, CAA section 181(a)(5), states, “Upon application by any State, the Administrator may extend for 1 additional year” the attainment date, provided that the state has complied with all requirements and commitments pertaining to the area in its applicable implementation plan and the area meets certain air quality criteria. Because the statute grants the EPA the discretion to extend an attainment date “upon application by any State” and establishes limiting conditions that can be demonstrated as satisfied by either a state or by the EPA, CAA section 181(a)(5) by its terms does not require the consent of every state within a multi-state nonattainment area. The EPA does, however, interpret that provision as requiring all states with jurisdiction over the nonattainment area to substantively meet the two statutory conditions, although we note that the provision does not specify who must make the demonstration that the conditions have been met.

Interpreting these two provisions to permit differing thresholds of state “unanimity” is particularly reasonable given the consequence of the EPA’s action in each case. In extending an attainment date, the EPA imposes no additional obligation upon any state, but rather grants areas that are close to achieving the air quality standard 1 additional year to come into compliance, provided that the states governing that area meet certain criteria. A voluntary reclassification, on the other hand, can impose significant new attainment planning and emission reduction obligations. Had Congress intended to allow one state to request a reclassification on behalf of another state, and, therefore, to impose upon another state, without that state’s consent, all of the resource-intensive consequences potentially associated with that action, it could have clearly stated so.

The EPA further disagrees with the commenter that its prior interpretation of CAA section 182(j)(1)—requiring all states in a multi-state ozone nonattainment area to agree to a voluntary reclassification—is inconsistent with *not* requiring such consensus in the case of an attainment date extension. CAA section 182(j)(1)(A) directs states to “take all reasonable

steps to coordinate, substantively and procedurally, the revisions and implementation of [SIPs] applicable to the nonattainment area concerned.” This provision on its face does not apply to an attainment date extension under CAA section 181(a)(5). Extending the attainment date by 1 year does not change an area’s SIP submission requirements. Therefore, CAA section 182(j)(1)(A)’s directive to states governing a multi-state area to coordinate SIP submissions plainly does not have bearing on a provision that does not alter or affect SIP submissions. By contrast, as the EPA has stated, the coordination required by CAA section 182(j)(1)(A) is relevant to a voluntary reclassification, which establishes upon the states with jurisdiction over the nonattainment area new obligations to prepare and submit revisions to SIPs.

Comment: One commenter stated that the states of Delaware and New Jersey did not make any claim or demonstration that they have complied with all requirements and commitments in the SIP, and, therefore, granting an extension to the multi-state area is not warranted. The commenter alleged that the EPA implied that an analysis of Delaware’s compliance with the CAA section 181(a)(5)(A) criteria was conducted but that the EPA failed to provide any evidence or showing that Delaware did in fact comply with all requirements and commitments in the applicable implementation plan pertaining to the Philadelphia nonattainment area.

Response: Given the state and federal partnership in implementing the CAA, it is not unreasonable for the EPA to interpret CAA section 181(a)(5)(A), in the absence of a state submitting a certification of compliance, for the EPA to exercise discretion and conduct an independent review of the applicable SIP in order to, in this case, determine whether Delaware and New Jersey are in compliance with the requirements and commitments of the federally-approved SIP. CAA section 302(q) defines “applicable implementation plan” as the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under CAA section 110, or promulgated under CAA section 110(c), or promulgated or approved pursuant to regulations promulgated under CAA section 201(d) and which implements the relevant requirements of the CAA. The Act does not specify what type of review is required in order for the states or the EPA to demonstrate that the condition under CAA section 181(a)(5)(A) has been met; therefore, the EPA reasonably interprets the condition

to require a review of the relevant, applicable approved implementation plan provisions, and an application of its own knowledge and expertise with regard to whether the state is meeting those obligations, including a review of whether the agency or outside parties has identified state noncompliance with the obligations. Therefore, in proposing to grant a 1-year extension of the attainment date for the Philadelphia area, and in conjunction with EPA Headquarters, the EPA Regional Offices, which have particular expertise and knowledge of the contents and implementation of SIPs, conducted reviews of whether Delaware and New Jersey are in compliance with their applicable implementation plans.

The EPA reviewed New Jersey’s applicable ozone implementation plan found at 40 CFR 52.1570 and the most recent actions related to New Jersey’s applicable ozone implementation plan, which include the following EPA approvals: 74 FR 22837—“Approval and Promulgation of Implementation Plans, New Jersey Reasonable Further Progress Plans, Reasonable Available Control Technology, Reasonably Available Control Measures and Conformity Budgets”; 75 FR 45483—“Approval and Promulgation of Implementation Plans; Implementation Plan Revision; State of New Jersey”; and 75 FR 80340—“Approval and Promulgation of Implementation Plans; New Jersey; 8-hour Ozone Control Measure.” Since the adoption of these measures, New Jersey has also amended its SIP to adopt and implement additional emission reductions as part of its SIPs to reduce regional haze and to meet the NAAQS for fine particles. The EPA has reviewed the contents of New Jersey’s applicable SIPs and notes that there are no pending enforcement actions by the EPA or outside parties alleging that New Jersey has failed to implement its applicable plan.

Similarly, the EPA reviewed Delaware’s applicable ozone implementation plan found at 40 CFR 52.420. In our August 2015 proposal, we noted a recent proposal to disapprove a revision to Delaware’s New Source Review (NSR) preconstruction permitting program regulation, *see* 80 FR 30015 (May 26, 2015). Despite this proposed disapproval of a SIP revision, we did not believe this proposal to disapprove a SIP revision was a bar to the EPA granting a 1-year attainment date extension for the Philadelphia area because there is an underlying approved nonattainment NSR SIP. The EPA has examined its own internal database of the notices required under 40 CFR 51.161(a), (b) and (d) (relating to a

notice providing for public and the EPA comment on permit applications) and information posted by the state of Delaware. For the period after September 11, 2013 (the date on which Delaware's newly expanded offset area provisions under state law were effective), the EPA has identified no permits which triggered the requirement for lowest achievable emission rate (LAER) and offsets under Delaware's Regulation 1125 relating to ozone precursors of volatile organic compounds and nitrogen oxides (NO_x). The EPA found that Delaware had undertaken a number of permitting actions since September 11, 2013, but none of these were subject to sections 2.5.5 and 2.5.6 of Delaware's Regulation 1125. The EPA also did not find any incidences of enforcement actions by the agency or outside parties alleging that Delaware is not meeting its SIP obligations.

Moreover, the commenter has not presented any evidence or made any demonstration that suggests either New Jersey or Delaware is not in compliance with their applicable SIP and is, thus, unqualified to receive an attainment date extension. Based on its review of the states' applicable implementation plans and its knowledge and expertise of state actions with regard to those plans, the EPA is making a final determination that both New Jersey and Delaware are meeting the conditional requirement of CAA section 181(a)(5)(A).

Comment: One commenter requested that the EPA deny Wisconsin's request for a 1-year extension to their attainment year for the Sheboygan County Marginal ozone nonattainment area. The commenter argued that 2015 preliminary air quality monitoring data for the Sheboygan area indicates that the area will not attain the standard in 2016, and, moreover, that the data also will not support a second 1-year extension of the attainment date for the Sheboygan area. The commenter maintained that even if a state meets the two conditions provided in CAA section 181(a)(5), the EPA retains the discretion to deny a request for a 1-year extension, and the commenter urged that the EPA should exercise its discretion in this case. In support, the commenter provided a citation to a 1994 EPA memo (Berry Memorandum)⁷ that cautions states to consider whether an attainment date extension will ultimately be helpful if the area is not likely to attain the

NAAQS by the extended attainment date. The commenter further pointed out that Wisconsin has an "inflexible and lengthy process for rulemaking," which could further hinder the state's ability to meet the attainment date in the future, if the state delays planning and implementing additional control measures now. The commenter also pointed out that the Sheboygan area has not made considerable progress towards attaining the standard, and that the area backslid into nonattainment for the 1997 8-hour ozone NAAQS in 2012 and 2013. The commenter suggested that, rather than granting a 1-year extension of the attainment date, the EPA should determine that the Sheboygan area failed to meet its Marginal area attainment date of July 20, 2015, and, therefore, the EPA should reclassify the area to Moderate, which will allow the state of Wisconsin adequate time to achieve emissions reductions to meet the new attainment date for a Moderate area.

Response: CAA section 181(a)(5) of the CAA, as interpreted by the EPA in 40 CFR 51.1107, authorizes the EPA to grant a 1-year attainment date extension upon application by a state if: (1) The state has complied with all requirements and commitments in the applicable SIP, and (2) all monitors in the area have a fourth highest daily maximum 8-hour average of 0.075 ppm or less for the last full year of air quality data prior to the attainment date (*i.e.*, 2014 for an attainment date of July 20, 2015). Here, Wisconsin has clearly met both of the conditions for the Sheboygan area. Wisconsin submitted a request to the EPA for a 1-year extension of the attainment date for the Sheboygan area, certifying that Wisconsin had complied with all requirements and commitments pertaining to the area in the applicable implementation plan and that all monitors in the area have a fourth highest daily maximum 8-hour average of 0.075 ppm or less for 2014, the most recent complete year of quality-assured and certified data preceding the July 20, 2015, attainment date.⁸ The EPA has also evaluated the quality-assured and certified air quality monitoring data for 2014 and determined that Sheboygan met the air quality requirements of CAA section 181(a)(5)(B) and 40 CFR

51.1107. Although the EPA agrees with the commenter that the Administrator retains the discretion to deny a state's request for an attainment date extension even if the state has met both criteria in CAA section 181(a)(5), the agency is declining to exercise that discretion here. The commenter relies primarily upon preliminary air quality data for 2015 that has not been quality assured and certified to contend that the Administrator should deny Wisconsin's request here.⁹ Given that the state meets the extension criteria, the Administrator is disinclined to deny the state's request based on preliminary data. Moreover, the citation from the Berry Memorandum that the commenter relies upon is directed at cautioning states, in deciding whether to request an extension, to consider whether a 1-year attainment date extension will be helpful in achieving the NAAQS and is not directed at the Administrator's decision to grant or deny such request. The EPA does, however, agree with the commenter that, given the air quality trends and data presented by the commenter, it would be prudent for the state to begin preparing for the possibility that the area may not attain by the July 20, 2016, attainment date, and also may fail to meet the requirements to get an additional 1-year attainment date extension. However, the agency does not believe that those possibilities are reason enough to deny the state's request for this first 1-year attainment date extension, given that Wisconsin has met the two statutory criteria. Therefore, the EPA declines to grant the commenter's request to find that the area failed to attain by July 20, 2015, and to subsequently reclassify the area accordingly. The Sheboygan nonattainment area will remain classified as Marginal for the 2008 ozone NAAQS until the EPA (1) determines, based on quality assured and certified air quality data for 2013–2015, that the area did not attain the 2008 ozone NAAQS by July 20, 2016, and does not qualify for an additional 1-year extension¹⁰ and (2) reclassifies the area based on this determination. We expect Wisconsin to be taking the necessary steps to achieve timely attainment and will continue to work with the state toward that end.

⁹ These data are subject to the EPA's data certification requirements of 40 CFR 58.15, which require a state to submit its annual data certification letter by May 1.

¹⁰ The area will qualify for a second 1-year extension if, and only if, the average of annual fourth-high daily maximum 8-hour ozone concentrations for 2014 and 2015 is at or below 0.075 ppm at all monitors in Sheboygan County.

⁷ See memorandum signed by D. Kent Berry, Acting Director, Air Quality Management Division, "Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas." U.S. EPA, February 3, 1994.

⁸ See letter signed by Bart Sponseller, Deputy Division Administrator, Air, Waste and Remediation & Redevelopment Division, Wisconsin Department of Natural Resources addressed to Ms. Susan Hedman, Regional Administrator, U.S. EPA Region 5. RE: Request for 1-year extension to the attainment date for the Sheboygan, WI nonattainment area, May 12, 2015. Docket EPA–HQ–OAR–2015–0468–0022 at <http://www.regulations.gov>.

Comment: One commenter maintained that, in evaluating whether a state is in compliance with all requirements and commitments pertaining to an area pursuant to CAA section 181(a)(5)(A), the EPA may not rely on a letter from the state certifying that the state is meeting this requirement. The commenter argued that there must be a factual and rational basis for the agency to grant 1-year extensions and that assertions by the states that they are in compliance with all requirements and commitments does not provide a factual or rational basis when there is no evidence that the assertion was based on a systematic review of compliance or noncompliance.

Response: The EPA disagrees with the commenter's assertion. CAA section 181(a)(5) does not specify who must make the demonstration as to whether a state is complying with all requirements and commitments to the area in the applicable implementation plan. Nothing in the provision explicitly prohibits the EPA from relying on certified statements from state officials that the requirement of CAA section 181(a)(5)(A) has been met, and nothing in the provision supports the commenter's suggestion that the EPA is independently required to perform a "systematic review of compliance or noncompliance" of the state's SIP regardless of whether a state official has made a certified statement to that effect in order to grant an attainment date extension. Given the state and federal partnership in implementing the CAA, it is not unreasonable for the EPA to interpret CAA section 181(a)(5)(A) as permitting the agency to rely upon the certified statements of its state counterparts, and the EPA has long interpreted the provision to be satisfied by such statements.¹¹ In practice, in conjunction with a request for an extension, a state air agency's Executive Officer, or other senior individual with equivalent responsibilities, signs and affirms that their state is complying with their applicable federally-approved SIP. The commenter argues that the certifications lack rational or factual bases, but has not presented any evidence or made any demonstration that suggests any of the states receiving an attainment date extension are not in compliance with their SIPs. Absent such a showing, the EPA is disinclined to invalidate the certifications made by the states.

¹¹ See Berry Memorandum.

C. Determinations of Failure To Attain and Reclassification

Pursuant to CAA section 181(b)(2), the EPA is finalizing its proposed determinations that the 11 Marginal nonattainment areas listed in Table 3 have failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015. Therefore, upon the effective date of this rule, these 11 Marginal 2008 ozone nonattainment areas will be reclassified by operation of law to Moderate for the 2008 ozone standard. The EPA received a number of adverse comments on its proposal to find that certain Marginal nonattainment areas failed to attain and to reclassify those areas. We summarize and respond to some of the key comments later. The docket for this action contains a more detailed Response to Comments document.

Comment: A number of commenters, while conceding that air quality monitoring data factually required the EPA to determine that an area failed to attain by its attainment date, alleged that certain nonattainment areas' failure to attain by the Marginal area attainment date was due in large part to the influence of transported emissions from upwind states. These commenters alleged that the EPA has not done enough to enforce CAA section 110(a)(2)(D), which requires states to eliminate emissions that significantly contribute to, or interfere with maintenance of the NAAQS in other states. One commenter further noted that the EPA's current strategy with regard to ozone transport addresses only the revoked 85 parts per billion (ppb) standard, and that the EPA has no strategy to reduce transport after 2017.

Response: The agency's mandatory duty to make determinations of attainment or failure to attain the NAAQS exists regardless of the nature or effect of transported emissions on monitored air quality data in a given nonattainment area.¹² Nonetheless, the EPA readily acknowledges the role interstate transport of precursors to ozone pollution plays in the efforts of downwind areas to attain and maintain the NAAQS. To that end, as commenters have alluded to, the agency has taken a number of steps to fulfill its statutory obligation to enforce CAA section 110(a)(2)(D), or the "good neighbor" provision, including the NO_x SIP Call, the Clean Air Interstate Rule, and the Cross-State Air Pollution Rule (CSAPR).

¹² See *Sierra Club v. EPA*, 294 F.3d 155, 160–62 (D.C. Cir. 2002) (holding that the EPA is not permitted to relax mandatory statutory requirements for downwind areas on the basis of interstate transport).

most recently, the EPA has proposed to update CSAPR specifically to address the 2008 ozone NAAQS with tightened NO_x budgets designed to achieve emission reductions in upwind states before the Moderate area attainment date of July 2018.

D. Moderate Area SIP Revision Submission Deadline

The EPA received a number of comments on its two proposed options for establishing the Moderate area SIP due date that would apply to areas newly reclassified under this final action. After full consideration of those comments and pursuant to CAA section 182(i), the EPA is finalizing that SIP revisions required for the newly reclassified Moderate areas must be submitted as expeditiously as practicable, but no later than January 1, 2017. The EPA acknowledges that for some states with Moderate nonattainment areas reclassified from Marginal, meeting this SIP submittal deadline may be challenging. The EPA is committed to working closely with these states to help them prepare their SIP revisions in a timely manner.

We summarize and provide responses to the most significant comments on this issue later; however, all comments received on the proposed options and the EPA's responses are available in the Response to Comment document located in the docket for this final rule.

Comment: One commenter contended that the EPA failed to provide a legal basis for extending the SIP submittal deadlines for Moderate nonattainment areas. The commenter believed that the EPA made no claim that the 2017 SIP submittal deadlines are necessary or appropriate to assure consistency among the required submissions. The commenter also believed that the EPA's proposed extension would interfere with the attainment date and contravene CAA section 110(l). The commenter pointed out that if the EPA finalized the SIP submission deadline to coincide with the area's beginning of the ozone monitoring season, the consequence would be that the EPA would have less than 18 months to take action on state SIP submittals, as late as July 2018, which is very near the attainment date. The commenter believed that would be far too late for the EPA to require timely corrections of SIPs that fail to satisfy the requirements and fail to assure timely attainment.

Response: The EPA disagrees with the commenter on all aspects of these comments. First, we believe that CAA section 182(i) clearly provides the Administrator the discretion to adjust any applicable deadline for reclassified

areas (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

The EPA disagrees with the implication of the comment that the default assumption upon reclassification is that the EPA would not adjust the Moderate area SIP submission deadlines. The fact that Congress included CAA section 182(i) in the statute indicates that it envisioned that upon reclassification, deadlines would be adjusted by the Administrator in a reasonable fashion. This is a particularly reasonable interpretation under the facts at issue here: The attainment date for Marginal areas under the statute and regulations was July 20, 2015, and the Moderate area SIP submission date for areas initially classified as Moderate for the 2008 ozone NAAQS was also July 20, 2015. Under CAA section 181(b)(2)(A), the EPA must make determinations of attainment and necessary reclassifications within 6 months of the statutory attainment date. Therefore, under the commenter's interpretation of the CAA, upon reclassification 6 months after July 20, 2015, states would immediately be found to be in default of the obligation to submit a Moderate area plan, a deadline that had passed 6 months prior, even though that obligation did not apply until the moment of reclassification. We do not agree that Congress would have intended the draconian and absurd result of providing states initial notice of an obligation and in the same action finding them at fault for already failing to have met that obligation. Therefore, the EPA believes that it is reasonable to read CAA section 182(i) in the context of the 11 reclassified 2008 Marginal ozone areas to provide the Administrator the authority to adjust the applicable deadline for Moderate area attainment plans "as necessary or appropriate to assure consistency among the required submissions."

Moreover, failing to establish new Moderate area SIP submission deadlines for the 11 areas that we are reclassifying in this rulemaking would lead to potential inconsistency in required submissions among those areas. Under the commenter's interpretation, these areas would all have missed their deadline to submit a Moderate area plan on July 20, 2015. The commenter would, therefore, have the EPA begin issuing findings of failure to submit under CAA section 110(k), which are required by statute 6 months following the statutory deadline to submit a SIP, simultaneously with this action, that is, the EPA's determination that the areas

failed to attain and reclassification of those areas. Following the EPA's issuance of findings of failure to submit for the 11 areas, there would be no defined statutory or regulatory deadline by which to remedy the states' failures to make submittals, except the outside limit of 2 years, the deadline for EPA's obligation to implement a Federal Implementation Plan (FIP). Additionally, if the EPA had not affirmatively determined that a state had made a complete SIP submittal for an area within 18 months from the issuance of a finding of failure to submit, the offset sanction identified in CAA section 179(b)(2) would apply to the affected nonattainment area.

The EPA also disagrees with the commenter that establishing a new SIP submittal deadline for the reclassified areas is in contravention of CAA section 110(l). CAA section 110(l) requires that plan revisions must go through notice and public hearing at the state level before submission to the EPA, and that "the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of this chapter." In order for the EPA's proposed SIP submittal date to be in contravention of CAA section 110(l), one has to assume that the states will submit deficient SIPs and that the EPA will not take any kind of corrective action on those SIPs until after the maximum possible time period permitted under the statute to take action on such submittals (18 months) has passed. Only then could a SIP submittal date of more than 18 months prior to the attainment date be interpreted as interfering with the attainment of the NAAQS. The EPA does not believe this is a reasonable reading of CAA section 110(l) or the circumstances of these reclassifications and SIP deadline adjustments. While the EPA acknowledges that the timeline for preparation and submittal of SIPs must be compressed in order for measures to be in place to ensure areas attain by their new Moderate area attainment date, in establishing the new SIP submittal deadlines for these reclassified areas, the agency is also taking into account the time required for states to identify measures, complete the public notice and hearing process at the state level, and prepare SIP submissions.

Comment: Several commenters supported the EPA's proposed option to align the deadline for SIP revisions with the start of the respective nonattainment area's 2017 ozone season. They cited a

number of reasons this option was preferred, including that more time would be provided to states to accomplish planning, administrative and SIP revisions processes in order to meet the deadline. They also cited that this option would be consistent among states in that they would need to submit their SIP revisions by their respective ozone seasons. However, another commenter pointed out that finalizing this option would result in SIP submittal dates that would be varied among the states and, therefore, inconsistent. The same commenter also stated that setting the SIP deadline for the beginning of each area's ozone season would not be compatible with ensuring implementation of RACT by January 1, 2017, which is the deadline established in 40 CFR 51.1112(a)(3).

Response: As noted earlier, of the 11 areas being reclassified to Moderate, there are only four areas located in states with ozone seasons that begin later than January 1 that could potentially benefit from an extra 2 months to submit their SIP revisions. While the EPA recognizes the value of additional time (beyond January 1, 2017) to these states to develop an attainment demonstration, an RFP plan, and contingency measures, the EPA also recognizes the value in establishing a single due date for Moderate area SIP submissions—including RACT—that does not extend beyond the deadline for implementing such controls. Thus, the EPA is finalizing its second proposed option, which requires that states submit the required Moderate area SIP revisions as expeditiously as practicable, but no later than January 1, 2017. This approach aligns the SIP submittal deadline with the January 1, 2017, deadline for implementing RACT pursuant to 40 CFR 51.1112(a)(3), for each area, and would also ensure that SIPs requiring control measures needed for attainment, including RACM, would be submitted prior to when those controls are required to be implemented. This option also treats states consistently, in keeping with CAA section 182(i). The EPA recognizes the challenges posed by these very short deadlines and is committed to working closely with all states to help them prepare their SIP revisions, including parallel processing, in a timely manner.

E. Rescission of Clean Data Determination and Final SIP Call for the 1997 8-Hour Ozone NAAQS for the New York-N. New Jersey-Long Island (NY-NJ-CT) Nonattainment Area

This action finalizes the EPA's determination that the NY-NJ-CT nonattainment area failed to attain the

2008 standard by the Marginal area attainment date of July 20, 2015, and must be reclassified to Moderate by operation of law in accordance with CAA section 181(b)(2)(A). In addition, the EPA is also finalizing in this rulemaking the proposed rescission of its prior CDD for the NY-NJ-CT nonattainment area with regard to the 1997 8-hour ozone NAAQS, as well as the accompanying SIP Call proposed with that rescission. As noted previously, in the May 2014 proposal, the EPA proposed that one way the affected states could respond to the SIP Call would be to voluntarily request a reclassification under the 2008 ozone NAAQS and to submit a SIP that meets the Moderate area requirements for that standard.

By reclassifying the area by operation of law, this final action effectively eliminates the need for the three affected states to request reclassification under this option. However, as explained in the agency's August 27, 2015, proposal and reiterated later, the EPA believes it is appropriate for the three states involved to be able to meet their obligations under the SIP Call for the 1997 ozone NAAQS with their Moderate area SIP submittal for the 2008 ozone standard. This final action also supersedes the 18 months, which is the maximum period allowed under CAA section 110(k)(5), that EPA proposed to provide the states of New York, New Jersey and Connecticut from the effective date of a final SIP Call to develop and submit to the EPA the relevant SIPs for the 1997 or 2008 ozone NAAQS. As discussed previously, the EPA is finalizing that the required SIP revisions for these areas shall be submitted as expeditiously as practicable, but no later than January 1, 2017. We also note that this deadline meets the statutory timeframe for a SIP revision under CAA section 110(k)(5).

The EPA did not receive adverse comments on its August 27, 2015, proposal to reclassify the NY-NJ-CT nonattainment area to Moderate, nor did the EPA receive comments about its statement that submitting an attainment plan for the 2008 ozone standard would satisfy a final SIP Call on the 1997 ozone standard. We received a number of comments on the May 15, 2014, proposal (79 FR 27830) to rescind the CDD for the NY-NJ-CT 1997 8-hour ozone nonattainment area and the accompanying SIP Call for attainment plans. We summarize later some of the significant comments submitted in response to the May 15, 2014, proposal and our responses. Additionally, we have made available a more detailed summary of comments and responses in

a document titled, "*Response to Comments: Proposed Rule: Rescission of Determination of Attainment and Call for Attainment Plans for New York, New Jersey and Connecticut for the 1997 8-Hour Ozone National Ambient Air Quality Standards for the NY-NJ-CT 1997 Ozone Nonattainment Area*," which is available in the docket associated with this rulemaking.

Comment: One commenter believed that CAA section 110(k)(5) either compels or provides the EPA the authority necessary to expand the proposed SIP Call to include any state that is shown to significantly contribute to the failure of the NY-NJ-CT area to attain because these states have failed to meet their obligations under CAA section 110(a)(2)(D)(i)(I).¹³ The commenter further believed that CAA section 110(k)(5) allows the EPA to issue a SIP Call to address states' SIPs that are inadequate in mitigating transport as described in CAA sections 176A and 184. The commenter believed that the U.S. Supreme Court decision in *EPA v. EME Homer City* (134 S. Ct. 1584 (2014)), compels the EPA to immediately issue FIPs for upwind states that have failed to take all necessary steps to make it feasible for any nonattainment area significantly impacted by interstate air pollution to attain and maintain both the 1997 and 2008 8-hour ozone NAAQS. Finally, the commenter noted that the "CSAPR modeling shows that Connecticut receives no more than a 0.2 ppb total benefit from the CSAPR remedy, which is entirely inadequate given the overwhelming scope of transport."

Response: CAA section 110(a)(2)(D)(i)(I) requires states to prohibit emissions that contribute significantly to nonattainment in, or interfere with maintenance by any other state with respect to primary and secondary NAAQS. In the CSAPR promulgated on August 8, 2011 (76 FR 48207), the EPA found that emissions of sulfur dioxide and NO_x in 27 eastern, midwestern, and southern states contribute significantly to nonattainment or interfere with maintenance in one or more downwind states with respect to one or more of three air quality standards—the annual PM_{2.5} NAAQS promulgated in 1997, the 24-hour PM_{2.5} NAAQS promulgated in 2006, and, as relevant here, the ozone NAAQS promulgated in 1997.

For the 1997 ozone NAAQS specifically, twenty states are required

under CSAPR to reduce NO_x emissions during the ozone season (May through September) because they contribute to downwind states' ozone pollution. The emission reductions under CSAPR in these upwind states will improve ozone air quality in downwind states and help them attain and maintain the 1997 8-hour ozone standard.

The timing of CSAPR's implementation was initially affected by litigation over the rule. On December 30, 2011, the D.C. Circuit stayed the effectiveness of CSAPR pending resolution of judicial review. On August 21, 2012, the D.C. Circuit vacated CSAPR,¹⁴ but on April 29, 2014, the U.S. Supreme Court issued an opinion reversing the D.C. Circuit's 2012 decision and remanded the case to the D.C. Circuit.¹⁵ Following the remand, on October 23, 2014, the D.C. Circuit granted the EPA's motion to lift the CSAPR stay and toll the CSAPR compliance deadlines by 3 years. Accordingly, CSAPR Phase 1 implementation began on January 1, 2015, with Phase 2 beginning in 2017. See CSAPR interim final rule at 81 FR 13275 (March 14, 2016). Subsequently, the D.C. Circuit issued its final ruling as to CSAPR, affirming it in most respects but invalidating without vacating several of the rule's state-specific budgets, including some of the rule's Phase 2 ozone-season NO_x budgets.¹⁶ The EPA has since proposed a rulemaking to update to the CSAPR ozone-season NO_x budgets in order to address the more stringent 2008 ozone NAAQS and to respond to the D.C. Circuit's remand of the Phase 2 ozone-season NO_x budgets.¹⁷ As proposed, the CSAPR Update ozone-season NO_x budgets would be effective starting in 2017, effectively replacing CSAPR Phase 2.

The EPA disagrees with the commenter that the Supreme Court's decision in *EPA v. EME Homer City* compels the agency to issue new FIPs or to expand the scope of the proposed SIP Call to address the 1997 and 2008 8-hour ozone NAAQS. The Supreme Court did, however, confirm that the EPA properly issued the CSAPR FIPs in response to disapprovals of SIPs or findings of failure to submit SIPs implementing states' 110(a)(2)(D)(i)(I) obligations with regard to the 1997 ozone NAAQS. Those FIPs took effect and began implementation on January 1,

¹⁴ *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Circuit 2012).

¹⁵ *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014).

¹⁶ *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Circuit 2015).

¹⁷ 80 FR 75706 (December 3, 2015).

¹³ The commenter refers to states' interstate transport obligations under CAA section 110(a)(2)(D)(ii), but the EPA understands these citations to in fact refer to the good neighbor provision, which is CAA section 110(a)(2)(D)(i)(I).

2015 pursuant to the D.C. Circuit's grant of the EPA's motion requesting lifting of the stay, so we note that at the time the NY-NJ-CT area fell back into nonattainment of the 1997 standard, it did not have the benefit of CSAPR reductions. While the commenter points out that modeling conducted for the CSAPR rulemaking projected that the remedy would provide "no more than a 0.2 ppb total benefit," the same modeling also predicted that those reductions, once implemented, would fully resolve nonattainment and maintenance problems for the 1997 ozone NAAQS in the receptors identified in the NY-NJ-CT nonattainment area. For upwind states that were linked only to receptors where downwind nonattainment and maintenance problems were fully resolved under the remedy, the EPA found that CSAPR quantified the full reduction responsibility for the 1997 ozone NAAQS under CAA section 110(a)(2)(D)(i)(I).¹⁸ Therefore, the EPA could not expand the scope of the SIP Call being issued on the basis that upwind states had not fulfilled their 110(a)(2)(D)(i)(I) obligations as to the 1997 ozone NAAQS when the EPA has already issued a FIP that fully resolves the obligations of those states with respect to that standard.

The EPA also does not agree that it would be appropriate in this action to more broadly apply its 110(k)(5) authority to include additional states in this SIP Call to address interstate pollutant transport as described in sections 176A and 184 of the CAA. The EPA acknowledges that a number of states, including Connecticut and New York, submitted a petition under CAA section 176A requesting that the EPA add additional states to the Ozone Transport Region (OTR) that was established under section 184 of the CAA. The EPA is reviewing that petition separately and is not acting on that petition in this action. In addition, the EPA's authority to require SIP revisions under 110(k)(5) as they relate to additional control measures required by CAA section 184 applies to only states that are currently part of the OTR.

III. Environmental Justice Considerations

The CAA requires that states with areas designated as nonattainment submit to the Administrator the appropriate SIP revisions and implement specified control measures

by certain dates applicable to the area's classification. By requiring additional planning and implementation requirements for the 11 nonattainment areas that we determined failed to attain the 2008 ozone NAAQS standard, the part of this action reclassifying those 11 areas from Marginal to Moderate will protect all those residing, working, attending school, or otherwise present in those areas regardless of minority or economic status.

IV. Statutory and Executive Order Reviews

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

This action is exempt from review by the Office of Management and Budget (OMB) because it makes determinations if designated 2008 ozone nonattainment areas are either attaining or failing to attain the 2008 ozone NAAQS by the attainment date along with resulting reclassifications or determination to grant 1-year attainment date extensions.

B. Paperwork Reduction Act (PRA)

This rule does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0695. This action to find that the Marginal ozone nonattainment areas listed in Table 3 failed to attain the 2008 NAAQS by the applicable attainment date, to reclassify those areas as Moderate ozone nonattainment areas, and to adjust any applicable deadlines, does not establish any new information collection burden that has not already been identified in the existing 2008 ozone NAAQS Information Collection Request number 2347.01.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. This action also establishes the deadline by which states will need to submit revisions to their SIPs to address the new Moderate area requirements, and

that deadline, if based on the statute, would otherwise be more stringent. In this final action, the EPA is exercising discretion under CAA section 182(i) which allows the Administrator to provide state air agencies additional time to comply with those requirements.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. No tribal areas are implicated in the 11 areas that we are finding to have failed to meet their attainment date. The CAA and the Tribal Authority Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this action determines that 11 areas, identified in Table 3, did not attain the 2008 ozone standard by their applicable attainment date and to reclassify these areas as Moderate ozone nonattainment areas and to adjust applicable deadlines.

¹⁸ See 76 FR 48210, Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals (August 8, 2011).

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in the section of the preamble titled “Environmental Justice Considerations.”

K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability that names specific entities where this rule makes factual determinations and does directly regulate any entities. The determinations of attainment and failure to attain the 2008 ozone NAAQS (and resulting reclassifications), and the determination to grant 1-year attainment date extensions do not in themselves create any new requirements beyond what is mandated by the CAA.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of final actions that are locally and regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. However, the statute also provides that notwithstanding that general rule, “a petition for review of any action . . . may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” 42 U.S.C. 7607(b)(1). *See also Dalton Trucking v. EPA*, 808 F.3d 875 (D.C. Circuit 2015). Because this final action makes findings with regard to nonattainment areas across the country, interprets the CAA and applies such interpretations to states and nonattainment areas across the country, and establishes SIP deadlines for newly reclassified areas in

different states in a consistent fashion, the Administrator finds that this action has nationwide scope and effect.

Therefore, in accordance with CAA section 307(b)(1), petitions for review of this final action may be filed only in the United States Court of Appeals for the District of Columbia Circuit by July 5, 2016. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings for enforcement.

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 11, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, parts 52 and 81, title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart E—Arkansas

- 2. Add § 52.174 to read as follows:

§ 52.174 Control strategy and regulations: Ozone.

(a) The EPA has determined that the Crittenden County Marginal 2008 ozone NAAQS nonattainment area attained the NAAQS by the applicable attainment date of July 20, 2015.

(b) [Reserved]

Subpart F—California

- 3. Section 52.282 is amended by revising paragraphs (e) introductory text and (e)(1) and (2) to read as follows:

§ 52.282 Control strategy and regulations: Ozone.

* * * * *

(e) *Determinations of attainment.* Effective June 3, 2016.

(1) *Approval of applications for extensions of applicable attainment dates.* Under section 181(a)(5) of the Clean Air Act, the EPA is approving the applications submitted by the California Air Resources Board dated June 1, 2015, referencing the District’s letter of May 19, 2015, for extensions of the applicable attainment date for the San Luis Obispo (Eastern San Luis Obispo), CA 2008 8-hour ozone nonattainment areas from July 20, 2015 to July 20, 2016.

(2) *Determinations of attainment.* The EPA has determined that the Calaveras County, Chico (Butte County), San Francisco Bay Area and Tuscan Buttes 2008 8-hour ozone nonattainment areas in California have attained the 2008 8-hour ozone standard by the July 20, 2015 applicable attainment date, based upon complete quality-assured data for 2012–2014. Therefore, the EPA has met its obligation pursuant to CAA section 181(b)(2)(A) to determine, based on the area’s air quality data as of the attainment date, whether the area attained the standard. As a result of these determinations, the Calaveras County, Chico (Butte County), San Francisco Bay Area and Tuscan Buttes 2008 8-hour ozone nonattainment areas in California will not be reclassified for failure to attain by their July 20, 2015, applicable attainment date under section 181(b)(2)(A).

* * * * *

Subpart H—Connecticut

- 4. Section 52.377 is amended by adding paragraph (p) to read as follows:

§ 52.377 Control strategy: Ozone.

* * * * *

(p) *Rescission of clean data determination for the 1997 eight-hour ozone standard.* Effective June 3, 2016, the EPA is determining that complete quality-assured and certified ozone monitoring data for 2012–2014 show the NY-NJ-CT 1997 eight-hour ozone nonattainment area did not meet 1997 eight-hour ozone standard. Therefore, the EPA is rescinding the clean data determination for the 1997 eight-hour ozone standard only. The prior determination (*see* paragraph k of this section) is in accordance with 40 CFR 51.918. The prior determination suspended the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable

further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual eight-hour ozone NAAQS. This rescission of the clean data determination will result in a SIP Call for a new ozone attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard, for this area only. If the revised plan is approved by the EPA as demonstrating reasonable further progress and attainment for the more stringent 2008 NAAQS by the Moderate area attainment date, and is approved by the EPA as containing adequate contingency measures for the 2008 NAAQS, then the plan would be deemed to have also satisfied requirements of the SIP Call associated with violations for the 1997 NAAQS.

Subpart I—Delaware

- 5. Section 52.425 is amended by adding paragraph (c) to read as follows:

§ 52.425 Determinations of attainment.

* * * * *

(c) The EPA has determined, as of June 3, 2016, that based on 2012 to 2014 ambient air quality data, the Seaford, DE 2008 ozone Marginal nonattainment area has attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality data as of the attainment date, whether the area attained the standard. The EPA also determined that the Seaford nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

Subpart P—Indiana

- 6. Section 52.777 is amended by adding paragraph (tt) to read as follows:

§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).

* * * * *

(tt) *Determination of attainment.* As required by section 181(b)(2)(A) of the Clean Air Act, the EPA has determined that the Cincinnati, OH-KY-IN Marginal 2008 ozone nonattainment area has attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015.

Subpart S—Kentucky

- 7. Section 52.930 is amended by adding paragraph (m) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(m) *Determination of attainment.* The EPA has determined, as of June 3, 2016, that based on 2012 to 2014 ambient air quality data, the Cincinnati, OH-KY-IN 2008 ozone Marginal nonattainment area has attained the 2008 ozone NAAQS. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality data as of the attainment date, whether the area attained the standard. The EPA also determined that the Cincinnati, OH-KY-IN nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

Subpart T—Louisiana

- 8. Section 52.977 is amended by adding paragraph (f) to read as follows:

§ 52.977 Control strategy and regulations: Ozone.

* * * * *

(f) The EPA has determined that the Baton Rouge Marginal 2008 ozone NAAQS nonattainment area attained the NAAQS by the applicable attainment date of July 20, 2015.

Subpart W—Massachusetts

- 9. Section 52.1129 is amended by adding paragraph (k) to read as follows:

§ 52.1129 Control strategy: Ozone.

* * * * *

(k) *Determination of attainment for the eight-hour ozone standard.* Effective June 3, 2016, the EPA is determining that complete quality-assured and certified ozone monitoring data for 2012 to 2014 show the Dukes County, Massachusetts eight-hour ozone nonattainment area attained the 2008 eight-hour ozone standard by its July 20, 2015 attainment deadline. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality data as of the attainment date, whether the area attained the standard. The EPA also determined that the Dukes County nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

Subpart Z—Mississippi

- 10. Add § 52.1273 to read as follows:

§ 52.1273 Control strategy: Ozone.

(a) *Determination of attainment.* The EPA has determined, as of June 3, 2016, that based on 2012 to 2014 ambient air quality data, the Memphis, TN-MS-AR 2008 ozone Marginal nonattainment area has attained the 2008 ozone NAAQS. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality data as of the attainment date, whether the area attained the standard. The EPA also determined that the Memphis, TN-MS-AR nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

(b) [Reserved]

Subpart FF—New Jersey

§ 52.1576 [Amended]

- 11. Section 52.1576 is amended by remove paragraph (d).
 ■ 12. Section 52.1582 is amended by adding paragraph (p) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone.

* * * * *

(p) *Rescission of clean data determination for the 1997 eight-hour ozone standard.* Effective June 3, 2016, the EPA is determining that complete quality-assured and certified ozone monitoring data for 2012–2014 show the New York-Northern New Jersey-Long Island, NY-NJ-CT 1997 eight-hour ozone nonattainment area did not meet 1997 eight-hour ozone standard. Therefore, the EPA is rescinding the clean data determination for the 1997 eight-hour ozone standard only. The prior determination (*see* paragraph (n)(2)) is in accordance with 40 CFR 51.918. The prior determination suspended the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual eight-hour ozone NAAQS. This rescission of the clean data determination will result in a SIP Call for a new ozone attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard, for this area only. If the revised plan is approved by the EPA as demonstrating reasonable further progress and attainment for the more stringent 2008 NAAQS by the Moderate area

attainment date, and is approved by the EPA as containing adequate contingency measures for the 2008 NAAQS, then the plan would be deemed to have also satisfied requirements of the SIP Call associated with violations for the 1997 NAAQS.

Subpart HH—New York

■ 13. Section 52.1679 is amended by revising paragraph (b) to read as follows:

§ 52.1679 Determinations of attainment.

* * * * *

(b) *Determination of attainment.* The EPA has determined, as of June 3, 2016, that based on 2012 to 2014 ambient air quality data, the Jamestown, NY 2008 ozone Marginal nonattainment area has attained the 2008 ozone NAAQS. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality data as of the attainment date, whether the area attained the standard. The EPA also determined that the Jamestown, NY nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

■ 14. Section 52.1683 is amended by revising paragraph (f)(2)(v) and adding paragraph (n) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(f) * * *

(2) * * *

(v) Jamestown (consisting of Chautauqua County) as of June 3, 2016.

* * * * *

(n) *Rescission of clean data determination for the 1997 eight-hour ozone standard.* Effective June 3, 2016, the EPA is determining that complete quality-assured and certified ozone monitoring data for 2012 to 2014 show the New York-Northern New Jersey-Long Island, NY-NJ-CT 1997 eight-hour ozone nonattainment area did not meet the 1997 eight-hour ozone standard. Therefore, the EPA is rescinding the clean data determination for the 1997 eight-hour ozone standard only. The prior determination (see paragraph (f)(2)(viii) of this section) is in accordance with 40 CFR 51.918. The prior determination suspended the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual eight-hour ozone NAAQS. This

rescission of the clean data determination will result in a SIP Call for a new ozone attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard, for this area only. If the revised plan is approved by the EPA as demonstrating reasonable further progress and attainment for the more stringent 2008 NAAQS by the Moderate area attainment date, and is approved by the EPA as containing adequate contingency measures for the 2008 NAAQS, then the plan would be deemed to have also satisfied requirements of the SIP Call associated with violations for the 1997 NAAQS.

Subpart II—North Carolina

■ 15. Section 52.1779 is amended by adding paragraph (c) to read as follows:

§ 52.1779 Control strategy: Ozone.

* * * * *

(c) *Determination of attainment.* The EPA has determined, as of June 3, 2016, that based on 2012 to 2014 ambient air quality data, the Charlotte-Rock Hill, NC-SC 2008 ozone Marginal nonattainment area has attained the 2008 ozone NAAQS. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality data as of the attainment date, whether the area attained the standard. The EPA also determined that the Charlotte-Rock Hill, NC-SC nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

Subpart KK—Ohio

■ 16. Section 52.1885 is amended by adding paragraph (nn) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(nn) *Determination of attainment.* As required by section 181(b)(2)(A) of the Clean Air Act, the EPA has determined that the Cincinnati, OH-KY-IN and Columbus, OH Marginal 2008 ozone nonattainment areas have attained the NAAQS by the applicable attainment date of July 20, 2015.

Subpart NN—Pennsylvania

■ 17. Section 52.2056 is amended by adding paragraphs (k), (l), and (m) to read as follows:

§ 52.2056 Determinations of attainment.

* * * * *

(k) The EPA has determined, as of June 3, 2016, that based on 2012 to 2014 ambient air quality data, the Allentown-Bethlehem-Easton, PA 2008 ozone Marginal nonattainment area has attained the 2008 8-hour ozone NAAQS by the applicable attainment date of July 20, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the 2008 8-hour ozone NAAQS. The EPA also determined that the Allentown-Bethlehem-Easton, PA marginal nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

(l) The EPA has determined, as of June 3, 2016, that based on 2012 to 2014 ambient air quality data, the Lancaster, PA 2008 ozone Marginal nonattainment area has attained the 2008 8-hour ozone NAAQS by the applicable attainment date of July 20, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the 2008 8-hour ozone NAAQS. The EPA also determined that the Lancaster, PA Marginal nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

(m) The EPA has determined, as of June 3, 2016, that based on 2012 to 2014 ambient air quality data, the Reading, PA 2008 ozone Marginal nonattainment area has attained the 2008 8-hour ozone NAAQS by the applicable attainment date of July 20, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the 2008 8-hour ozone NAAQS. The EPA also determined that the Reading, PA Marginal nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

Subpart PP—South Carolina

■ 18. Section 52.2125 is amended by adding paragraph (c) to read as follows:

§ 52.2125 Control strategy: Ozone.

* * * * *

(c) *Determination of attainment.* The EPA has determined, as of June 3, 2016, that based on 2012 to 2014 ambient air quality data, the Charlotte-Rock Hill, NC-SC 2008 ozone Marginal nonattainment area has attained the 2008 ozone NAAQS. Therefore, the EPA has met the requirement pursuant to

CAA section 181(b)(2)(A) to determine, based on the area's air quality data as of the attainment date, whether the area attained the standard. The EPA also determined that the Charlotte-Rock Hill, NC-SC nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

Subpart RR—Tennessee

- 19. Section 52.2235 is amended by adding paragraph (d) to read as follows:

§ 52.2235 Control strategy: Ozone.

* * * * *

(d) *Determination of attainment.* The EPA has determined, as of June 3, 2016, that based on 2011 to 2013 ambient air quality data, the Knoxville, TN and Memphis, TN-MS-AR 2008 ozone Marginal nonattainment areas have attained the 2008 ozone NAAQS. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on an

area's air quality data as of the attainment date, whether the areas attained the standard. The EPA also determined that the Knoxville, TN and Memphis, TN-MS-AR nonattainment areas will not be reclassified for failure to attain by their applicable attainment date under section 181(b)(2)(A).

Subpart ZZ—Wyoming

- 20. Add § 52.2623 to read as follows:

§ 52.2623 Control strategy and regulations: Ozone.

(a) *Determination of attainment.* The EPA has determined, as of June 3, 2016, that based on 2012 to 2014 ambient air quality data, the Upper Green River Basin Area, WY 2008 ozone Marginal nonattainment area has attained the 2008 ozone NAAQS. Therefore, the EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality data as of the attainment date, whether the area attained the standard. The EPA also determined that the Upper Green River

Basin Area, WY nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

(b) [Reserved]

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

- 21. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

- 22. Section 81.303 is amended in the table for “Arizona-2008 8-Hour Ozone NAAQS (Primary and secondary)” by revising the heading entry for “Phoenix-Mesa, AZ” and the entries for “Maricopa County (part)” to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Phoenix-Mesa, AZ: ²		Nonattainment	6/3/16	Moderate.
Maricopa County (part)				
T1N, R1E (except that portion in Indian Country); T1N, R2E; T1N, R3E; T1N, R4E; T1N, R5E; T1N, R6E; T1N, R7E; T1N, R1W; T1N, R2W; T1N, R3W; T1N, R4W; T1N, R5W; T1N, R6W; T1N, R7W; T1N, R8W; T2N, R1E; T2N, R2E; T2N, R3E; T2N, R4E; T2N, R5E; T2N, R6E; T2N, R7E; T2N, R8E; T2N, R9E; T2N, R10E; T2N, R11E; T2N, R12E (except that portion in Gila County); T2N, R13E (except that portion in Gila County); T2N, R1W; T2N, R2W; T2N, R3W; T2N, R4W; T2N, R5W; T2N, R6W; T2N, R7W; T2N, R8W; T3N, R1E; T3N, R2E; T3N, R3E; T3N, R4E; T3N, R5E; T3N, R6E; T3N, R7E; T3N, R8E; T3N, R9E; T3N, R10E (except that portion in Gila County); T3N, R11E (except that portion in Gila County); T3N, R12E (except that portion in Gila County); T3N, R1W; T3N, R2W; T3N, R3W; T3N, R4W; T3N, R5W; T3N, R6W; T4N, R1E; T4N, R2E; T4N, R3E; T4N, R4E; T4N, R5E; T4N, R6E; T4N, R7E; T4N, R8E; T4N, R9E; T4N, R10E (except that portion in Gila County); T4N, R11E (except that portion in Gila County); T4N, R12E (except that portion in Gila County); T4N, R1W; T4N, R2W; T4N, R3W; T4N, R4W; T4N, R5W; T4N, R6W; T5N, R1E; T5N, R2E; T5N, R3E; T5N, R4E; T5N, R5E; T5N, R6E; T5N, R8E; T5N, R9E (except that portion in Gila County); T5N, R10E (except that portion in Gila County); T5N, R1W; T5N, R2W; T5N, R3W; T5N, R4W; T5N, R5W; T6N, R1E (except that portion in Yavapai County); T6N, R2E; T6N, R3E; T6N, R4E; T6N, R5E; T6N, R6E; T6N, R7E; T6N, R8E; T6N, R9E (except that portion in Gila County); T6N, R10E (except that portion in Gila County); T6N, R1W (except that portion in Yavapai County); T6N, R2W; T6N, R3W; T6N, R4W; T6N, R5W; T7N, R1E; (except that portion in Yavapai County); T7N, R2E (except that portion in Yavapai County);				

ARIZONA—2008 8-HOUR OZONE NAAQS—Continued
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
T7N, R3E; T7N, R4E; T7N, R5E; T7N, R6E; T7N, R7E; T7N, R8E; T7N, R9E (except that portion in Gila County); T7N, R1W (except that portion in Yavapai County); T7N, R2W (except that portion in Yavapai County); T8N, R2E (except that portion in Yavapai County); T8N, R3E (except that portion in Yavapai County); T8N, R4E (except that portion in Yavapai County); T8N, R5E (except that portion in Yavapai County); T8N, R6E (except that portion in Yavapai County); T8N, R7E (except that portion in Yavapai County); T8N, R8E (except that portion in Yavapai and Gila Counties); T8N, R9E (except that portion in Yavapai and Gila Counties); T1S, R1E (except that portion in Indian Country); T1S, R2E (except that portion in Pinal County and in Indian Country); T1S, R3E; T1S, R4E; T1S, R5E; T1S, R6E; T1S, R7E; T1S, R1W; T1S, R2W; T1S, R3W; T1S, R4W; T1S, R5W; T1S, R6W; T2S, R1E (except that portion in Indian Country); T2S, R5E; T2S, R6E; T2S, R7E; T2S, R1W; T2S, R2W; T2S, R3W; T2S, R4W; T2S, R5W; T3S, R1E; T3S, R1W; T3S, R2W; T3S, R3W; T3S, R4W; T3S, R5W; T4S, R1E; T4S, R1W; T4S, R2W; T4S, R3W; T4S, R4W; T4S, R5W; T5S, R4W (Sections 1 through 22 and 27 through 34).				
*	*	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

* * * * *

■ 23. Section 81.305 is amended in the table for “California-2008 8-Hour Ozone NAAQS (Primary and secondary)” by revising the entries for “Imperial

County, CA”, “Kern County (Eastern Kern), CA”, “Mariposa County, CA”, “Nevada County (Western part), CA”, and “San Diego County, CA”, and “San Luis Obispo (Eastern San Luis Obispo),

CA” and adding a footnote “5” to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
*	*	*	*	*
Imperial County, CA: ²		Nonattainment	6/3/16	Moderate.
Imperial County. Quechan Tribe of the Fort Yuma Indian Reservation ³ . Torres Martinez Desert Cahuilla Indians ³ .				
Kern County (Eastern Kern), CA: ²		Nonattainment	6/3/16	Moderate.
Kern County (part).				

CALIFORNIA—2008 8-HOUR OZONE NAAQS—Continued
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205—the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.				
* * * * *				
Mariposa County, CA: ² Mariposa County		Nonattainment	6/3/16	Moderate.
Nevada County (Western part), CA: ²		Nonattainment	6/3/16	Moderate.
Nevada County (part). That portion of Nevada County, which lies west of a line, described as follows: Beginning at the Nevada-Placer County boundary and running north along the western boundaries of Sections 24, 13, 12, 1, Township 17 North, Range 14 East, Mount Diablo Base and Meridian, and Sections 36, 25, 24, 13, 12, Township 18 North, Range 14 East to the Nevada-Sierra County boundary.				
* * * * *				
San Diego County, CA: ²		Nonattainment	6/3/16	Moderate.
San Diego County. Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation³. Campo Band of Diegueno Mission Indians of the Campo Indian Reservation³. Capitan Grande Band of Diegueno Mission Indians of California³. Ewilaapaay Band of Kumayaay Indians³. Iipay Nation of Santa Ysabel³. Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation³. Jamul Indian Village of California³. La Jolla Band of Luiseno Indians³. La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation³. Los Coyotes Band of Cahuilla and Cupeno Indians³.				

CALIFORNIA—2008 8-HOUR OZONE NAAQS—Continued
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation ³ . Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation ³ . Pala Band of Luiseno Mission Indians of the Pala Reservation ³ . Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation ³ . Rincon Band of Luiseno Mission Indians of the Rincon Reservation ³ . San Pasqual Band of Diegueno Mission Indians of California ³ . Sycuan Band of the Kumeyaay Nation ³ . Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians ³ .				
* * *	*	*	*	*
San Luis Obispo (Eastern San Luis Obispo), CA: ² San Luis Obispo County (part). That portion of San Luis Obispo County that lies east of a line described as follows: Beginning at the San Luis Obispo County/Santa Barbara County boundary and running north along 120 degrees 24 minutes longitude to the intersection with 35 degrees 27 minutes latitude; east along 35 degrees 27 minutes latitude to the intersection with 120 degrees 18 minutes longitude; then north along 120 degrees 18 minutes longitude to the San Luis Obispo County/Monterey County boundary.		Nonattainment	6/3/16	Marginal. ⁵
* * *	*	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

³ Includes Indian country of the tribe listed in this table located in the identified area. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

⁴ Attainment date is extended to July 20, 2016.

* * * * *

■ 24. Section 81.306 is amended in the table for “Colorado—2008 8-Hour

Ozone NAAQS (Primary and secondary)” by revising the entries for “Denver-Boulder-Greeley-Ft. Collins-Loveland, CO” to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO: ² Adams County. Arapahoe County. Boulder County. Broomfield County. Denver County. Douglas County. Jefferson County. Larimer County (part).		Nonattainment	6/3/16	Moderate.

COLORADO—2008 8-HOUR OZONE NAAQS—Continued
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
That portion of the county that lies south of a line described as follows: Beginning at a point on Larimer County's eastern boundary and Weld County's western boundary intersected by 40 degrees, 42 minutes, and 47.1 seconds north latitude, proceed west to a point defined by the intersection of 40 degrees, 42 minutes, 47.1 seconds north latitude and 105 degrees, 29 minutes, and 40.0 seconds west longitude, thence proceed south on 105 degrees, 29 minutes, 40.0 seconds west longitude to the intersection with 40 degrees, 33 minutes and 17.4 seconds north latitude, thence proceed west on 40 degrees, 33 minutes, 17.4 seconds north latitude until this line intersects Larimer County's western boundary and Grand County's eastern boundary.				
Weld County (part). That portion of the county that lies south of a line described as follows: Beginning at a point on Weld County's eastern boundary and Logan County's western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County's western boundary and Larimer County's eastern boundary.				
*	*	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

* * * * *

■ 25. Section 81.307 is amended by revising the table for “Connecticut—

2008 8-Hour Ozone NAAQS (Primary and secondary)” to read as follows:

§ 81.307 Connecticut.

* * * * *

CONNECTICUT—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Greater Connecticut, CT: ²		Nonattainment	6/3/16	Moderate.
Hartford County				
Litchfield County				
New London County				
Tolland County				
Windham County				
Mashantucket Pequot Tribe of Connecticut ³				
Mohegan Indian Tribe of Connecticut ³				
New York-N. New Jersey-Long Island, NY-NJ-CT: ²		Nonattainment	6/3/16	Moderate.
Fairfield County				
Middlesex County				
New Haven County				

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

³Includes Indian country of the tribe listed in this table located in the identified area. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

* * * * *

■ 26. Section 81.308 is amended by revising the table for “Delaware—2008

8-Hour Ozone NAAQS (Primary and secondary)” to read as follows:

§ 81.308 Delaware.

* * * * *

DELAWARE—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE: ² New Castle County		Nonattainment	6/3/16	Marginal. ⁴
Seaford: ² Sussex County		Nonattainment .....	.....	Marginal.
Rest of State: ³ Southern Delaware Intrastate AQCR: (remainder) Kent County		Unclassifiable/Attainment		

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

³ Includes any Indian country in each county or area, unless otherwise specified.

⁴ Attainment date is extended to July 20, 2016.

* * * * *

■ 27. Section 81.309 is amended by revising the table for “District of

Columbia—2008 8-Hour Ozone NAAQS (Primary and secondary)” to read as follows:

§ 81.309 District of Columbia.

* * * * *

DISTRICT OF COLUMBIA—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Washington, DC-MD-VA: District of Columbia ²		Nonattainment	6/3/16	Marginal. ³

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

³ Attainment date is extended to July 20, 2016.

* * * * *

■ 28. Section 81.311 is amended in the table for “Georgia—2008 8-Hour Ozone

NAAQS (Primary and secondary)” by revising the entries for “Atlanta, GA” to read as follows:

§ 81.311 Georgia.

* * * * *

GEORGIA—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Atlanta, GA: ²		Nonattainment	6/3/16	Moderate.

GEORGIA—2008 8-HOUR OZONE NAAQS—Continued
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Bartow County				
Cherokee County				
Clayton County				
Cobb County				
Coweta County				
DeKalb County				
Douglas County				
Fayette County				
Forsyth County				
Fulton County				
Gwinnett County				
Henry County				
Newton County				
Paulding County				
Rockdale County				
*	*	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

* * * * *

■ 29. Section 81.314 is amended in the table for “Illinois—2008 8-Hour Ozone NAAQS (Primary and secondary)” by:

■ a. Revising the entries for “Chicago-Naperville, IL-IN-WI”;

■ b. Revising the heading entry “St. Louis-St. Charles-Farmington, MO-IL” and the entries “Madison County”, “Monroe County”, and “St. Clair County”; and

■ c. Adding a footnote “4”.

The revisions and addition read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Chicago-Naperville, IL-IN-WI: ²		Nonattainment	6/3/16	Moderate.
Cook County				
DuPage County				
Grundey County (part)				
Aux Sable Township				
Goose Lake Township				
Kane County				
Kendall County (part)				
Oswego Township				
Lake County				
McHenry County				
Will County				
St. Louis-St. Charles-Farmington, MO-IL: ²		Nonattainment	6/3/16	Marginal. ⁴
Madison County				
Monroe County				
St. Clair County				
*	*	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

* * *

⁴ Attainment date is extended to July 20, 2016.

* * * * *

■ 30. Section 81.315 is amended in the table for “Indiana—2008 8-Hour Ozone

NAAQS (Primary and secondary)” by revising the entries for “Chicago-Naperville, IL-IN-WI” to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Chicago-Naperville, IL-IN-WI: ²		Nonattainment	6/3/16.	Moderate.
Lake County				
Porter County				
*	*	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

* * * * *

■ 31. Section 81.321 is amended in the table for “Maryland—2008 8-Hour Ozone NAAQS (Primary and secondary)” by:

- a. Revising the entries for “Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE”;
- b. Revising the heading entry “Washington, DC-MD-VA”; and
- c. Adding a footnote “4”.

The revisions and addition read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE: ²		Nonattainment	6/3/16	Marginal. ⁴
Cecil County				
Washington, DC-MD-VA: ²		Nonattainment	6/3/16	Marginal. ⁴
*	*	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

* * *

⁴ Attainment date is extended to July 20, 2016.

* * * * *

■ 32. Section 81.326 is amended in the table for “Missouri—2008—8-Hour Ozone NAAQS (Primary and

secondary)” by revising the heading entry for “St. Louis-St. Charles-Farmington, MO-IL” and adding a footnote “4” to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
St. Louis-St. Charles-Farmington, MO-IL: ²		Nonattainment	6/3/16	Marginal. ⁴
*	*	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

* * *

⁴ Attainment date is extended to July 20, 2016.

* * * * *

■ 33. Amend § 81.331 by revising the table for “New Jersey—2008 8-Hour

Ozone NAAQS (Primary and secondary)” to read as follows:

§ 81.331 New Jersey.

* * * * *

NEW JERSEY—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
New York-N. New Jersey-Long Island, NY-NJ-CT: ² .. Bergen County. Essex County. Hudson County. Hunterdon County. Middlesex County. Monmouth County. Morris County. Passaic County. Somerset County. Sussex County. Union County. Warren County.		Nonattainment	6/3/16	Moderate.
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE: ² . Atlantic County. Burlington County. Camden County. Cape May County		Nonattainment	6/3/16	Marginal. ³ .
Cumberland County. Gloucester County. Mercer County. Ocean County. Salem County.				

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

³ Attainment date is extended to July 20, 2016.

* * * * *

■ 34. Section 81.333 is amended in the table for “New York—2008 8-Hour

Ozone NAAQS (Primary and secondary)” by revising the entries for “New York-N. New Jersey-Long Island, NY-NJ-CT” to read as follows:

§ 81.333 New York.

* * * * *

NEW YORK—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * * New York-N. New Jersey-Long Island, NY-NJ-CT: ² .. Bronx County. Kings County. Nassau County. New York County. Queens County. Richmond County. Rockland County. Suffolk County. Westchester County. Shinnecock Indian Nation ³ .		Nonattainment	6/3/16	Moderate.
* * * * *				

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

³ Includes Indian country of the tribe listed in this table located in the identified area. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

* * * * *

■ 35. Section 81.336 is amended in the table for “Ohio—2008 8-Hour Ozone NAAQS (Primary and secondary)” by

revising the entries for “Cleveland-Akron-Lorain, OH” and adding a footnote “4” to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—2008—8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * * Cleveland-Akron-Lorain, OH: ² Ashtabula County. Cuyahoga County. Geauga County. Lake County. Lorain County. Medina County. Portage County. Summit County. * * * * *		Nonattainment	6/3/16	Marginal. ⁴

¹ This date is July 20, 2012, unless otherwise noted.² Excludes Indian country located in each area, unless otherwise noted.

* * *

⁴ Attainment date is extended to July 20, 2016.

* * * * *

■ 36. Section 81.339 is amended in the table for “Pennsylvania—2008 8-Hour Ozone NAAQS (Primary and

secondary)” by revising the entries for “Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE” and “Pittsburgh-

Beaver Valley, PA” and adding a footnote “4” to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * * Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE ² . Bucks County. Chester County. Delaware County. Montgomery County. Philadelphia County. Pittsburgh-Beaver Valley, PA: ² Allegheny County. Armstrong County. Beaver County. Butler County. Fayette County. Washington County. Westmoreland County. * * * * *		Nonattainment	6/3/16	Marginal. ⁴

¹ This date is July 20, 2012, unless otherwise noted.² Excludes Indian country located in each area, unless otherwise noted.

* * *

⁴ Attainment date is extended to July 20, 2016.

* * * * *

■ 37. Section 81.344 is amended in the table for “Texas—2008 8-Hour Ozone

NAAQS (Primary and secondary)” by revising the entries for “Houston-Galveston-Brazoria, TX” and adding a footnote “4” to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * * Houston-Galveston-Brazoria, TX: ² Brazoria County. Chambers County. Fort Bend County. Galveston County. Harris County. Liberty County. Montgomery County. Waller County. * * * * *		Nonattainment	6/3/16	Marginal. ⁴

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

* * *

⁴ Attainment date is extended to July 20, 2016.

* * * * *

■ 38. Section 81.347 is amended in the table for “Virginia—2008 8-Hour Ozone

NAAQS (Primary and secondary)” by revising the entries for “Washington, DC-MD-VA” and adding a footnote “4” to read as follows:

§ 81.347 Virginia.

* * * * *

VIRGINIA—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
Washington, DC-MD-VA: ² Arlington County. Fairfax County. Loudoun County. Prince William County. Alexandria City. Fairfax City. Falls Church City. Manassas City. Manassas Park City. * * * * *		Nonattainment	6/3/16	Marginal. ⁴

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

* * *

⁴ Attainment date is extended to July 20, 2016.

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■ 39. Section 81.350 is amended in the table for “Wisconsin—2008 8-Hour Ozone NAAQS (Primary and secondary)” by:

■ a. Revising the heading entry for “Chicago-Naperville, IL-IN-WI” and the entries for “Sheboygan County, WI”; and

■ b. Adding a footnote “4”.

The revisions and addition read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—2008 8-HOUR OZONE NAAQS
[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Chicago-Naperville, IL-IN-WI: ² * * * * * Sheboygan County, WI: ²		Nonattainment	6/3/16	Moderate. Marginal. ⁴

WISCONSIN—2008 8-HOUR OZONE NAAQS—Continued

[Primary and secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Sheboygan County.				
*	*	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.² Excludes Indian country located in each area, unless otherwise noted.

* * *

⁴ Attainment date is extended to July 20, 2016.

* * * * *

[FR Doc. 2016-09729 Filed 5-3-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180****[EPA-HQ-OPP-2015-0014; FRL-9944-82]****Mefenoxam; Pesticide Tolerances****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This regulation establishes tolerances for residues of mefenoxam in or on rapeseed subgroup 20A. Syngenta Crop Protection, LLC., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 4, 2016. Objections and requests for hearings must be received on or before July 5, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2015-0014, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division

(7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDfrNotices@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2015-0014 in the subject line on the first page of your submission. All

objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 5, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2015-0014, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 6, 2015 (80 FR 18327) (FRL-9924-00), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F8323) by Syngenta Crop Protection, LLC., 410 Swing Road, Greensboro, NC 27419. The petition requested that 40 CFR 180.546

be amended by establishing tolerances for residues of the fungicide mefenoxam, methyl *N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)-*DL*-alaninate, in or on rapeseed crop subgroup 20A at 0.05 parts per million (ppm). That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for mefenoxam including exposure resulting from the tolerances established by this action. EPA’s assessment of exposures and risks associated with mefenoxam follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Mefenoxam is the enriched *R*-enantiomer of metalaxyl which is a racemic mixture that contains approximately 50% each of the *R*- and *S*-enantiomers. EPA conducted side-by-side comparison of the available toxicity data for mefenoxam and metalaxyl and concluded that mefenoxam has similar toxicity to that of metalaxyl. Therefore, the metalaxyl data may be used to support regulatory actions for mefenoxam.

The Agency reassessed the toxicity databases for metalaxyl and mefenoxam in accordance with current policies and determined that many of the effects previously noted in several toxicological studies are no longer considered to be adverse (*i.e.* body weight gain without changes in absolute body weight; hepatocyte hypertrophy without necrosis; enzyme leakage to bloodstream or disruption of lipid homeostasis). In rat and dog repeat dose (*i.e.*, subchronic and chronic) oral toxicity studies, there were no indications of adverse effects up to the highest dose tested (HDT).

Adverse effects were only observed from acute exposure to rats. In the rat developmental toxicity study of metalaxyl, maternal toxicity consisted of dose-related increased incidence of convulsions that occurred shortly after dosing, as well as other clinical signs. In a range-finding acute neurotoxicity study of mefenoxam, females showed abnormal functional observation battery (FOB) findings at lower doses than males. However, there was no indication of toxicity up to the HDT in the mefenoxam subchronic neurotoxicity study, which confirms the lack of adverse effects observed in all other repeated-dose studies.

There was no indication of developmental toxicity in studies of mefenoxam or metalaxyl. There was no indication of immunotoxicity in a mouse immunotoxicity study of mefenoxam. Metalaxyl and mefenoxam have been classified as “not likely to be carcinogenic in humans” based on the

results for metalaxyl in the carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats.

Specific information on the studies received and the nature of the adverse effects caused by mefenoxam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document “Mefenoxam, Human Health Risk Assessment” at pages 14–17 in docket ID number EPA–HQ–OPP–2015–0014.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide’s toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides>.

A summary of the toxicological endpoints for mefenoxam used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR MEFENOXAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants, children, and females 13–50 years of age).	NOAEL = 50 mg/kg/day. UF _A = 10x UF _H = 10x FQPA SF = 1x	Acute RfD = 0.5 mg/kg/day. aPAD = 0.5 mg/kg/day	Metalaxyl Prenatal Developmental Toxicity—Rat LOAEL = 250 mg/kg/day based on dose-related increases in clinical signs of toxicity (e.g., post-dosing convulsions).
Chronic dietary (All populations)	No endpoint was identified. No systemic toxicity was observed in any toxicity study where the animals were administered metalaxyl or mefenoxam in the diet. Acute dietary assessment is protective of all other durations of exposure.		
Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL = 50 mg/kg/day. UF _A = 10x UF _H = 10x FQPA SF = 1x	LOC for MOE = 100	Metalaxyl Prenatal Developmental Toxicity—Rat LOAEL = 250 mg/kg/day based on dose-related increases in clinical signs of toxicity (e.g., post-dosing convulsions).
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months).	No endpoint was identified. No systemic toxicity was observed at the limit dose (1,000 mg/kg/day) in rabbits treated with metalaxyl during a 21-day dermal toxicity study. For converting oral to dermal doses for risk assessment, the Dermal Absorption Factor (DAF) = 35%.		
Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL = 50 mg/kg/day. UF _A = 10x UF _H = 10x FQPA SF = 1x Note: Toxicity via the inhalation and oral routes are assumed to be equivalent.	LOC for MOE = 100	Metalaxyl Prenatal Developmental Toxicity—Rat LOAEL = 250 mg/kg/day based on dose-related increases in clinical signs of toxicity (e.g., post-dosing convulsions).
Cancer (Oral, dermal, inhalation).	Classification: “Not Likely to be Carcinogenic to Humans” based on the absence of treatment-related increases in tumor incidence in adequately conducted carcinogenicity studies in rats and mice treated with metalaxyl.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to mefenoxam, EPA considered exposure under the petitioned-for tolerances as well as all existing mefenoxam tolerances in 40 CFR 180.546 and metalaxyl tolerances 40 CFR 180.408. EPA assessed dietary exposures from mefenoxam/metalaxyl in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for mefenoxam. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey/What We

Eat in America (NHANES/WWEIA). As to residue levels in food, EPA conducted a somewhat refined acute dietary exposure assessment for the proposed food use of mefenoxam on the rapeseed subgroup 20A and the existing uses of both metalaxyl and mefenoxam. Residues were assumed to be present at tolerance levels in plant commodities, with additional factors applied to certain plant commodities to include all residues of concern for risk assessment. Tolerance-level residues adjusted upward to account for metalaxyl/mefenoxam residues of concern in livestock commodities were used and based on data from metabolism studies on goats and hens. DEEM default and empirical processing factors were used as available. It was assumed that 100% of the crops were treated (100% CT).

ii. *Chronic exposure.* No such effects were identified in the toxicological studies for mefenoxam; therefore, a quantitative chronic dietary exposure assessment is unnecessary.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that mefenoxam does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for mefenoxam. Tolerance-level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for mefenoxam in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of mefenoxam. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www2.epa.gov/pesticide-science->

and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.

Based on the Surface Water Concentration Calculator (SWCC) and the Pesticide Root Zone Model-Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of mefenoxam for acute exposures are estimated to be 741 parts per billion (ppb) for surface water and 3,700 ppb for ground water. These modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Mefenoxam is currently registered for the following uses that could result in residential exposures: Residential turf and ornamentals, including nonbearing citrus trees. EPA assessed residential exposure using the following assumptions: Residential handler exposure is expected to be short-term in duration. Intermediate-term exposures are not likely because of the intermittent nature of applications by homeowners. Residential post-application exposure was assessed based on short-term incidental oral risk estimates for children 1 < 2 years old. Dermal post-application risk assessments were not conducted because an adverse systemic dermal hazard was not identified for mefenoxam. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide>.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.” EPA has not found mefenoxam to share a common mechanism of toxicity with any other substances, and mefenoxam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that mefenoxam does not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which

chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s Web site at <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides>

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence that mefenoxam results in increased susceptibility from in utero exposure to rats or rabbits in the prenatal developmental studies or exposure to young rats in the 2-generation reproduction study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for metalaxyl and mefenoxam is complete.

ii. In the rat prenatal developmental toxicity with metalaxyl, maternal animals exhibited clinical signs indicative of neurobehavioral effects as previously discussed.

In the range-finding acute neurotoxicity study with mefenoxam, females exhibited abnormal functional observation battery (FOB) findings at doses lower than in males. In the subchronic neurotoxicity study with mefenoxam, there were no indications of neurotoxicity up to the HDT. In metalaxyl and mefenoxam treated adult animals, clinical signs and abnormal FOB findings were noted. However, a developmental neurotoxicity (DNT) study is not required for metalaxyl or mefenoxam because (1) there are no indications of increased susceptibility for infants or children; (2) the convulsions observed in the rat prenatal developmental toxicity study occurred in the maternal animals with no effects being observed in the young; (3) the convulsions occurred only after a bolus

dose; (4) the available developmental and range-finding acute neurotoxicity studies provided clear NOAELs and LOAELs for evaluating effects; (5) the current POD is below the level at which any effects were seen in either study, and (6) there were no other indications of neurotoxicity in the mefenoxam or metalaxyl databases, which include a subchronic (adult rat) neurotoxicity study for mefenoxam. Therefore, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. In metalaxyl and mefenoxam treated animals, there was no evidence of increased susceptibility following pre-/postnatal exposure in the prenatal developmental toxicity studies or the reproduction and fertility effects study. There is no evidence that mefenoxam results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance levels or upper bound residue estimates. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to mefenoxam in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by mefenoxam.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* The acute aggregate risk assessment considers exposure estimates from dietary consumption of mefenoxam (food and drinking water). Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to mefenoxam will occupy 95% of the aPAD for children <1 years old, the population group

receiving the greatest exposure, but this is below the level of concern.

2. *Chronic risk.* A chronic aggregate risk assessment takes into account chronic exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from repeated exposure was identified and no chronic dietary endpoint was selected. Therefore, mefenoxam is not expected to pose a chronic risk.

3. *Short-term and Intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account both short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Mefenoxam is currently registered for uses that could result in short-term and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate short-term and intermediate-term residential exposures to mefenoxam. Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded the combined short-term and intermediate-term food, water, and residential exposures result in aggregate MOEs of 79,000 for adult; and 1,000 for children 1 < 2 years old. Because EPA's level of concern for mefenoxam is a MOE of 100 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, mefenoxam is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to mefenoxam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Several methods are available for enforcing tolerances: (1) A gas-liquid chromatography procedure employing an alkali flame ionization detector (GLC/AFID); (2) a method using GLC/nitrogen phosphorus detection; and (3) a multi-residue method in PAM, Vol 1.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: residuemethods@epa.gov.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for mefenoxam for the rapeseed crop subgroup 20A.

V. Conclusion

Therefore, tolerances are established for residues of mefenoxam, methyl *N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)-*DL*-alaninate, in or on rapeseed subgroup 20A at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 21, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.546, add alphabetically the entry for “Rapeseed subgroup 20A” to the table in paragraph (a) to read as follows:

§ 180.546 Mefenoxam; tolerances for residues.

(a) * * *

Commodity	Parts per million
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Rapeseed subgroup 20A	0.05
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[FR Doc. 2016–10389 Filed 5–3–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 151210999–6348–02]

RIN 0648–BF59

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 27

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS approves and implements through regulations the measures included in Framework Adjustment 27 to the Atlantic Sea Scallop Fishery Management Plan, which the New England Fishery Management Council adopted and submitted to NMFS for approval. The purpose of Framework 27 is to prevent overfishing, improve yield-per-recruit, and improve the overall management of the Atlantic sea scallop fishery. Framework 27 sets specifications for the scallop fishery for fishing year 2016, including days-at-sea allocations,

individual fishing quotas, and sea scallop access area trip allocations; creates a new rotational closed area south of Closed Area 2 to protect small scallops; opens the northern portion of the Nantucket Lightship Access Area to the Limited Access General Category fleet; transfers 19 percent of the Limited Access General Category access area trips from the Mid-Atlantic Access Area to the northern portion of the Nantucket Lightship Access Area; and implements an accountability measure to the fishing year 2016 Northern Gulf of Maine Total Allowable Catch as a result of a fishing year 2015 catch overage.

DATES: Effective May 4, 2016.

ADDRESSES: The Council developed an environmental assessment (EA) for this action that describes the action and other considered alternatives and provides a thorough analysis of the impacts of these measures. Copies of the Framework, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/IRFA is also accessible via the Internet at: <http://www.nefmc.org/scallops/index.html> or <http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/>.

Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or available on the internet at: <http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/>.

FOR FURTHER INFORMATION CONTACT:

Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION:

Background

The Council adopted Framework 27 on December 3, 2015, and submitted a draft of the framework to NMFS on December 22, 2015, that presented Council recommended measures, rationale, impacts for review, and a draft EA. NMFS published a proposed rule, including a reference on how to obtain the framework and the draft final EA, for approving and implementing Framework 27 on February 24, 2016 (81 FR 9151). The proposed rule included a 30-day public comment period that closed on March 25, 2016. The Council submitted a final EA to NMFS on March 14, 2016, for approval. This annual action includes catch, effort, and quota allocations and adjustments to the

rotational area management program for fishing year 2016. Framework 27 specifies measures for fishing year 2016, and includes fishing year 2017 measures that will go into place as a default should the next specifications-setting framework be delayed beyond the start of fishing year 2017. NMFS has approved all of the measures recommended by the Council and described below. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) permits NMFS to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, the Magnuson-Stevens Act and its National Standards, and other applicable law. We must defer to the Council's policy choices unless there is a clear inconsistency with the law or the FMP. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here.

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), and Set-Asides for the 2016 Fishing Year and Default Specifications for Fishing Year 2017

Table 1 outlines the scallop fishery catch limits derived from the ABC values.

TABLE 1—SCALLOP CATCH LIMITS (MT) FOR FISHING YEARS 2016 AND 2017 FOR THE LIMITED ACCESS AND LIMITED ACCESS GENERAL CATEGORY (LAGC) INDIVIDUAL FISHING QUOTA (IFQ) FLEETS

	2016	2017 (default)
OFL	68,418	68,418
ABC/ACL (discards removed)	37,852	37,852
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	379	379
ACL for fishery	36,884	36,884
Limited Access ACL	34,855	34,855
LAGC ACL	2,029	2,029
LAGC IFQ	1,845	1,845
Limited Access with LAGC IFQ ..	184	184
Limited Access ACT	18,290	18,290

This action deducts 1.25 million lb (567 mt) of scallops annually for 2016 and 2017 from the ABC and sets it aside

as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA projects. As of March 1, 2016, this set-aside has been available for harvest by RSA-funded projects in open areas. Framework 27 allows RSA to be harvested from the Mid-Atlantic Access Area (MAAA), but prevents RSA harvesting from access areas under 2017 default measures. Of this 1.25 million-lb (567-mt) allocation, NMFS has already allocated 3,393 lb (1.5 mt) to multi-year projects it previously funded as part of the 2015 RSA awards process. NMFS reviewed proposals submitted for consideration of 2016 RSA awards and announced project selections on April 7, 2016. Details on the 2016 RSA awards can be found on our Web site here: <http://www.nefsc.noaa.gov/coopresearch/news/scallop-rsa-2016.html>.

This action sets aside 1 percent of the ABC for the industry-funded observer program to help defray the cost of scallop vessels that carry an observer. The observer set-aside is 379 mt for fishing year 2016 and 379 mt for fishing year 2017. In fishing year 2016, the compensation rates for limited access vessels in open areas fishing under days-at-sea (DAS) is 0.11 DAS per DAS fished. For access area trips, the compensation rate is 175 lb (79 kg), in addition to the vessel's possession limit

for the trip for each day or part of a day an observer is onboard. LAGC IFQ vessels may possess an additional 175 lb (79 kg) per trip in open areas when carrying an observer. NMFS may adjust the compensation rate throughout the fishing year, depending on how quickly the fleets are using the set aside. The Council may adjust the 2017 observer set-aside when it develops specific, non-default measures for 2017.

Open Area DAS Allocations

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.*, full-time, part-time, and occasional) for 2016 and 2017 (Table 2). Fishing year 2016 DAS allocations are higher than those allocated to the limited access fleet in 2015 (30.86 DAS for full-time, 12.94 DAS for part-time, and 2.58 DAS for occasional vessels). Framework 27 also sets a 2017 DAS allocations equal to fishing year 2016 as a default measure in the event the 2017 specifications action is delayed past the start of the 2017 fishing year. The 2016 level default measure is expected to be more precautionary than the 2017 projected level. The allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeded its 2015 sub-ACL. In addition, these DAS values take into account a 0.14-DAS per vessel reduction necessary to compensate for a

measure implemented in Framework Adjustment 26 to the FMP (80 FR 22119; April 21, 2015) that allows vessel to transit to ports south of 39° N Lat. while not on DAS.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2016 AND 2017

Permit category	2016	2017
Full-Time	34.55	34.55
Part-Time	13.82	13.82
Occasional	2.88	2.88

LA Allocations and Trip Possession Limits for Scallop Access Areas

For fishing year 2016 and the start of 2017, Framework 27 keeps all three Georges Bank Access Areas (*i.e.*, Nantucket Lightship, Closed Area 1, and Closed Area 2 Access Areas) closed and keeps the MAAA open to the limited access fleet. This action closes a new area, the Closed Area 2 Extension, to protect small scallops located south of the current Closed Area 2 boundary. The Council will reconsider opening this closure area to scallop fishing in a future framework action when the scallops are larger and ready for harvest.

Table 3 outlines the limited access allocations that can be fished from the MAAA, which each vessel can take in as many trips as needed, so long as the trip possession limits (also in Table 3) are not exceeded.

TABLE 3—SCALLOP ACCESS AREA LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2016 AND 2017

Permit category	Possession limits	2016 Vessel allocation	2017 Vessel allocation
Full-Time	17,000 lb (7,711 kg)	51,000 lb (23,133 kg)	17,000 lb (7,711 kg).
Part-Time	10,200 lb (4,627 kg)	20,400 lb (9,253 kg)	10,200 lb (4,627 kg).
Occasional	1,420 lb (644 kg)	4,250 lb (1,928 kg)	1,420 lb (644 kg).

Additional Measures To Reduce Impacts on Scallops

1. Delayed Harvesting of Default 2017 MAAA Allocations. Although the Framework includes default access area allocations for the 2017 fishing year (see 2017 allocations in Table 3), vessels have to wait to fish these allocations until April 1, 2017. This measure is precautionary to help to protect scallops when scallop meat weights are lower than other times of the year (generally, this change in meat-weight is a physiological change in scallops due to spawning). However, if a vessel has not fully harvested its 2016 scallop access area allocation in fishing year 2016, it may still fish the remainder of its allocation in the first 60 days of 2017

(*i.e.*, March 1, 2017, through April 29, 2017).

2. 2017 RSA Harvest Restrictions.

This action prohibits vessels participating in RSA projects from harvesting RSA in access areas while default 2017 measures are in place. If default measures are in place at the start of 2017, RSA can only be harvested from open areas. The Council will re-evaluate this measure in the framework action that would set final 2017 specifications.

LAGC Measures

1. *ACL for LAGC vessels with IFQ permits.* For LAGC vessels with IFQ permits, this action implements a 1,845-mt ACL for 2016 and an initial ACL of 1,845 mt for 2017 (see Table 1). The Council and NMFS calculate IFQ

allocations by applying each vessel's IFQ contribution percentage to these ACLs. IFQ allocations for each vessel assume that LAGC IFQ fleet does not trigger any accountability measures (AMs). The AM dictates that if a vessel exceeds its IFQ in a given fishing year, its IFQ for the subsequent fishing year is reduced by the amount of the overage.

Because Framework 27 will go into effect after the March 1 start of fishing year 2016, the default 2016 IFQ allocations went into place automatically on March 1, 2016. This action implements IFQ allocations greater than the default allocations. NMFS sent a letter to IFQ permit holders providing both March 1, 2016, IFQ allocations and Framework 27 IFQ allocations so that vessel owners know

what mid-year adjustments will occur now that Framework 27 is approved.

2. *ACL for Limited Access Scallop Vessels with IFQ Permits.* For limited access scallop vessels with IFQ permits, this action implements a 184-mt ACL for 2016 and a default 184-mt ACL for 2017 (see Table 1). We calculate IFQ allocations by applying each vessel's IFQ contribution percentage to these ACLs. IFQ allocations for each vessel assume that the LAGC IFQ fleet doesn't trigger any AMs. The AM dictates that if a vessel exceeds its IFQ in a given fishing year, its IFQ for the subsequent fishing year would be reduced by the amount of the overage.

3. *LAGC IFQ Trip Allocations and Possession Limits for Scallop Access Areas.* Framework 27 allocates LAGC IFQ vessels a fleetwide number of trips in the MAAA and a fleetwide number of trips in the northern portion of the Nantucket Lightship Access Area (NLSN). This action does not grant the limited access fleet access to the NLSN.

Framework 27 allocates 2,068 and 602 trips in 2016 and the same default amounts for 2017, respectively, to the MAAA. Under default 2017 measures, LAGC IFQ vessels must wait to fish these trips until April 1, 2017. It also allocates 485 trips to the NLSN for fishing year 2016. The total number of trips for both areas combined (2,553) for fishing year 2016 is equivalent to the overall proportion of total catch from access areas compared to total catch. Framework 27 does not allocate any trips to either fleet category in NLSN for the 2017 fishing year.

4. *NGOM Total Allowable Catch (TAC).* The Framework 27 proposed rule proposed a 70,000-lb (31,751-kg) annual NGOM TAC for fishing years 2016 and 2017. However, the year-end analysis of the fishing year 2015 NGOM fishery shows a 2,546-lb (1,155-kg) overage in the NGOM TAC. The regulations implementing the Scallop FMP require that we implement an AM that reduces the NGOM TAC by the amount of the overharvest. Therefore, as a result of the fishing year 2015 catch overage, this action implements that AM, reducing the fishing year 2016 NGOM TAC to 67,454 lb (30,597 kg).

5. *Scallop Incidental Catch Target TAC.* This action allocates a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2016 and a default target TAC for 2017 to account for mortality from this component of the fishery, and to ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

Despite the comments opposing the action, we find that the justification and analysis support the Council's recommendations, and that the Council process, in adopting Framework 27, followed up by the proposed and final rulemaking process, provided Council members and the public sufficient analysis to consider the proposed alternatives, including opening NLSN to LAGC vessels only, and adequate opportunity to comment on such alternatives. We have determined the Council's recommendations are consistent with law and we intend to approve all measures. Under the Magnuson-Stevens Act we can only disapprove a Council measure if it is not consistent with all applicable law. Otherwise, we give deference to the Council's policy recommendations.

Regulatory Corrections Under Regional Administrator Authority

This action includes several revisions to the regulatory text to address text that is unnecessary, outdated, unclear, or NMFS could otherwise improve. NMFS proposed these changes consistent with section 305(d) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. The first revision, at § 648.14(i)(2)(ii)(B)(7), clarifies that the crew member restrictions, specified in § 648.51(c) and § 648.51(e)(3)(i), apply in all access areas. The second revision, at § 648.14(i)(3)(v)(C), clarifies that LAGC IFQ vessels must be declared into the Sea Scallop Access Area Program if they fish for, possess, or land scallops in or from any Sea Scallop Access Area. The third revision, at § 648.51(e)(2), clarifies that vessels participating in the small dredge program may carry component parts on board the vessel such that they do not conform with the definition of "dredge or dredge gear." The fourth revision, at § 648.52(f), clarifies that LAGC IFQ vessels are permitted to possess no more than 75 bu (26.4 hL) of in-shell scallops outside of the Access Areas. Finally, the fifth revision, at § 648.60(g)(2), clarifies that LAGC IFQ vessels may fish with trawl gear in the MAAA.

Comments and Responses

NMFS received several comments on Framework 27 after the Council voted to submit the action but prior to the publication of the proposed rule. The majority of these comments objected to the alternative to allow exclusive LAGC effort in the NLSN, but we also received

comments supporting this alternative. We considered these comments when preparing the proposed rule, but they did not present sufficient legal concerns that would require us to discuss possible disapproval of the measure in the proposed rule. Because these comments were mostly mirrored in comments on the proposed rule, we have not summarized them here.

We received 17 comment letters on the proposed rule during the public comment period, including letters from 14 individuals; the Associated Fisheries of Maine (AFM); the Virginia Department of Environmental Quality; and Fisheries Survival Fund (FSF). The following summarizes the issues raised in the comments and NMFS's responses.

Comment 1: Thirteen individuals wrote in support approving of the measure that allocates LAGC trips in the NLSN. These commenters were LAGC IFQ vessel owners and/or operators from New England. They believe that access to the NLSN will be extremely beneficial to their businesses and will allow them to fish closer to their homeports. They urged NMFS to approve this measure.

Response: NMFS has approved all of the measures recommended by the Council, as supported by these commenters.

Comment 2: Regarding the measure that allocates LAGC trips in the NLSN, AFM highlighted that the biological and economic analysis could not identify any negative impacts to the scallop resource or human communities because the amount of proposed harvest would be very small. It also highlighted that the Council has moved LAGC access area trips from Closed Area 2 to areas closer to shore in previous actions. AFM views the alternative to provide LAGC access to NLSN as a similar accommodation for a fleet comprised primarily of small vessels.

Response: NMFS agrees that accommodating one specific fleet, whether the Limited Access fleet or LAGC fleet, with area-specific allocations is consistent with the Scallop FMP and with prior Council actions.

Comment 3: The Virginia Department of Environmental Quality commented that it has no concerns with the proposed rule, and it believes the action is unlikely to have adverse impacts on fisheries resources under its jurisdiction.

Response: We appreciate Virginia Department of Environmental Quality's comment.

Comment 4: An individual was concerned that Framework 27 will adversely affect the income of the

fishermen involved. He stated that the open area cannot withstand the increased effort due to an increase in the LAGC ACL. He asserts that vessels will target small scallops and prices will drop as a result of this increase. He also stated that the IFQ fleet will have a large amount of carryover because of poor catch rates in fishing year 2015, and that the LAGC fleet was caught off guard by this unforeseen anticipated increase.

Response: We disagree with the commenter's concern about small scallops. Scallop dredges are required to have 4-inch rings that are designed to allow smaller scallops to pass through the gear, which should reduce the ability of vessel operators to target small scallops. Further, because larger scallops draw a higher price per pound there is generally an incentive to target larger scallops. Therefore, it is not likely to be in a vessel's best interest to target small scallops. In any event, because this substantial increase is only applicable to 5.5 percent of the fleet, analysis shows that it would not have a meaningful effect on price. The estimated ex-vessel price for the preferred alternative is \$11.50, which is equal to or similar to the ex-vessel price in all of the other viable alternatives. Regarding carryover, LAGC IFQ vessels are limited to carrying over 15 percent of their available catch from fishing year 2015. However, despite this additional 15 percent that the LAGC fleet could carry over into fishing year 2016, that 15 percent carryover is unlikely to cause unexpected negative impacts resulting from additional catch on top of an already-increased sub-ACL. Finally, we projected an increase in the LAGC IFQ ACL during the fishing year 2015 specifications process in Framework 26. Because the LAGC ACL is formulaic, the magnitude of this increase was dependent on the result of the 2015 summer surveys. Once the surveys were completed, Council staff presented the potential increase in the LAGC ACL to the public in September of 2015. Therefore, this increase was not unforeseen. The quota allocations for fishing years 2016 and 2017 are based on the best scientific information available and are consistent with the control rules outlined in the ACL process established under Amendment 15 to the FMP.

Comment 5: FSF, which represents a majority of the limited access scallop fleet, commented generally in favor of the Framework 27 measures, but, in a comment, recommended we disapprove the measure that allocates only LAGC effort in the NLSN. FSF stated in its comment its opinion that approval of this alternative is not legally permissive

because of procedural flaws by the Council and NMFS. FSF contends that because the analysis was not included in the draft Framework until the day the Council voted on preferred alternatives (December 3, 2015), we cannot approve this measure because approval would violate the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA). In support of this comment FSF notes, that, "alternatives considered by the Council must be 'encompassed by the range of alternatives discussed in the relevant environmental documents,'" citing NEPA and Agency Planning regulations at 40 CFR 1501.1(e).

Response: FSF conflates the Council process with legal requirements on NMFS mandated by NEPA and APA. The legal adequacy of the relevant documents subject to NEPA and APA are not the draft documents considered by the Council at the December meeting because the Council is not a federal agency subject to these laws. Rather, the relevant documents are the final EA prepared after the December Council meeting and the proposed rule proposing to adopt the framework. The final EA encompasses a range of alternatives, including the NLSN measure, which are thoroughly analyzed for environmental and socioeconomic impacts and address the concerns raised by FSF. Further, the proposed rule provided ample opportunity for the public in general, and FSF in particular, to comment on the Framework, the EA analysis completed after the December Council meeting and referenced in the proposed rule, and the NLSN measure in particular.

Comment 6: FSF cites 50 CFR 648.55(f) and states that the biological analysis for the measure allowing only LAGC vessels in the NLSN was conducted during the December Council meeting and not prior to, as required by law, and that the Council did not "provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting." FSF cites the regulations at § 648.55(f) which state: "After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings . . . The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council

meeting . . ." FSF comments that any public notice deficiencies or, procedural irregularities at the Council level cannot be remedied by this rulemaking process. FSF goes on to state that the addition of the NLSN alternative could not be approved as a "logical outgrowth" of other alternatives.

Response: We disagree with FSF's comment that we cannot approve the NLSN alternative because it is inconsistent with § 648.55(f) by failing to provide sufficient public notice and analysis before the Council voted on the alternative. First, there was sufficient public notice, analysis and full discussion before the Council voted to adopt the alternative. Although this specific alternative was not explicitly incorporated into the draft EA for Framework 27 at the beginning of the Council meeting, the public, and FSF in particular, were aware of this alternative well before the Council meeting and at the very least it is a logical outgrowth of measures that were being considered by the Council during the development of the framework. The Council initiated Framework 27 at its June 18, 2015, meeting and developed alternatives over several meetings including its September and December meetings, as well as the September 17, 2015, and the November 19, 2015, Scallop Oversight Committee meetings. Based on a Committee motion from its September 17, 2015, meeting, the concept of an alternative to allow fishing by all scallopers in NLSN was first included in a draft framework document for the September Council meeting. Members of the Scallop Advisory Panel, on which members of FSF sit, first suggested limiting scallop fishing in the NLSN to LAGC vessels only as an alternative at their meeting on November 18, 2015. The Advisory Panel suggested this alternative only after the Advisory Panel suggested a new alternative, created and raised by FSF, which proposed to have all access area effort in the MAAA. The next day, the Committee, in its meeting attended by representatives of FSF, requested that the Scallop Plan Development Team (PDT) analyze both the restricted NLSN alternative and the FSF sponsored alternative for the December Council meeting. Once analysis was complete, the PDT held a conference call on December 1, 2015. The notice for this call was posted on the Council Web site on November 23, 2015, and an automatic email was sent out on November 24, 2015, to anyone who registered to be informed on Council scallop issues. Members of the public, including representatives from FSF, attended the call. The next day, the

Council summarized the details of that call in a PDT memo dated December 2, 2015, and made the memo available to the public at the Council meeting prior to the scallop discussion on December 3, 2015. The PDT memo provided both a biological and an economic analysis of the alternative.

The Council heard public comment during the discussion of this measure both against and in support of this alternative, including comments against the measure from different representatives of FSF. The analyses included in the PDT memo, in combination with the public comment solicited at the meeting, and other analyses in Framework 27, allowed the Council to make an informed decision on this alternative. While this timing was tight, the process was consistent with the intent of the cited regulation in that it gave advance notice and analysis to the public over the course of two meetings (the November Committee meeting and the December Council meeting) before the measure was adopted. The Council frequently adjusts specific management alternatives that are logical outgrowths in the actions it is considering at or just before the final Council meeting. This provides the Council with the flexibility to consider sensible solutions or adjustments to these logical outgrowth alternatives without postponing action. Indeed, FSF was pushing for the adoption of its own sponsored proposed alternative even though it was subject to the same sequence of events and given the same analysis and consideration as the NSLN alternative. Therefore, we conclude that the Council and the public, including FSF, had more than adequate opportunity to consider and comment on the NLSN measure. Further, the adoption of this measure by the Council was consistent with the Council's procedural requirements to ensure that measures it adopts are sufficiently analyzed and the public is sufficiently aware of the analysis and propose alternatives before it adopts such a measure. Even if the Council's activity marginally infringed its established procedures because of the tight timing, courts, including those cited by FSF, have held that if there were procedural irregularities, they would not necessarily invalidate a regulation if such irregularities resulted in only "harmless error," or there is no evidence that our decision to approve the alternative was materially affected by the Council's procedural irregularities (for which there is no evidence in this instance). Indeed, the Ninth U.S. Circuit Court of Appeals has

held that "[i]f the Secretary has followed the appropriate rulemaking procedures and has established a rational basis for this action in promulgating regulations based on the submitted amendment, procedural challenges for irregularities at the Council level will not provide a justification for invalidating the regulations." *Atlantic Factory Trawler Association, et al. v. Baldrige, et al.*, 831 F. 2d 1456, 1464 (9th Cir. 1987). FSF's comments that there was not adequate or sufficient understanding of and discussion about the alternative at the Council meeting is not supported by the facts as discussed above. There can be no doubt that there was a rational basis for the Council and NMFS adopting this alternative and nothing in the Council process materially affected our decision regarding this framework. Therefore any inconvenience FSF or the public may have experienced was at worst "harmless error," which has been cured through notice and comment rulemaking.

Comment 7: FSF alleges that the alternative that allocates LAGC trips in the NLSN violates the Scallop FMP access area guidelines, claiming that Amendment 10 to the Scallop FMP (69 FR 35194; June 23, 2004), "describes access area policies in terms that plainly anticipate that such areas are either open proportionally to both fleets or to neither." FSF also cites a section of Amendment 11 to the Scallop FMP (73 FR 20090; April 14, 2008) referring to access area allocations for LAGC vessels that states that once an area is designated as controlled access, "*it is understood that a specific percentage of the TAC per access area would be allocated to the General Category fleet.*" FSF further contends that the Scallop FMP does not provide for decoupling of limited access and LAGC access to access areas, and the Council has never embarked on this path before. Finally, FSF quotes the Regional Administrator, who commented at the December Council meeting that he was concerned this alternative, "[takes] a chink out of this rotational closure and allows one group in early."

Response: There is nothing in the guidelines or policy underlying the Scallop FMP that prohibits this type of measure. Granting increased access area allocation to one part of the scallop fleet and not the other is not only contemplated by the Scallop FMP, it has been done in the past. The Environmental Impact Statement (EIS) to Amendment 11 acknowledges the possibility of differential allocations of area access specifically where it was determined that "*it may not be effective*

to allocate the same percent per access area to the general category fishery. About 2 percent of the total TAC has been allocated to the general category fishery in previous access programs, but it was noted during this process that it may be most effective to consider variable percents for different access areas. For example, the 2 percent allocated in Closed Area 2 has never been caught by the general category fishery. It was discussed that these decisions are best considered in future framework actions that set specifications and allocations for the access area program and there is nothing in current regulations to prevent different percentages from being considered." (EIS for Amendment 11 to the Scallop FMP; pg. 65). FSF's citation to Amendment 11 action comes from the description of a considered but rejected alternative. The rationale for rejection provides the same analysis as stated above that "*it was discussed that it may not be effective to allocate the same percent per access area to the general category fishery.*" FSF's reference to Amendment 10's intent is not specifically documented, and, in any event, Amendment 11 clearly allows for variable allocations among the Limited Access and LAGC fleets. Framework Adjustment 25 to the Scallop FMP (79 FR 26690; May 9, 2014) serves as the most recent example of the Council deciding to differentially allocate harvesting opportunities to one group of scallopers and not the other without any objection from FSF. In that framework, the Council allowed access to Closed Area 2 to the limited access fleet only, while permitting the LAGC fleet trips to another area based on a determination of equivalency of the LAGC fleet fishing in Closed Area 2. The fact that the Regional Administrator both spoke and voted against this measure at the December Council meeting does not by itself justify disapproval of the measure. The Regional Administrator's comments expressed policy, but not legal, concerns about the measure. Under the Magnuson-Stevens Act, even though the Regional Administrator may not be in favor of this measure on policy grounds, we can only disapprove a Council measure if it is not consistent with all applicable law, which is not the case here.

Comment 8: FSF was concerned that the alternative that allocates LAGC trips in the NLSN differentially affects LAGC vessels homeported in New England differently than those homeported in the Mid-Atlantic, and the Council did not

hold any meetings or hearings on this issue in the Mid-Atlantic region.

Response: The Framework 27 EA discusses that this alternative may have a different impact on vessels regionally. Analysis in the EA suggests that allowing LAGC access to the NLSN may reduce the number of New England vessels traveling to the MAAA to fish, therefore increasing the total number of MAAA trips available to the Mid-Atlantic LAGC fleet. Furthermore, industry members from all regions had an equal opportunity to comment on the proposed rule, and there are members of the Advisory Panel, the Committee, and the Council that have LAGC and/or Mid-Atlantic interests. The fact that meetings were not held in an affected region does not mean that the framework is invalid, particularly when there was adequate opportunity for different regional fishers to comment.

Comment 9: FSF asserts that “required analyses were inadequate or entirely lacking both prior to and at the meeting during which the Council took its vote.” It goes on to cite NEPA requirements for an EIS and they extend these requirements to the EA that the Council prepared for Framework 27.

Response: NEPA regulations at 40 CFR 1508.9 state that an EA, “*Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.*” The final EA includes these requirements. As stated above, the Council is not required to have a completed EA during the development of an action because it is not a Federal agency. In fact, it is impossible to analyze the action as a whole until after the Council selects preferred alternatives. While this regulation imposes a requirement ultimately of NMFS, the Council uses a draft EA as a means to present and analyze alternatives, and, in turn, submits that as part of the Council’s recommendation to NMFS on the action. NMFS adopts the draft document prepared by the Council and works with the Council to finalize it. Nevertheless, we disagree with FSF’s comment that there was inadequate analysis at the Council meeting before the Council took its vote. The analysis of the alternative that allocates LAGC trips in the NLSN that was available to the Council at the December meeting (the December 2, 2015, PDT memo) before any vote was taken was on par with other alternatives in the document. This analysis contained detailed images describing where fishing would occur and the condition of the resource in that

area, both biological and economic projections of the impacts of the alternative, and a comparative analysis of those impacts compared to alternatives already in the document. This analysis found that the allowing LAGC access into the NLSN had the highest total benefits of any alternative in 2016 and no noticeable biological impact. Once the Council chose preferred alternatives, Council staff worked with NMFS to fully analyze all the alternatives and meet NEPA requirements for Framework 27.

Comment 10: FSF believes that Framework 27 failed to sufficiently analyze economic impacts such as regional variation in lease prices.

Response: FSF is incorrect. Framework 27 includes an economic and social analysis of all of the considered alternatives in Section 5.4 and it specifically analyzes regional variation in leasing in Section 5.4.3.12.3. Framework 27 concludes that “*the distribution of access area allocations could have some impacts on (lease) prices, however, those impacts would be uncertain given that not only the size of scallops but several other factors, including the distance to each area from the homeports of IFQ holders, the fuel and trip costs, total amount of IFQ available, distribution of IFQ holdings among the active vessels, relative price of scallops by market category have an influence on lease prices.*” Furthermore, as stated above, the PDT analysis available to the Council during its December meeting found that the allowing LAGC access into the NLSN had the highest total benefits of any alternative in 2016.

Comment 11: FSF also claims that the alternative that allocates LAGC trips in the NLSN is an allocative measure and requires an amendment, as opposed to a framework, and also an EIS versus an EA. They cite NMFS’ Operational Guidelines that limit a framework action, by definition, to “*a mechanism for implementing recurrent, routine, or foreseeable actions in an expedited manner.*”

Response: This measure is not fundamentally allocative in the way suggested by FSF. The NLSN provision is only a one-year specification that does not increase total allocations or take away any allocations from the limited access fleet. The provision merely shifts around how LAGC scallopers can harvest their allocations based on their particular circumstances, not the amount they are allocated. This type of specification is a regular annual action that is foreseeable and consistent with the Scallop FMP, as discussed in the response to comment 7, which

allows for differential access to access areas for the limited access and LAGC fleets depending on the annual needs of each fleet. Thus, although controversial, this action was a routine specifications action that is appropriate for a Framework. 50 CFR 648.55(f) describes the types of measures that the Council can decide to adjust. It allows for adjustments to area-specific trip allocations, specifications for IFQs for limited access general category vessels, and any other management measures currently included in the FMP. The controversy of a measure in terms of its desirability is not justification to conduct an EIS. Only when the analysis of an action is controversial in terms of its validity is an EIS required. Finally, there is no law or provision of the Magnuson-Stevens Act that requires an amendment for allocative issues. Nor does NEPA require an EIS because of significant economic impacts as suggested by FSF.

Comment 12: FSF says that the Council made the decision that NLSN was not ready to be opened as a biological matter. FSF states that the alternative that allocates LAGC trips in the NLSN violates National Standard 2 requiring that “*conservation and management measures shall be based upon the best scientific information available.*” FSF asserts that the Council made their decision to allow LAGC effort in the NLSN area based on politics and not the best available science.

Response: This is not true as even acknowledged by FSF. In fact, alternatives in the document considered access to NLSN. The PDT determined that the NLSN area could handle a small amount of limited access effort (52 trips at 17,000 lb (400 mt)) and this alternative was included in Framework 27. Allowing the LAGC trips in the NLSN included in this final rule will result in approximately 132 mt of harvest. The Council’s non-selected alternative to open the NLSN to both fleets at a very limited level would have resulted in approximately 400 mt of scallop harvest. The reason the broader NLSN alternative was not selected was not biological, but rather it was not supported by the limited access fleet because only 16.6 percent of the full-time limited access fleet would receive a trip in NLSN.

The best available science shows that allowing access to the LAGC fleet will not harm the resource. Indeed, the analysis in the draft and final EA and the PDT memo concludes that the alternative allowing three times more access (400 mt) by limited access vessels and LAGC vessels would not jeopardize sustainability of the scallop resource.

The decision was a policy decision of how much to allocate between the two fleets. The Council has the right to make these types of decisions, and we can only disapprove if it is inconsistent with Magnuson-Stevens Act requirements and the applicable law, not on whether we disagree with the policy underlying the measure. The Council made its decision based on the scientific analysis provided in the December 2, 2015, PDT memo, public and Council member testimony, and other analyses in the Framework 27 EA. FSF has not offered any other science or biological analysis to contradict the scientific information upon which the Council made its decision. FSF even notes that the PDT analysis in the memo could not identify negative biological impacts to the scallop resource because the amount of proposed harvest would be very small. Also, the draft and final EA concluded that there would be overall positive economic impacts for the scallop fleet, with relatively higher positive economic impacts for LAGC vessels homeported in the New England states. The Advisory Panel, including members of FSF preferred access to MAAA over NLSN in part because it allowed the entire limited access fleet into the area. It was only when the limited access fleet requested this alternative, that members of the LAGC fleet requested that 19 percent of their MAAA trip allocation be moved into the NLSN.

Comment 13: FSF claims that the alternative that allocates LAGC trips in the NLSN violates National Standard 8 because it analyzed only impacts on the LAGC fleet that fished from ports closer to the access area rather than how it affects the entire LAGC fleet.

Response: National Standard 8 requires that "Conservation and management measures shall . . . take into account the importance of fishery resources to fishing communities by utilizing economic and social data . . . in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities." (16 U.S.C. 1851, Sec 301(a)(8)). The final version of the Framework, the expanded draft EA available when the proposed rule was published, and the final EA specifically analyze the differential impacts and conclude that because fewer northern vessels will go down to the MAAA, the Mid-Atlantic vessels, *i.e.*, those farther from the NLSN, may have more quota to fish. While this analysis was not specifically available at the time the Council approved the NLSN measure there was a general mention of possible differential impacts in the PDT report

that was available during the Council meeting and a self-evident understanding by Council members and the public that area-based allocations are, by their very nature, going to have more benefits to regions that are closer to areas open to fishing. As discussed above, the public had additional opportunity to comment on the draft EA which was made available for review at the time of the publication of the proposed rule. Ultimately, the adequacy of the NEPA analysis is determined by the final EA not the draft NEPA analysis available at the Council meeting. This level of analysis alerting the public and FSF to the differential impacts to communities as required by National Standard 8, followed up by more complete analysis in the draft and final EA is consistent with Magnuson-Stevens Act and NEPA requirements.

Changes From Proposed Rule to Final Rule

We included changes to the regulatory text to § 648.62 to implement an AM due to the overage of the NGOM TAC.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, the ESA, and other applicable law.

The Office of Management and Budget (OMB) has determined that this rule is not significant pursuant to Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or "takings" implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject the Paperwork Reduction Act (PRA).

The Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner in order to help achieve conservation objectives for the scallop fishery and certain fish stocks constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness and to make the Framework 27 final measures effective upon publication in the **Federal Register**.

Because Framework 27 has not yet been approved and implemented, certain default measures, including access area designations and DAS, IFQ, research set-aside and observer set-aside allocations, are automatically put into place. These default allocations were

purposely set to be more conservative than what would eventually be implemented under Framework 27. Under default measures, each full-time vessel has 26 DAS and one access area 17,000-lb (7,711-kg) trip in the MAAA. We have good cause to waive the 30-day delay in effectiveness because this action provides full-time vessels with an additional 8.55 DAS (34.55 DAS total) and 34,000 lb (15,422 kg) in access area allocation (51,000 lb (23,133 kg) total) into the MAAA. Further, LAGC IFQ vessels will receive an additional 330 mt (2,029 mt total) of allocation and 1,466 trips into the MAAA (2,068 trips total) and 485 trips in the NLSN. Framework 27 could not have been put into place sooner to allow for a 30-day delayed effectiveness because the information and data necessary for the Council to develop the framework was not available in time. We received the final submission of the EA from the Council on March 14, 2016. We published the proposed rule on February 24, 2016, and the comment period did not close until March 25, 2016. Delaying the implementation of Framework 27 for 30 days would delay positive economic benefits to the scallop fleet and could negatively impact the access area rotation program by delaying fishing in access areas that should be available. There are no new measures that implement additional burdens on the fleet, and we do not expect that any members of the scallop industry will be aggrieved by waiving this delay.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 27 in this final rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 27 EA, and this portion of the preamble. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 27 and in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and a copy of the IRFA, the Regulatory Impact Review (RIR), and the EA are available upon request (see **ADDRESSES**).

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

There were no specific comments on the IRFA. The Comments and Responses section summarizes the comments that highlight concerns about the economic impacts and implications of impacts on small businesses (*i.e.*, comments 4, 8, 9, 10, and 13).

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The regulations affect all vessels with limited access and LAGC scallop permits. The Framework 27 EA provides extensive information on the number and size of vessels and small businesses that will be affected by the regulations, by port and state (see **ADDRESSES**). There were 313 vessels that obtained full-time limited access permits in 2014, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits. NMFS issued 220 LAGC IFQ permits in 2014 and 128 of these vessels actively fished for scallops that year (the remaining permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History). The RFA defines a small business in shellfish fishery as a firm that is independently owned and operated and not dominant in its field of operation, with receipts of up to \$5.5 million annually. Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by this action. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. For the purposes of this analysis, "ownership entities" are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an "ownership entity." For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one "ownership entity," that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be

considered a separate "ownership entity" for the purpose of this analysis.

Ownership data from 2014 result in 166 distinct ownership entities for the limited access fleet and 106 distinct ownership entities for the LAGC IFQ fleet. Of these, and based on the Small Business Administration (SBA) guidelines, 152 of the limited access distinct ownership entities and 102 of the LAGC IFQ entities are categorized as small. The remaining 14 of the limited access and 4 of the LAGC IFQ entities are categorized as large entities, all of which are shellfish businesses.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

During the development of Framework 27, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. For example, they opened the NLSN to LAGC vessels to provide vessels homeported in Massachusetts an opportunity to fish in an access area without traveling to the MAAA. This measure addresses safety and economic concerns for smaller northern LAGC vessels when fishing in an access area. Final actions and alternatives are described in detail in Framework 27, which includes an EA, RIR, and IRFA (available at **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. The only alternatives for the prescribed catch limits that were analyzed were those that met the legal requirements to implement effective conservation measures. Catch limits are fundamentally a scientific calculation based on the Scallop FMP control rules and SSC approval, and therefore are legally limited to the numbers contained in this rule. Moreover, the limited number of alternatives available for this action must be evaluated in the context of an ever-changing fishery management plan that has considered numerous alternatives over the years and have provided many mitigating measures applicable every fishing year.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality

rates that promote stock rebuilding, and as a result, maximize yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term. This final rule implements measures that enable small entities to offset some portion of the estimated economic impacts. These measures include allocating about 19 percent of LAGC IFQ access area trips (or 300,000 lb (136 mt)) to the NLSN which is open to LAGC vessels only. Because of the proximity of the LAGC vessels, which are smaller in size and homeported in Massachusetts to NLSN, this option will reduce fishing costs and have positive impacts on their profits; and allowing about 1.5 million lb (680 mt) of the total LAGC allocation of 4.4 million lb (1,996 mt) to be harvested from access areas.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 28, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEAST UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.14, paragraphs (i)(2)(ii)(B)(7) and (i)(3)(v)(B) are revised, and paragraph (i)(3)(v)(C) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(2) * * *

(ii) * * *

(B) * * *

(7) Fish in a Sea Scallop Access Area, as described in § 648.59, with more persons on board the vessel than the number specified in § 648.51(c) or § 648.51(e)(3)(i), unless otherwise authorized by the Regional Administrator.

* * * * *

(3) * * *

(v) * * *

(B) Declare into or leave port for an area specified in § 648.59(a) through (d) after the effective date of a notification published in the **Federal Register** stating that the number of LAGC trips have been taken, as specified in § 648.60.

(C) Fish for or land per trip, or possess in excess of 40 lb (18.1 kg) of shucked scallops at any time in or from any Sea Scallop Access Area specified at § 648.59, unless declared into the Sea Scallop Access Area Program.

* * * * *

■ 3. In § 648.51, paragraph (e)(2) is revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(e) * * *

(2) The vessel may not use or have more than one dredge on board. However, component parts may be on board the vessel such that they do not conform with the definition of “dredge or dredge gear” in § 648.2, *i.e.*, the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and no more than one complete spare dredge could be made from these component’s parts.

* * * * *

■ 4. In § 648.52, paragraph (f) is revised to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(f) A limited access vessel or an LAGC vessel that is declared into the Sea Scallop Area Access Program as described in § 648.60, may not possess more than 50 bu (17.6 hL) or 75 bu (26.4 hL), respectively, of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

* * * * *

■ 5. In § 648.53, paragraphs (a), (b)(1), (b)(4), and (g)(1) are revised, and paragraph (h)(5)(iv)(D) is removed and reserved to read as follows:

§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

(a) *Scallop fishery ABC.* The ABC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55 and is equal to the overall scallop fishery ACL minus discards. The ABC/ACL, after discards are removed, shall be divided as sub-ACLs between limited access vessels, limited access vessels that are fishing under a LAGC permit, and LAGC vessels as specified in paragraphs (a)(3) and (4) of this section, after deducting the scallop incidental catch target TAC specified in paragraph (a)(2) of this section, observer set-aside specified in paragraph (g)(1) of this section, and research set-aside specified in § 648.56(d). The ABC/ACL for the 2017 fishing year is subject to change through a future framework adjustment.

(1) ABC/ACL for fishing years 2016 through 2017, excluding discards, shall be:

(i) 2016: 37,852 mt.

(ii) 2017: 37,852 mt.

(2) *Scallop incidental catch target TAC.* The annual incidental catch target TAC for vessels with incidental catch scallop permits is 22.7 mt.

(3) *Limited access fleet sub-ACL and ACT.* The limited access scallop fishery shall be allocated 94.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a)(3). ACT for the limited access scallop fishery shall be established through the framework adjustment process described in § 648.55. DAS specified in paragraph (b) of this section shall be based on the ACTs specified in paragraph (a)(3)(ii) of this section. The limited access fleet sub-ACL and ACT for the 2017 fishing year are subject to change through a future framework adjustment.

(i) The limited access fishery sub-ACLs for fishing years 2016 and 2017 are:

(A) 2016: 36,884 mt.

(B) 2017: 36,884 mt.

(ii) The limited access fishery ACTs for fishing years 2016 and 2017 are:

(A) 2016: 18,290 mt.

(B) 2017: 18,290 mt.

(4) *LAGC fleet sub-ACL.* The sub-ACL for the LAGC IFQ fishery shall be equal to 5.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a)(4). The LAGC IFQ fishery ACT shall be equal to the LAGC IFQ fishery’s ACL. The ACL for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a)(4). The ACL for the LAGC IFQ fishery for vessels issued only both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a)(4).

(i) The ACLs for fishing years 2016 and 2017 for LAGC IFQ vessels without a limited access scallop permit are:

(A) 2016: 1,845 mt.

(B) 2017: 1,845 mt.

(ii) The ACLs for fishing years 2016 and 2017 for vessels issued both a LAGC and a limited access scallop permits are:

(A) 2016: 184 mt.

(B) 2017: 184 mt.

(b) * * *

(1) *Landings per unit effort (LPUE).*

LPUE is an estimate of the average amount of scallops, in pounds, that the limited access scallop fleet lands per DAS fished. The estimated LPUE is the average LPUE for all limited access scallop vessels fishing under DAS, and shall be used to calculate DAS specified in paragraph (b)(4) of this section, the DAS reduction for the AM specified in paragraph (b)(4)(ii) of this section, and the observer set-aside DAS allocation specified in paragraph (g)(1) of this section. LPUE shall be:

(i) 2016 fishing year: 2,316 lb/DAS (1,051 kg/DAS).

(ii) 2017 fishing year: 2,690 lb/DAS (1,220 kg/DAS).

(iii) [Reserved]

* * * * *

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (full-time, part-time, or occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, excluding carryover DAS in accordance with paragraph (d) of this section. DAS allocations shall be determined by distributing the portion of ACT specified in paragraph (a)(3)(ii) of this section, as reduced by access area allocations specified in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area LPUE specified in paragraph (b)(1) of this section. Allocation for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS allocations, respectively. The annual open area DAS allocations for each category of vessel for the fishing years indicated are as follows:

SCALLOP OPEN AREA DAS
ALLOCATIONS

Permit category	2016	2017
Full-Time	34.55	34.55
Part-Time	13.82	13.82
Occasional	2.88	2.88

* * * * *

(g) * * *

(1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL specified in paragraph (a)(1) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. The total TAC for observer set aside is 379 mt in fishing

year 2016, and 379 mt in fishing year 2017.

* * * * *

■ 6. In § 648.58 paragraphs (b), (c), and (e) are revised to read as follows:

§ 648.58 Rotational Closed Areas.

* * * * *

(b) *Closed Area II—(1) Closed Area II Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II Closed Area. No vessel may possess scallops in the Closed Area II Closed

Area. The Closed Area II Closed Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude	Note
CAIIA1	41°00' N.	67°20' W.	.....
CAIIA2	41°00' N.	66°35.8' W.	.....
CAIIA3	41°18.45' N.	(1)	(2)
CAIIA4	41°30' N.	(3)	(2)
CAIIA5	41°30' N.	67°20' W.	.....
CAIIA1	41°00' N.	67°20' W.	.....

¹ The intersection of 41°18.45' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.45' N. lat. and 66°24.89' W. long.

² From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada Maritime Boundary.

³ The intersection of 41°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N. lat., 66°34.73' W. long.

(2) *Closed Area II Extension Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II Extension Closed Area. No vessel may

possess scallops in the Closed Area II Extension Closed Area. The Closed Area II Extension Closed Area is defined by straight lines, except where noted, connecting the following points in the

order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude	Note
CAIIE1	40°30' N.	67°20' W.	.....
CAIIE2	41°00' N.	67°20' W.	.....
CAIIE3	41°00' N.	66°35.8' W.	.....
CAIIE4	41°18.45' N.	(1)	(2)
CAIIE5	40°30' N.	(3)	(2)
CAIIE1	40°30' N.	67°20' W.	.....

¹ The intersection of 41°18.45' N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.45' N. lat. and 66°24.89' W. long.

² From Point CAIIE4 to Point CAIIE5 following the U.S.-Canada Maritime Boundary.

³ The intersection of 40°30' N. lat. and the U.S.-Canada Maritime Boundary, approximately 65°44.34' W. long.

(c) *Nantucket Lightship Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Closed Area. No vessel may possess scallops in the Nantucket Lightship Closed Area, unless such vessel is an IFQ LAGC vessel participating in, and complying with the requirements of, the IFQ LAGC area access program described in § 648.60(g)(3), or the vessel is only transiting the area as provided in paragraph (e) of this section. The Nantucket Lightship Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request),

Point	Latitude	Longitude
NLAA1	40°50' N.	69°30' W.
NLAA2	40°50' N.	69°00' W.
NLAA3	40°33' N.	69°00' W.
NLAA4	40°33' N.	68°48' W.
NLAA5	40°20' N.	68°48' W.
NLAA6	40°20' N.	69°30' W.
NLAA1	40°50' N.	69°30' W.

* * * * *

(e) *Transiting.* No vessel possessing scallops may enter or be in the area(s) specified in paragraphs (a) and (c) of this section unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Closed Area or the Closed Area II Extension Closed Area, as described in paragraph (b) of this section, or the Elephant Trunk Closed Area, as described in paragraph (d) of this section, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

■ 7. In § 648.59, paragraphs (a)(1), (b)(1), (c)(1), and (d)(1) are revised and paragraph (a)(2)(i) is removed and reserved to read as follows:

§ 648.59 Sea Scallop Access Areas.

(a) * * *

(1) Beginning March 1, 2016, through February 28, 2018 (*i.e.*, fishing years 2016 and 2017), a vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Mid-Atlantic Access Area unless the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60 or the vessel is transiting pursuant to paragraph (f) of this section. The Mid-Atlantic Access Area is comprised of the following scallop access areas: The Delmarva Scallop Access Area, as described in paragraph (a)(2) of this section; the Elephant Trunk Scallop Access Area, as described in paragraph (a)(3) of this section; and the Hudson Canyon Scallop Access Area, as described in paragraph (a)(4) of this section.

* * * * *

(b) * * *

(1) From March 1, 2016, through February 28, 2018 (*i.e.*, fishing years 2016 and 2017), a vessel issued a scallop permit may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Scallop

Access Area, described in paragraph (b)(3) of this section, unless transiting in accordance with paragraph (f) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may not fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, unless it complies with restrictions in paragraph (b)(5)(ii)(C) of this section.

* * * * *

(c) * * *

(1) From March 1, 2016, through February 28, 2018 (*i.e.*, fishing years 2016 and 2017), a vessel issued a scallop permit may not fish for, possess, or land scallops in or from, the area known as the Closed Area II Access Area, described in paragraph (c)(3) of this section, unless transiting in accordance with paragraph (f) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may not fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, unless it complies with restrictions in paragraph (c)(5)(ii)(C) of this section.

* * * * *

(d) * * *

(1) From March 1, 2016, through February 28, 2018 (*i.e.*, fishing years 2016 and 2017), a vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless the vessel is an IFQ LAGC vessel participating in, and complying with the requirements of, the IFQ LAGC area access program described in § 648.60(g)(3), or the vessel is transiting pursuant to paragraph (f) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may not fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access

area, unless it complies with restrictions in paragraph (d)(5)(ii)(C) of this section.

* * * * *

■ 8. In § 648.60, paragraphs (a)(3)(i), (a)(5)(i), (c), (e), and (g)(1), (g)(2), and (g)(3) are revised to read as follows:

§ 648.60 Sea scallop access area program requirements.

(a) * * *

(3) *Sea Scallop Access Area*

Allocations—(i) *Limited access vessel allocations*. (A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total amount of scallops, in weight, that a limited access scallop vessel may harvest from Sea Scallop Access Areas during applicable seasons specified in § 648.59. A vessel may not possess or land in excess of its scallop allocation assigned to specific Sea Scallop Access Areas, unless authorized by the Regional Administrator, as specified in paragraph (d) of this section, unless the vessel owner has exchanged an area-specific scallop allocation with another vessel owner for additional scallop allocation in that area, as specified in paragraph (a)(3)(ii) of this section. A vessel may harvest its scallop allocation, as specified in paragraph (a)(3)(i)(B) of this section, on any number of trips in a given fishing year, provided that no single trip exceeds the possession limits specified in paragraph (a)(5) of this section, unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section.

(B) *Full-time scallop vessels*. (1) In fishing year 2016, each full-time vessel shall have a total of 51,000 lb (23,133 kg) of scallops that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a).

(2) For the 2017 fishing year, each full-time vessel shall have a total of

17,000 lb (7,711 kg) of scallops that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a), starting on April 1, 2017.

(C) *Part-time scallop vessels*. (1) For the 2016 fishing year, each part-time scallop vessel shall have a total of 20,400 lb (9,253 kg) of scallop that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a).

(2) For the 2016 fishing year, each part-time scallop vessel shall have a total of 10,200 lb (4,627 kg) of scallop that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a), starting on April 1, 2017.

(D) *Occasional scallop vessels*. (1) For the 2016 fishing year, each occasional scallop vessel shall have a total of 4,250 lb (1,928 kg) of scallop that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a).

(2) For the 2017 fishing year, each occasional scallop vessel shall have a total of 1,420 lb (644 kg) of scallop that may be harvested from the Mid-Atlantic Access Area, as defined in § 648.59(a), starting on April 1, 2017.

* * * * *

(5) *Possession and landing limits*—(i) *Scallop possession limits*. Unless authorized by the Regional Administrator, as specified in paragraph (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). No vessel declared into the Access Areas as described in § 648.59(a) through (e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2016	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644 kg).
2017	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644 kg).

* * * * *

(c) *Access area scallop allocation carryover*. Unless otherwise specified in § 648.59, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Access Area is open. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Mid-Atlantic Access Area at the end of fishing year

2016, that vessel may harvest 7,000 lb (3,175 kg) from its 2017 fishing year scallop access area allocation during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2017 (March 1, 2017, through April 29, 2018). Unless otherwise specified in § 648.59, if an Access Area is not open in the subsequent fishing year, then the unharvested scallop allocation would

expire at the end of the fishing year that the scallops were allocated.

* * * * *

(e) *Sea Scallop Research Set-Aside Harvest in Access Areas*—(1) *Access Areas available for harvest of research set-aside (RSA)*. Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a framework adjustment and pursuant to § 648.56. The amount of scallops that

can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2016 and 2017 are:

(i) 2016: The Mid-Atlantic Scallop Access Area, as specified in § 648.59(a).

(ii) 2017: None.

(2) [Reserved]

* * * * *

(g) *Limited Access General Category Gear restrictions.* (1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e) or in (g)(3)(iv) of this section, subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (9), (d), (e), (f), and (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

(2) *Limited Access General Category Gear restrictions.* An LAGC IFQ scallop vessel authorized to fish in the Access Areas specified in § 648.59(b) through (e) must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in Closed Area I, Closed Area II, and Nantucket Lightship Access Areas may not exceed 10.5 ft (3.2 m). The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the remaining Access Areas described in § 648.59 may not exceed 31 ft (9.4 m). Dredge width is measured at the widest point in the bail of the dredge.

(3) *LAGC IFQ Access Area Trips.* (i) An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) or in paragraph (g)(3)(iv) of this section may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips have been or are projected to be taken. The total number of LAGC IFQ trips in a specified Access Area for fishing year 2016 and 2017 are:

Access area	2016	2017
Mid-Atlantic Access Area	2,068	602
Closed Area 1	0	0
Closed Area 2	0	0
Nantucket Lightship	0	0
Nantucket Lightship North	485	0

(ii) Scallops landed by each LAGC IFQ vessel on an access area trip shall count against the vessel's IFQ.

(iii) Upon a determination from the Regional Administrator that the total number of LAGC IFQ trips in a specified Access Area have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the **Federal Register**, in accordance with the Administrative Procedure Act. Once this determination has been made, an LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area after the effective date of the notification published in the **Federal Register**.

(iv) *Nantucket Lightship North Sea Scallop Access Area.* (A) From March 1, 2016, through February 28, 2018 (*i.e.*, fishing years 2016 and 2017), a vessel issued an LAGC IFQ scallop permit may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship North Access Area, described in paragraph (g)(3)(iv)(B) of this section, unless the vessel is participating in, and complying with the requirements of, the area access program described in this section or the vessel is transiting pursuant to § 648.59(f). A vessel issued both a NE multispecies permit and an LAGC scallop permit may not fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, unless it complies with restrictions in paragraph (d)(5)(ii)(C) of this section.

(B) The Nantucket Lightship North Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLNAA1	40°50' N.	69°00' W.
NLNAA2	40°30' N.	69°00' W.
NLNAA3	40°30' N.	69°30' W.
NLNAA4	40°50' N.	69°30' W.
NLNAA1	40°50' N.	69°00' W.

* * * * *

■ 9. In § 648.62, paragraph (b)(1) is revised to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

* * * * *

(b) * * *

(1) *NGOM annual hard TACs.* The annual hard TAC for the NGOM is 67,454 lb (30,597 kg) for the 2016 fishing year and 70,000 lb (31,413 kg) for the 2017 fishing year.

* * * * *

[FR Doc. 2016-10439 Filed 5-3-16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150430410-6340-02]

RFN 0648-BF05

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 109 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). This final rule amends regulations governing the Western Alaska Community Development Quota (CDQ) Program to support increased participation in the groundfish CDQ fisheries (primarily Pacific cod) by catcher vessels less than or equal to 46 feet (ft) (14.0 meters (m)) length overall (LOA) using hook-and-line gear. Specifically, this final rule exempts operators of registered catcher vessels greater than 32 ft (9.8 m) LOA and less than or equal to 46 ft LOA using hook-and-line gear from the requirement to obtain and carry a License Limitation Program (LLP) license when groundfish CDQ fishing. This final rule also reduces observer coverage requirements for catcher vessels less than or equal to 46 ft LOA when groundfish CDQ fishing, and implements new in-season management and catch accounting requirements to properly account for the harvest of groundfish and halibut and the accrual of halibut prohibited species catch in these fisheries. In addition to the regulations necessary to implement Amendment 109, this final rule removes from the regulations a table and some explanatory text that are no longer necessary. This final rule is intended to facilitate increased participation by residents of CDQ communities in the

groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI), and to support economic development in western Alaska. This final rule also is intended to promote the goals of the CDQ Program, the goals and objectives of the BSAI FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Effective June 3, 2016.

ADDRESSES: Electronic copies of the Regulatory Impact Review/ Environmental Assessment (RIR/EA) and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by email to OIRA_Submission@omb.eop.gov or faxed to 202-395-5806.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907-586-7389.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements Amendment 109 to the BSAI FMP. NMFS published a notice of availability (NOA) for Amendment 109 in the **Federal Register** on January 21, 2016 (81 FR 3374), with comments invited through March 21, 2016. The Secretary of Commerce approved Amendment 109 on April 15, 2016, after considering information from the public, and determining that Amendment 109 is consistent with the BSAI FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law. NMFS published a proposed rule to implement Amendment 109 and the regulatory amendments on February 8, 2016 (81 FR 6489). The comment period on the proposed rule ended on March 9, 2016. NMFS received one letter of comment on proposed Amendment 109 and one letter of comment on the proposed rule. NMFS responds to these comments in the section titled Comments and Responses. No changes were made from the proposed rule in response to these comments. Several minor editorial revisions are made in the amendatory instructions of this final rule to be

consistent with two final rules that were implemented since the proposed rule for Amendment 109 was published. These revisions are described in the section titled Changes from the Proposed Rule.

Summary of Amendment 109

This section summarizes background information about the CDQ Program and the regulatory constraints on the small catcher vessel hook-and-line halibut and groundfish CDQ fisheries that led the North Pacific Fishery Management Council (Council) to recommend Amendment 109 and this final rule. Additional background is included in the proposed rule (81 FR 6489; February 8, 2016) and is not repeated here.

The CDQ Program is an economic development program associated with federally managed fisheries in the BSAI. The purpose of the CDQ Program is to provide western Alaska communities with the opportunity to participate and invest in BSAI fisheries, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska. The CDQ Program also is a catch share program that allocates a portion of the BSAI total allowable catch limits for specific target crab and groundfish species, a portion of the commercial catch limits for halibut, and portions of certain prohibited species catch (PSC) limits to the CDQ Program. These amounts are then further allocated among the six CDQ groups as allocations that may be transferred among the CDQ groups. The primary focus of Amendment 109 is on the halibut CDQ allocations, the Pacific cod CDQ allocations, and the halibut PSC in the groundfish CDQ fisheries.

The successful harvest of CDQ Program allocations is integral to achieving the goals of the CDQ Program and the community development plans of each CDQ group. One of the most effective ways the CDQ groups provide benefits to residents of their CDQ communities is to use the CDQ allocations to create local small-scale commercial fisheries. For purposes of this final rule, "local small-scale" means CDQ fisheries prosecuted by catcher vessels that are less than or equal to 46 ft LOA, using hook-and-line gear, and homeported or operated from CDQ communities. These local small-scale fisheries provide opportunities for residents of the CDQ communities to earn income from the sale of the commercially harvested fish.

Certain Federal regulations have restricted the ability of fishermen in

CDQ communities to harvest allocations of Pacific cod CDQ with small hook-and-line catcher vessels. In particular, requirements for full observer coverage and an LLP license limit the ability of CDQ community fishermen to retain Pacific cod CDQ when participating in the halibut CDQ fisheries or to develop separate local small-scale directed fisheries for Pacific cod CDQ. These regulatory constraints are described in more detail in the preamble to the proposed rule (81 FR 6489; February 8, 2016).

This final rule amends regulations governing the CDQ Program to support increased participation in the groundfish CDQ fisheries (primarily Pacific cod) by catcher vessels less than or equal to 46 ft LOA using hook-and-line gear as intended by Amendment 109. Specifically, this final rule:

- Exempts operators of registered catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA using hook-and-line gear from the requirement to obtain and carry an LLP license when groundfish CDQ fishing (catcher vessels less than or equal to 32 ft LOA already are exempt from the LLP requirements in the BSAI under existing regulations);

- Implements new in-season management and catch accounting procedures to properly account for the harvest of groundfish and halibut and the accrual of halibut PSC by operators of catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when halibut or groundfish CDQ fishing;

- Allows halibut caught by operators of catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing to accrue as either halibut CDQ, halibut individual fishing quota (IFQ), or halibut PSC, on a trip-by-trip basis; and

- Places catcher vessels less than or equal to 46 ft LOA using hook-and-line gear in the partial observer coverage category when they are groundfish CDQ fishing. In addition to these changes for Amendment 109, the final rule removes a table and some explanatory text from observer program regulations at § 679.51(f) that are no longer necessary.

This final rule is intended to facilitate increased participation by residents of CDQ communities in the BSAI groundfish CDQ fisheries and to support economic development in western Alaska. This final rule benefits the six CDQ groups and the operators of the small hook-and-line catcher vessels that the CDQ groups authorize to fish on their behalf by reducing the costs of participating in the groundfish CDQ fisheries. More information about the

Council's and NMFS' rationale for this final rule and its expected impacts are provided in the proposed rule (81 FR 6489; February 8, 2016). The elements of this final rule are summarized in the following section of this preamble.

The Final Rule

LLP Exemption

Regulations exempting specific vessels from LLP license requirements are codified at § 679.4(k)(2). This final rule adds a new paragraph (vi) to § 679.4(k)(2) to establish an LLP exemption for registered catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing. The operators of catcher vessels eligible for the LLP exemption are not required to obtain and carry an LLP license when they are groundfish CDQ fishing provided that certain vessel registration requirements are met prior to groundfish CDQ fishing.

This final rule adds a new paragraph at § 679.5(m) that includes the vessel registration requirements that must be met to receive an LLP exemption. To receive an LLP exemption, a CDQ group representative must register each eligible catcher vessel through NMFS' online CDQ vessel registration system ("the CDQ vessel registration system"). To successfully register a catcher vessel, the CDQ group representative must log into the CDQ vessel registration system using the CDQ group's existing NMFS ID and password and provide the information required on the computer screen. NMFS will add each catcher vessel successfully registered to the CDQ vessel registration list, and NMFS will post that list on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The CDQ group representative may add eligible catcher vessels to the CDQ vessel registration list at any time during the groundfish fishing year (January 1 through December 31); there is no deadline for vessel registration with NMFS.

With each successful registration, the CDQ vessel registration system will provide the CDQ group representative with an LLP exemption letter documenting that the vessel is eligible for the LLP exemption when groundfish CDQ fishing. The CDQ group representative must provide a copy of the LLP exemption letter to the vessel operator. NMFS will not provide the LLP exemption letter directly to vessel operators. The vessel operator must maintain a legible copy of the LLP exemption letter on board the named vessel at all times when that vessel is

groundfish CDQ fishing. Because registered vessels must have a legible copy of the LLP exemption letter on board the vessel before the vessel operator starts groundfish CDQ fishing, the CDQ group representative and the vessel operator must allow sufficient time to complete the registration process prior to the start of groundfish CDQ fishing by the vessel.

The LLP exemption letter also will provide printable confirmation to the CDQ group of a successfully completed vessel registration. Once registered, a vessel will remain on the CDQ vessel registration list until removed by the CDQ group. The CDQ groups are not required to re-register vessels annually.

A CDQ group representative may remove a vessel from the CDQ vessel registration list at any time by logging into the CDQ vessel registration system and following the applicable instructions. To remove a vessel from the CDQ vessel registration list, the CDQ group representative must certify to NMFS that 1) the vessel operator has been given notice by the CDQ group that the vessel is being removed from the list, and 2) the vessel operator is not groundfish CDQ fishing at the time of removal. The CDQ vessel registration system will provide a printable confirmation that a vessel has been removed from the CDQ vessel registration list. Once a vessel is removed from the CDQ vessel registration list, that vessel is no longer exempt from the LLP requirements, even if the operator still possesses the LLP exemption letter. This final rule does not require a CDQ group representative to remove registered vessels from the CDQ vessel registration list when they are participating in a non-CDQ fishery.

To further clarify the vessel operator's responsibility, this final rule adds a new prohibition at § 679.7(d)(9) to prohibit the operator of a vessel eligible for the LLP exemption from conducting groundfish CDQ fishing without having a legible copy of the LLP exemption letter issued to a CDQ group for that vessel on board the vessel. In addition, this final rule adds a new prohibition at § 679.7(d)(10) to prohibit a CDQ group representative from removing a vessel from the CDQ vessel registration list without first providing notice to the operator of the registered vessel that the vessel is being removed from the CDQ vessel registration list, or when the vessel is groundfish CDQ fishing.

Catch Accounting and Fishery Monitoring Requirements

This final rule adds a new paragraph at § 679.32(c)(3)(iii) to establish the

catch accounting and fishery monitoring requirements that apply to catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing and to the CDQ groups authorizing these vessels. Current regulations at § 679.32(c)(3)(i)(D) and (c)(3)(ii)(D) will continue to apply to catcher vessels greater than 46 ft LOA using hook-and-line gear when groundfish CDQ fishing.

This final rule also establishes catch accounting procedures in § 679.32(c)(3)(iii) that provide CDQ groups and vessel operators with the opportunity to retain halibut CDQ or halibut IFQ when groundfish CDQ fishing. If the vessel operator is relying on halibut CDQ from a CDQ group to support the retained catch of legal-size halibut during a fishing trip, the CDQ group must provide adequate halibut CDQ to this vessel operator to account for all the legal-size halibut caught by the vessel during the entire fishing trip. A CDQ group's halibut prohibited species quota (PSQ) will not be reduced if halibut is present in the landing. Landed halibut CDQ or halibut IFQ will accrue to the account balance of the permit holder identified by the processor in the landing report based on the permits held by the vessel operator or persons on board the vessel.

The operator of a hook-and-line catcher vessel less than or equal to 46 ft LOA who retains any halibut CDQ or halibut IFQ during the groundfish CDQ fishing trip must retain all legal-size halibut caught during that fishing trip. NMFS will continue to consider sub-legal-size halibut as wastage associated with the halibut fishery. As long as at least one halibut (IFQ or CDQ) is included in the groundfish CDQ landing, NMFS will not accrue any estimates of halibut PSC from the small catcher vessel groundfish CDQ fisheries to the CDQ group's halibut PSQ or to any component of the BSAI halibut PSC limit.

If no halibut are included in a groundfish CDQ landing, NMFS will accrue an estimate of halibut PSC to the CDQ group's small catcher vessel halibut PSC limit (described below). NMFS will estimate the halibut PSC associated with these types of groundfish CDQ fishing trips using halibut PSC rates as calculated by NMFS, and apply the halibut PSC rates when halibut fishing is closed or when halibut fishing is open but no halibut are included in a landing.

Under this final rule, NMFS will create a new quota category available to each CDQ group called the "small catcher vessel halibut PSC limit." If a CDQ group wants to have a small hook-

and-line catcher vessel groundfish CDQ fishery, the CDQ group must transfer halibut PSQ from its halibut PSQ to its small catcher vessel halibut PSC limit through a CDQ Transfer Request. The CDQ Transfer Request requirements are described under § 679.5(n). CDQ groups that do not want to have a local small-scale groundfish CDQ fishery do not have to transfer any halibut PSQ to this account. Each CDQ group will, in collaboration with NMFS, decide the appropriate amount of halibut PSQ to transfer to the small catcher vessel halibut PSC limit based on the amount of groundfish CDQ it wants to allocate to its small hook-and-line catcher vessel groundfish CDQ fishery and the expected use of halibut PSC in that fishery.

With the exception of sablefish CDQ fishing, which will continue to be managed under § 679.32(c)(1), this final rule will prohibit groundfish CDQ fishing by catcher vessels less than or equal to 46 ft LOA using hook-and-line gear unless NMFS publishes notification in the **Federal Register** authorizing a CDQ group to conduct such fishing. In deciding whether to authorize groundfish CDQ fishing by these vessels, NMFS will consider whether a CDQ group has sufficient halibut in its small catcher vessel halibut PSC limit to support groundfish CDQ fishing by these catcher vessels.

If NMFS determines that a CDQ group's small catcher vessel halibut PSC limit has been or will be reached, NMFS will issue a notice in the **Federal Register** prohibiting groundfish CDQ fishing by the small hook-and-line catcher vessels fishing for that CDQ group. NMFS will be responsible for issuing fishing closures to the small hook-and-line catcher vessel groundfish CDQ fisheries to maintain halibut PSC by these vessels within the small catcher vessel halibut PSC limit established by a CDQ group. NMFS will manage these fisheries to stay within the applicable CDQ groups' halibut PSC amount to the best of its ability, and will manage the small hook-and-line catcher vessel groundfish CDQ fishery conservatively to ensure that these PSC limits are not exceeded.

Even with conservative management, it is possible that a small catcher vessel halibut PSC limit could be exceeded due to the high degree of variability in halibut PSC rates that can occur in hook-and-line fisheries. If NMFS is unable to close a CDQ group's small catcher vessel groundfish CDQ fishery before it exceeds the amount of halibut PSC allocated to the small catcher vessel halibut PSC limit, NMFS will not consider this a violation, and NMFS

will not require the CDQ group to transfer an amount of halibut PSQ needed to cover the negative balance. However, this final rule will allow a CDQ group to voluntarily choose to transfer additional halibut PSQ to bring the balance of its small catcher vessel halibut PSC limit to zero.

If a CDQ group's small catcher vessel halibut PSC limit has a negative balance at the end of the groundfish fishing year (December 31), and if the CDQ group has remaining halibut PSQ on that date, NMFS will transfer an amount of halibut PSQ into the CDQ group's small catcher vessel halibut PSC limit to bring the balance of the small catcher vessel halibut PSC limit to zero. NMFS will make this administrative transfer only after all fishing by a CDQ group is completed for the year, after data from the fishing year is finalized, and if the CDQ group has sufficient remaining halibut PSQ.

This final rule also will permit a CDQ group to transfer halibut from its small catcher vessel halibut PSC limit back to the CDQ group's halibut PSQ. In reviewing a request to transfer halibut from the small catcher vessel halibut PSC limit back to the CDQ group's halibut PSQ, NMFS will consider the status of CDQ fisheries through the end of the year and anticipated halibut PSC rates for any remaining groundfish CDQ fishing by vessels managed under the small catcher vessel halibut PSC limit for the requesting CDQ group.

Observer Coverage

This final rule adds paragraph (a)(1)(i)(D) to § 679.51 and revises § 679.51(a)(2)(i)(C)(2) to place catcher vessels less than or equal to 46 ft LOA that are using hook-and-line gear when groundfish CDQ fishing in the partial observer coverage category. Under current regulations, the owners or operators of vessels in the partial observer coverage category are placed in an observer selection pool based on the requirements of the Annual Deployment Plan (ADP). Since implementation of the ADP process in 2013, vessels less than 40 ft (12.2 m) LOA have been placed in the "no selection pool." These vessels are not required to carry observers or register fishing trips with NMFS. Vessels 40 ft LOA or greater are in the "trip selection pool" and must log all of their fishing trips in the Observer Declare and Deploy System (ODDS). This is an online system for registering fishing trips and receiving information about whether a particular trip is selected for observer coverage. If selected for observer coverage, the catcher vessel is required to carry an observer. Operators of vessels selected

for observer coverage are required to comply with all vessel responsibilities in § 679.51(e)(1). More information about logging trips in ODDS is on the NMFS Alaska Region Web site under "Frequently Asked Questions" about the Observer Program (<http://alaska.fisheries.noaa.gov/sustainablefisheries/observers/>).

Other Regulatory Change

This final rule removes the table in § 679.51(f) that summarizes the observer coverage requirements for different management programs and industry sectors, and the introductory text about the table that is at the beginning of § 679.51. Prior to Observer Program Restructuring (77 FR 70062, November 21, 2012), this table was located at the beginning of subpart E as a table of contents or guide to observer coverage requirements. However, with the reorganization of observer coverage requirements in 2012 and the placement of this table at the end of § 679.51, it no longer serves its previous function as a table of contents for the section. Therefore, this table is removed.

Comments and Responses

During the public comment periods for the NOA for Amendment 109 and the proposed rule to implement Amendment 109, NMFS received one letter of comment on the NOA and one letter of comment on the proposed rule. Both of these letters were from one member of the public. NMFS' responses to these comments are presented below.

Comment 1: Both letters of comment expressed concern about overfishing and opposition to the overall management of the BSAI groundfish fisheries, including allocations to the CDQ Program to support economic development in Western Alaska and any regulations to increase participation in the CDQ fisheries.

Response: This final rule does not change the overall harvest levels or allocations in the BSAI groundfish fisheries, or the total amount of groundfish, halibut, or PSC allocated to the CDQ Program. Therefore, the comments expressing concern about overfishing, or expressing opposition about the overall management of the BSAI groundfish fisheries are outside of the scope of the NOA and proposed rule. As for the comments in opposition to increased participation in the CDQ Program, NMFS supports the Council's and CDQ groups' efforts to increase participation in the CDQ fisheries by owners and operators of small catcher vessels using hook-and-line gear. Participation in the CDQ Program by small, local fishing fleets is consistent

with the goals and objectives of the CDQ Program in the Magnuson-Stevens Act and the BSAI FMP. Any increased participation by small, local hook-and-line catcher vessels in the groundfish CDQ fisheries will be conducted within the existing allocations to the CDQ Program and to the CDQ groups, and within other applicable conservation and management regulations.

Changes From the Proposed Rule

The paragraph numbers for two additions to prohibitions at § 679.7(d) are renumbered from paragraphs (d)(8) and (d)(9) to paragraphs (d)(9) and (d)(10), respectively, because a new paragraph (d)(8) was recently added to § 679.7 under the cost recovery program final rule (81 FR 150, January 5, 2016).

The final rule includes three revisions to § 679.51(a)(1)(i) to insert additional punctuation and make minor wording changes (moving placement of the word “or”) to the list of vessels that are in the partial observer coverage category. These minor changes are needed to reflect the addition of paragraph (a)(1)(i)(C) in § 679.51 through the final rule for Amendment 112 to the BSAI FMP and Amendment 102 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (81 FR 17403; March 29, 2016).

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 109 and this final rule are necessary for the conservation and management of the BSAI groundfish fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable law.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The final rule is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule (81 FR 6489; February 8, 2016) and the preamble to this final rule serve as the small entity compliance guide. This rule does not require any additional compliance from small entities that is not described in the preamble to the proposed rule and this final rule. Copies of the proposed rule and this final rule are available from NMFS at the following Web site: <http://alaskafisheries.noaa.gov>.

Final Regulatory Flexibility Analysis (FRFA)

Section 604 of the Regulatory Flexibility Act (RFA) requires an agency to prepare a FRFA after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

Section 604 describes the required contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Need for and Objectives of the Rule

A description of the need for, and objectives of, the rule is contained in the preamble to the proposed rule and this final rule and is not repeated here. This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) (see ADDRESSES) and the summary of the IRFA in the proposed rule (81 FR 6489; February 8, 2016).

Summary of Significant Issues Raised During Public Comment

NMFS published a proposed rule to implement Amendment 109 and the regulatory amendments on February 8, 2016 (81 FR 6489). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on March 9, 2016. NMFS received one letter of comment on the proposed rule. This letter did not address the IRFA or the economic impacts of the rule more generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by the Action

This final rule will directly regulate two classes of small entities: (1) The six CDQ groups, which are non-profit corporations that represent the 65 western Alaska communities that are eligible to participate in the CDQ Program; and (2) the owners and operators of small hook-and-line catcher vessels who are authorized by a CDQ group to harvest groundfish or halibut CDQ allocations.

The RFA recognizes and defines three kinds of small entities: (1) Small businesses, (2) small non-profit organizations, and (3) small government jurisdictions. The CDQ groups are considered small entities due to their status as non-profit corporations. The Small Business Administration has established size standards for all major industry sectors in the United States. A business primarily involved in finfish harvesting is classified as a small business if it is independently owned

and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$20.5 million, for all its affiliated operations worldwide.

It is difficult to predict how many small hook-and-line catcher vessels may participate in the future under this final rule because no catcher vessels less than or equal to 46 ft LOA using hook-and-line gear currently are conducting directed fishing for groundfish CDQ. The best estimate of the upper bound of the number of future participants in the small catcher vessel Pacific cod CDQ fisheries is the maximum of 278 vessels less than or equal to 46 ft LOA that participated in the halibut CDQ fisheries from 2000 through 2013. NMFS assumes that all of the vessels that could be directly regulated by this action would be small entities based on estimated revenues of less than \$20.5 million for all vessels and their known affiliations.

Recordkeeping, Reporting, and Other Compliance Requirements

This final rule contains three new reporting and recordkeeping requirements that affect small entities. First, each CDQ group that authorizes catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA using hook-and-line gear to fish for groundfish CDQ with an exemption from the LLP must register the vessel in an online CDQ vessel registration system developed and maintained by NMFS. All six CDQ groups will be subject to the vessel registration requirement if they have vessels participating.

Second, the operator of any registered catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA using hook-and-line gear that is exempt from the LLP license requirements must maintain a legible copy of an LLP exemption letter on board the vessel at all times when groundfish CDQ fishing. The LLP exemption letter is generated through the CDQ vessel registration system when a CDQ group registers an eligible vessel. The CDQ group representative must provide this letter to the registered vessel operator. Depending on the level of participation, all six CDQ groups and all vessel operators could be subject to this requirement.

Third, small catcher vessels fishing for groundfish CDQ under this final rule will be placed in the partial observer coverage category. Vessels subject to observer coverage are determined annually through the Observer Program's ADP. Since inception of the ADP process in 2013, vessels less than

40 ft LOA have been placed in the "no selection pool" and have had no additional reporting or recordkeeping requirements. Vessels 40 ft LOA or greater are in the "trip selection pool" and must log all of their fishing trips in ODDS. This is an online system for registering fishing trips and receiving information about whether a particular trip is selected for observer coverage.

Vessels between 40 ft LOA and 46 ft LOA already log their halibut CDQ and halibut IFQ fishing trips in ODDS. Therefore, if these vessels are combining groundfish CDQ fishing with halibut CDQ or halibut IFQ fishing, they will not incur any additional reporting requirements associated with placement in the partial observer coverage category because the halibut trips already are in partial observer coverage. However, if any of these vessels start fishing for groundfish CDQ separate from their halibut CDQ or halibut IFQ fishing trips, then those additional fishing trips must be logged in ODDS. The cost of logging trips in ODDS represents an additional cost associated with the new small catcher vessel groundfish CDQ fisheries.

Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities

The RFA requires identification of any significant alternatives to the final rule that would accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. As noted in the IRFA, this final rule is expected to create a net benefit for the directly regulated small entities. The benefits of this action are expected to outweigh the reporting, recordkeeping, and other compliance costs described in the previous section.

The Council considered a status quo alternative (Alternative 1), and two action alternatives (Alternatives 2 and 3) in addition to this final rule (which was Alternative 4, the Council's preferred alternative). Neither Alternative 2 nor 3 would have provided more benefits to the directly regulated small entities or reduced reporting, recordkeeping, or compliance costs more than the preferred alternative that is implemented by this final rule.

Under Alternative 2, the maximum retainable amount (MRA) of Pacific cod in the halibut CDQ fisheries would have been increased so the operators of the small hook-and-line vessels could retain more Pacific cod when halibut CDQ fishing and still be considered directed fishing for halibut rather than directed fishing for Pacific cod. Alternative 2 was considered because the more costly LLP

license requirements, observer coverage requirements, and vessel monitoring system (VMS) requirements do not apply to vessels halibut CDQ fishing in the BSAI (except that the VMS requirements apply to vessels halibut fishing in the Aleutian Islands). Increasing the MRAs for Pacific cod when halibut CDQ fishing would allow the small vessels to retain more Pacific cod without triggering requirements that apply to vessels directed fishing for Pacific cod. The Council did not select Alternative 2 because this final rule accomplishes a similar outcome to Alternative 2 without creating a situation where vessels with the same catch composition are defined as fishing for halibut in the CDQ fisheries and fishing for Pacific cod in the non-CDQ fisheries. Also, Alternative 2 would have increased monitoring and enforcement costs relative to this final rule.

Alternative 3 would have created a new type of LLP license specific to the small CDQ vessels in contrast to this final rule which provides an exemption to the LLP. However, Alternative 3 would not have resulted in a reduction in reporting, recordkeeping, and compliance costs in comparison to this final rule. Issuing a new CDQ LLP license would have required applications to NMFS and the issuance of a CDQ LLP license with certain conditions. Alternative 3 would have increased costs relative to this final rule.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB) under control numbers 0648-0269, 0648-0318, and 0648-0334. The information collections are presented by OMB control number.

OMB Control No. 0648-0269

Public reporting burden for CDQ Vessel Registration to add or remove vessels online that are exempt from the LLP license requirements is estimated to average five minutes per individual response and five minutes for maintenance of the LLP exemption letter on board a vessel that is groundfish CDQ fishing.

The Groundfish/Halibut CDQ and Prohibited Species Quota (PSQ) Transfer Request is mentioned in this final rule, but no changes occur in the individual response for each requirement.

OMB Control No. 0648–0318

The Observer Declare and Deploy System is mentioned in this final rule, but the individual response for each requirement is not changed.

OMB Control No. 0648–0334

The individual response for each requirement of the LLP mentioned in this final rule is not changed.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collections, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov*, or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 28, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

- 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

- 2. In § 679.4:

■ a. In paragraph (k)(2)(iv), remove the words “license; or” and add in their place “license;” and in paragraph (k)(2)(v), remove “Area.” and add in its place “Area; or”; and

- b. Add paragraph (k)(2)(vi).

The addition reads as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(2) * * *

(vi) The operator of a catcher vessel that is greater than 32 ft (9.8 m) LOA, that does not exceed 46 ft (14.0 m) LOA, and that is registered by a CDQ group following the procedures described in § 679.5(m) may use hook-and-line gear to conduct groundfish CDQ fishing without a groundfish license.

* * * * *

- 3. In § 679.5, add paragraph (m) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(m) *CDQ Vessel Registration*—(1) *Registration.* The representative for a CDQ group must register each vessel that is to receive the exemption from the LLP license requirements at § 679.4(k)(2)(vi) through the CDQ vessel registration system available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>). The CDQ group representative must log into the CDQ vessel registration system and provide the information required on the computer screen. NMFS will add each vessel successfully registered to the CDQ vessel registration list on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

(2) *Responsibility.* The CDQ group representative must successfully complete vessel registration through the CDQ vessel registration system before the vessel may be used to conduct groundfish CDQ fishing under § 679.32(c)(3)(iii) without an LLP license. By using the CDQ group’s NMFS ID and password and submitting the vessel registration request, the CDQ group representative certifies that all information is true, correct, and complete.

(3) *LLP exemption letter.* The CDQ vessel registration system will provide the CDQ group representative with an LLP exemption letter documenting that the registered vessel is exempt from the LLP when groundfish CDQ fishing. The CDQ group representative must provide a copy of the LLP exemption letter to the operator of the registered vessel named in the LLP exemption letter. The operator of the registered vessel named in the LLP exemption letter must maintain a legible copy of the LLP exemption letter on board the registered vessel at all times when that vessel is groundfish CDQ fishing.

(4) *Removing a vessel from the CDQ vessel registration list.* A CDQ group representative may remove a vessel from the CDQ vessel registration system by logging into the online system and following the applicable instructions. A CDQ group representative may remove a

registered vessel from the CDQ vessel registration list at any time but must certify at the time of removal that the vessel operator had been given notice by the CDQ group that the vessel is going to be removed from the list and that the vessel is not groundfish CDQ fishing at the time of removal. A vessel that is successfully removed from the CDQ vessel registration list is no longer exempt from the LLP requirements under § 679.4(k).

* * * * *

- 4. In § 679.7, add paragraphs (d)(9) and (10) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(9) For an operator of a catcher vessel greater than 32 ft (9.8 m) LOA and less than or equal to 46 ft (14.0 m) LOA using hook-and-line gear and that is registered by a CDQ group under § 679.5(m), to conduct groundfish CDQ fishing without a legible copy of the LLP exemption letter issued to a CDQ group for that vessel on board the vessel.

(10) For a CDQ group representative, to remove a vessel from the CDQ vessel registration list under § 679.5(m)(4) without first providing notice to the operator of the registered vessel that the vessel is being removed from the CDQ vessel registration list or when the vessel operator is groundfish CDQ fishing.

* * * * *

- 5. In § 679.32, add a new first sentence to paragraphs (c)(3)(i)(D) and (c)(3)(ii)(D) and add paragraph (c)(3)(iii) to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) *Observed catcher vessels using nontrawl gear.* This paragraph applies to all observed catcher vessels using nontrawl gear, except those catcher vessels regulated under paragraph (c)(3)(iii) of this section. * * *

(ii) * * *

(D) *Observed catcher vessels using nontrawl gear.* This paragraph applies to all observed catcher vessels using nontrawl gear, except those catcher vessels regulated under paragraph (c)(3)(iii) of this section. * * *

(iii) *Groundfish CDQ fishing by catcher vessels less than or equal to 46 ft LOA using hook-and-line gear*—(A) *Applicability.* Regulations in this paragraph apply to the operators of catcher vessels less than or equal to 46

ft (14.0 m) LOA using hook-and-line gear when groundfish CDQ fishing and to the CDQ groups authorizing the operators of these vessels to harvest groundfish CDQ or halibut CDQ.

(B) *Halibut CDQ or halibut IFQ.* If any halibut CDQ or halibut IFQ are retained during a fishing trip on board a vessel described in paragraph (c)(3)(iii)(A) of this section, the following requirements apply:

(1) The vessel operator must retain all legal-size halibut caught during that entire fishing trip.

(2) The vessel operator must have sufficient halibut IFQ or halibut CDQ available to account for the catch of all legal-size halibut caught during the entire fishing trip.

(3) If the vessel operator is relying on halibut CDQ from a CDQ group to support the retained catch of legal-size halibut during a fishing trip, the CDQ group must provide adequate halibut CDQ to this vessel operator to account for all of the legal-size halibut caught by the vessel during the entire fishing trip.

(C) *Halibut PSC.* If halibut CDQ or halibut IFQ are not retained during a fishing trip on board a vessel described in paragraph (c)(3)(iii)(A) of this section, the following requirements apply:

(1) The vessel operator must discard all halibut caught during the fishing trip.

(2) *Small catcher vessel halibut PSC limit.* The CDQ group representative may transfer halibut from a CDQ group's halibut PSQ to its small catcher vessel halibut PSC limit. To do so, the CDQ representative must submit a transfer request using the procedures described in § 679.5(n). In reviewing a request to transfer halibut PSQ to a CDQ group's small catcher vessel halibut PSC limit, NMFS will consider whether the amount of halibut to be transferred to the small catcher vessel halibut PSC limit is sufficient to support groundfish CDQ fishing by the catcher vessels that the CDQ group plans to authorize to conduct groundfish CDQ fishing. The transfer is not effective until approved by NMFS. The CDQ group representative also may transfer halibut from a CDQ group's small catcher vessel halibut PSC limit back to its halibut PSQ by submitting a transfer request using the procedures described in § 679.5(n). In reviewing a request to transfer halibut from the small catcher vessel halibut PSC limit back to the CDQ group's halibut PSQ, NMFS will consider the status of CDQ fisheries through the end of the year and anticipated halibut PSC rates for any remaining groundfish CDQ fishing by vessels managed under the small

catcher vessel halibut PSC limit for the requesting CDQ group.

(3) *Fishery closures.* Directed fishing for groundfish CDQ, except sablefish CDQ managed under paragraph (c)(1) of this section, by catcher vessels less than or equal to 46 ft LOA using hook-and-line gear is prohibited unless the Regional Administrator publishes notification in the **Federal Register** authorizing such directed fishing. In deciding whether to authorize directed fishing, NMFS will consider whether a CDQ group has sufficient halibut in its small catcher vessel halibut PSC limit to support directed fishing for groundfish CDQ by these catcher vessels. Upon determining that a CDQ group's small catcher vessel halibut PSC limit has been or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for all groundfish CDQ species, except sablefish CDQ, by catcher vessels less than or equal to 46 ft LOA using hook-and-line gear fishing for that CDQ group. If the estimated halibut PSC by vessels described in paragraph (c)(3)(iii)(A) of this section exceeds the balance of the small catcher vessel halibut PSC limit on December 31 of any year, and if the CDQ group has remaining halibut PSQ on that date, NMFS will transfer an amount of halibut PSQ into the CDQ group's small catcher vessel halibut PSC limit to bring the balance of the small catcher vessel halibut PSC limit to zero. NMFS will make the determination about whether such an administrative transfer is necessary after data from the fishing year is finalized.

* * * * *

■ 6. In § 679.51:

- a. Remove the introductory text;
- b. In paragraphs (a)(1)(i)(A) and (B) remove "or" and in paragraph (a)(1)(i)(C) remove the period and add in its place "; or";
- c. Add paragraph (a)(1)(i)(D);
- d. Revise paragraph (a)(2)(i)(C)(2); and
- e. Remove paragraph (f).

The addition and revision read as follows:

§ 679.51 Observer requirements for vessels and plants.

(a) * * *

(1) * * *

(i) * * *

(D) A catcher vessel less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing under § 679.32(c)(3)(iii).

* * * * *

(2) * * *

(i) * * *

(C) * * *

(2) Using trawl gear or hook-and-line gear when groundfish CDQ fishing (see § 679.2), except for catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing under § 679.32(c)(3)(iii); or

* * * * *

[FR Doc. 2016-10356 Filed 5-3-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742-6210-02]

RIN 0648-XE604

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 30, 2016, through 1200 hours, A.l.t., May 15, 2016.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 256 metric tons as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016), for the period 1200 hours, A.l.t., April

1, 2016, through 1200 hours, A.l.t., July 1, 2016.

In accordance with § 679.21(d)(6)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached.

Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at

§ 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for

public comment because the most recent, relevant data only became available as of April 28, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 29, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016-10444 Filed 4-29-16; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 81, No. 86

Wednesday, May 4, 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 ENERGY

10 CFR Part 431

[Docket Number EERE-2013-BT-STD-0030]

RIN 1904-AD01

Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers

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

ACTION: Extension of public comment period.

SUMMARY: On March 24, 2016, the U.S. Department of Energy (DOE) published in the **Federal Register** a notice of proposed rulemaking (NPR) for commercial packaged boiler energy conservation standards. This document announces an extension of the public comment period for submitting comments on the NPR or any other aspect of the rulemaking for commercial packaged boilers. The comment period is extended to June 22, 2016.

DATES: The comment period for the proposed rule published on March 24, 2016 (81 FR 15836), is extended. DOE will accept comments, data, and information regarding this rulemaking received no later than June 22, 2016.

ADDRESSES: Interested persons may submit comments, identified by docket number EERE-2013-BT-STD-0030 and/or Regulation Identifier Number (RIN) 1904-AD01, by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Email:** PkgdBoilers2013STD0030@ee.doe.gov. Include the docket number EERE-2013-BT-STD-0030 and/or RIN 1904-AD01 in the subject line of the message.
- **Mail:** Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. If

possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]

- **Hand Delivery/Courier:** Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586-2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at www.regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The rulemaking Web page can be found at: https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=8 The Web page contains a link to the docket for this notice on the regulation.gov site. The www.regulations.gov Web page contains instructions on how to access all documents in the docket, including public comments.

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-8654. Email: Jim.Raba@ee.doe.gov.

In the Office of the General Counsel, contact Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-9496. Email: Peter.Cochran@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On March 24, 2016, DOE published in the **Federal Register** a notice of proposed rulemaking (NPR) for Commercial Packaged Boilers. 81 FR 15836. The notice provided for submitting written comments, data, and information by

May 23, 2016. DOE has received three requests to suspend the rulemaking until DOE completes a companion rulemaking addressing test procedures for commercial package boilers. (See: AHRI, No. 51, Laclede, No. 52, and AGA/APGA, No. 53). At this time, DOE denies the request to suspend the rulemaking for an undefined period of time, as requested. However, in oral comments at the April 21 public meeting regarding proposed energy conservation standards, a representative from the Air-Conditioning, Heating, & Refrigeration Institute (AHRI) requested an extension of the comment period for the NPR, if DOE did not grant the suspension previously requested. An extension of the comment period would allow additional time for AHRI and other interested parties to examine the data, information, and analysis presented in the Commercial Packaged Boilers Technical Support Document, gather any additional data and information to address the proposed standards, and submit comments to DOE. The TSD can be found at: https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=8.

In view of the alternative request and oral comments presented by AHRI during the April 21 public meeting, DOE has determined that a 30-day extension of the public comment period is appropriate. The comment period would be extended to June 22, 2016.

Issued in Washington, DC, on April 26, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016-10427 Filed 5-3-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-6141; Directorate Identifier 2015-NM-048-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 Model 767 airplanes. This proposed AD was prompted by fuel system reviews conducted by the manufacturer. This proposed AD would require modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. This proposed AD would also provide optional actions for cargo airplanes. We are proposing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by June 20, 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-2016-6141.

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-2016-6141; 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: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6506; fax: 425-917-6590; email: Jon.Regimbal@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-2016-6141; Directorate Identifier 2015-NM-048-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 FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88"), Amendment 21-78. Subsequently, SFAR 88 was amended by: Amendment 21-82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002) and Amendment 21-83 (67 FR 72830, December 9, 2002;

corrected at 68 FR 37735, June 25, 2003, to change "21-82" to "21-83").

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, combination of failures, and unacceptable (failure) experience. For all three failure criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

767 FQIS Design

The design of the in-tank FQIS components and wiring has the potential for latent faults that could cause arcs, sparks, or resistive heating in the event of a hot short of an FQIS tank circuit to power wiring. The wiring of the FQIS is in some areas cobundled or closely adjacent to power wiring. An ignition source combined with flammable conditions in a center fuel tank could result in ignition of flammable vapor in the fuel tank, causing a structural failure of the wing and inflight breakup of the airplane.

Under the policy contained in FAA Policy Memo PS-ANM100-2003-112-15 SFAR 88—Mandatory Action Decision Criteria, dated February 25, 2003 (http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/dc94c3a46396950386256d5e006aed11/

\$FILE/Feb2503.pdf), the FAA determined that this ignition source risk combined with the fleet average flammability for the center wing tank on most Model 767 airplanes created an unsafe condition for the center fuel tank. Applying that same policy, the FAA determined that, due to a lower fleet average flammability, that same unsafe condition does not exist in the main (wing) tanks of Model 767 airplanes. The FAA has also determined that the unsafe condition does not exist in the center wing tanks of certain Model 767–200 airplanes that do not carry fuel within the center wing structural box. For those Model 767–200 airplanes, the center tank consists of rib bays in the wing root area between the side of the fuselage and the engine nacelles. Those areas are subject to cooling from air flow over the wing in flight, and Boeing has shown that the center fuel tank on those airplanes meets the FAA's definition of a low-flammability fuel tank contained in the policy memo mentioned previously.

Related Rulemaking

On March 21, 2016, we issued AD 2016–07–07, Amendment 39–18452 (81 FR 19472, April 5, 2016), for certain Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes. AD 2016–07–07 requires similar actions to those proposed in this NPRM. AD 2016–07–07 addressed the numerous public comments that were submitted on the proposal.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin 767–28–0118, dated July 15, 2014. The service information describes procedures for a BITE check (check of built-in test equipment) of the FQIS. 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 modifying the FQIS to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. As an alternative for cargo airplanes, this proposed AD would provide the option to modify the airplane by separating FQIS wiring routed between the FQIS processor and the center fuel tank, provided repetitive BITE checks (checks of built-in test equipment) of the FQIS are also performed. Refer to the service information identified previously for details on the procedures and compliance times.

Costs of Compliance

We estimate that this proposed AD affects 133 airplanes of U.S. registry. This estimate includes 127 cargo airplanes; 4 private, business/corporate/executive, or government airplanes; and 2 experimental airplanes. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS—REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification ...	1,200 work-hours × \$85 per hour = \$102,000	\$200,000	\$302,000	\$40,166,000

ESTIMATED COSTS—ALTERNATIVE ACTIONS

Action	Labor cost	Parts cost	Cost per product
BITE check	18 work-hours × \$85 per hour = \$1,530 per check	\$0	\$1,530 per check.
Wire separation	230 work-hours × \$85 per hour = \$19,550	\$10,000	\$29,550.

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–2016–6141; Directorate Identifier 2015–NM–048–AD.

(a) Comments Due Date

We must receive comments by June 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, excluding airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airplanes on which the center auxiliary tank consists only of the spaces between the side of body rib 0 and rib 3 of the left and right wings (*i.e.*, the wing center structural box is a dry bay and is not part of the fuel tank).

(2) Airplanes equipped with a flammability reduction means (FRM) approved by the FAA as compliant with the Fuel Tank Flammability Reduction (FTFR) rule (73 FR 42444, July 21, 2008) requirements of section 25.981(b) or section 26.33(c)(1) of the Federal Aviation Regulations (14 CFR 25.981(b) or 14 CFR 26.33(c)(1)).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Modification

Within 60 months after the effective date of this AD, modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Alternative Actions for Cargo Airplanes

For airplanes used exclusively for cargo operations: As an alternative to the requirements of paragraph (g) of this AD, do

the actions specified in paragraphs (h)(1) and (h)(2) of this AD. To exercise this option, operators must perform the first inspection required under paragraph (h)(1) of this AD within 6 months after the effective date of this AD. To exercise this option for airplanes returned to service after conversion of the airplane from a passenger configuration to an all-cargo configuration more than 6 months after the effective date of this AD, operators must perform the first inspection required under paragraph (h)(1) of this AD prior to further flight after the conversion.

(1) Within 6 months after the effective date of this AD, record the existing fault codes stored in the FQIS processor and then do a BITE check (check of built-in test equipment) of the FQIS, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28–0118, dated July 15, 2014. If any nondispatchable fault code is recorded prior to the BITE check or as a result of the BITE check, before further flight, do all applicable repairs and repeat the BITE check until a successful test is performed with no nondispatchable faults found, in accordance with Boeing Service Bulletin 767–28–0118, dated July 15, 2014. Repeat these actions thereafter at intervals not to exceed 650 flight hours. Modification as specified in paragraph (h)(2) of this AD does not terminate the repetitive BITE check requirement of this paragraph.

(2) Within 60 months after the effective date of this AD, modify the airplane by separating FQIS wiring that runs between the FQIS processor and the center tank wing spar penetrations, including any circuits that might pass through a main fuel tank, from other airplane wiring that is not intrinsically safe, using methods approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) 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) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) apply.

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

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

(j) Related Information

For more information about this AD, contact Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: Jon.Regimbal@faa.gov.

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

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09795 Filed 5–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6140; Directorate Identifier 2015–NM–059–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 777 airplanes. This proposed AD was prompted by fuel system reviews conducted by the manufacturer. This proposed AD would require modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. This proposed AD would also provide alternative actions for cargo airplanes. We are proposing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a

fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by June 20, 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.

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-2016-6140; 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: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6506; fax: 425-917-6590; email: Jon.Regimbal@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-2016-6140; Directorate Identifier 2015-NM-059-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 FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled “Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements” (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (“SFAR 88”), Amendment 21-78. Subsequently, SFAR 88 was amended by: Amendment 21-82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002) and Amendment 21-83 (67 FR 72830, December 9, 2002; corrected at 68 FR 37735, June 25, 2003, to change “21-82” to “21-83”).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, combination of failures, and unacceptable (failure) experience. For all three failure criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Model 777 FQIS Design

The design of the in-tank FQIS components and wiring has the potential for latent faults that could cause arcs, sparks, or resistive heating in the event of a hot short of an FQIS tank circuit to power wiring. The wiring of the FQIS is in some areas cobundled or closely adjacent to power wiring. An ignition source combined with flammable conditions in a center fuel tank could result in ignition of flammable vapor in the fuel tank, causing a structural failure of the wing and inflight breakup of the airplane.

Under the policy contained in FAA Policy Memo PS-ANM100-2003-112-15 (http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/DC94C3A46396950386256D5E006AED11?OpenDocument&Highlight=sfar), the FAA determined that this ignition source risk combined with the fleet average flammability for the center wing tank on Model 777 airplanes created an unsafe condition for the center fuel tank. Applying that same policy, the FAA determined that, due to a lower fleet average flammability, that same unsafe condition does not exist in the main (wing) tanks of Model 777 airplanes, in the center auxiliary fuel tank of Model 777-200 series airplanes with a center auxiliary fuel tank capacity of less than 12,500 U.S. gallons (*i.e.*, airplanes on which the wing center structural box is a dry bay and is not part of the center fuel tank), or in the body auxiliary tank of Model 777-200LR series airplanes.

Related Rulemaking

On March 21, 2016, we issued AD 2016-07-07, Amendment 39-18452 (81 FR 19472, April 5, 2016), for certain Boeing Model 757-200, -200PF, -200CB, and -300 series airplanes. AD 2016-07-07 requires similar actions to those proposed in this NPRM. AD 2016-07-07 addressed the numerous public comments that were submitted on the proposal.

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 modifying the FQIS to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. As an alternative for cargo airplanes, this proposed AD would provide the alternative to modify the airplane by separating FQIS wiring routed between the FQIS processor and the center fuel tank, provided repetitive BITE checks

(checks of built-in test equipment) of the FQIS are also performed.

Costs of Compliance

We estimate that this proposed AD affects 187 airplanes of U.S. registry. This estimate includes 29 cargo airplanes. Currently, there are no experimental, private, business/ corporate/executive, or government aircraft registered in the United States that would be affected by the proposed airworthiness directive. The 158

affected U.S. air-carrier passenger airplanes are already required by applicable FAA operating regulations to be modified to include flammability reduction measures (FRM), so the proposed AD would not apply to those airplanes. However, to address the potential for those airplanes to be converted to cargo airplanes before the compliance deadline for the operating rule FRM requirement, we provide the following cost estimates to comply with this proposed AD:

ESTIMATED COSTS—REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product
Modification	600 work-hours × \$85 per hour = \$51,000	\$150,000	\$201,000

ESTIMATED COSTS—ALTERNATIVE ACTIONS

Action	Labor cost	Parts cost	Cost per product
BITE check	1 work-hours × \$85 per hour = \$85 per check	\$0	\$85 per check.
Wire separation	230 work-hours × \$85 per hour = \$19,550	\$10,000	\$29,550.

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–2016–6140; Directorate Identifier 2015–NM–059–AD.

(a) Comments Due Date

We must receive comments by June 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, 777–200LR, 777–300, 777–300ER, and 777F series airplanes, certificated in any category, excluding airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airplanes on which the center tank consists only of the inboard structural box of the left and right wings (*i.e.*, the wing center structural box is a dry bay and is not part of the fuel tank).

(2) Airplanes equipped with a flammability reduction means (FRM) approved by the FAA as compliant with the Fuel Tank Flammability Reduction (FTFR) rule (73 FR 42444, July 21, 2008) requirements of section 25.981(b) or section 26.33(c)(1) of the Federal Aviation Regulations (14 CFR 25.981(b) or 14 CFR 26.33(c)(1)).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Modification

Within 60 months after the effective date of this AD, modify the fuel quantity

indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Alternative Actions for Cargo Airplanes

For airplanes used exclusively for cargo operations: As an alternative to the requirements of paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD, using methods approved in accordance with the procedures specified in paragraph (i) of this AD. To exercise this alternative, operators must perform the first inspection required under paragraph (h)(1) of this AD within 6 months after the effective date of this AD. To exercise this alternative for airplanes returned to service after conversion of the airplane from a passenger configuration to an all-cargo configuration more than 6 months after the effective date of this AD, operators must perform the first inspection required under paragraph (h)(1) of this AD prior to further flight after the conversion.

(1) Within 6 months after the effective date of this AD, record the existing fault codes stored in the FQIS processor and then do a BITE check (check of built-in test equipment) of the FQIS. If any nondispatchable fault code is recorded prior to the BITE check or as a result of the BITE check, before further flight, do all applicable repairs and repeat the BITE check until a successful test is performed with no nondispatchable faults found, using a method approved in accordance with the procedures specified in paragraph (i) of this AD. Repeat these actions thereafter at intervals not to exceed 650 flight hours. Modification as specified in paragraph (h)(2) of this AD does not terminate the repetitive BITE check requirement of this paragraph.

(2) Within 60 months after the effective date of this AD, modify the airplane by separating FQIS wiring that runs between the FQIS processor and the center tank wing spar penetrations, including any circuits that might pass through a main fuel tank, from other airplane wiring that is not intrinsically safe, using methods approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

For more information about this AD, contact Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6506; fax: 425-917-6590; email: Jon.Regimbal@faa.gov.

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

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-09801 Filed 5-3-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. FDA-2016-N-1170]

Standard Preparations, Limits of Potency, and Dating Period Limitations for Biological Products; Companion to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or Agency or we) is proposing to amend the general biological products standards relating to dating periods and also to remove certain standards relating to standard preparations and limits of potency. FDA is proposing this action to update outdated requirements, and accommodate new and evolving technology and testing capabilities, without diminishing public health protections. This proposed action is part of FDA's retrospective review of its regulations in response to an Executive order.

DATES: Submit either electronic or written comments on this proposed rule or its companion direct final rule by July 18, 2016. If FDA receives any timely significant adverse comments on the direct final rule with which this proposed rule is associated, the Agency

will publish a document withdrawing the direct final rule within 30 days after the comment period ends. FDA will apply any significant adverse comments received on the direct final rule to the proposed rule in developing the final rule. FDA will then proceed to respond to comments under this proposed rule using the usual notice and comment procedures.

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-1170 for "Standard Preparations, Limits of Potency, and Dating Period Limitations for Biological Products." 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: Tami Belouin, 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. Executive Summary

A. Purpose of the Proposed Rule

The proposed rule would revise and remove certain general biological products standards, which would

update outdated requirements and accommodate new and evolving technology and testing capabilities without diminishing public health protections. FDA is proposing this action because the existing codified requirements are duplicative of requirements that are also specified in biologics license applications (BLAs) or are no longer necessary or appropriate to help ensure the safety, purity, and potency of licensed biological products.

B. Summary of the Major Provisions of the Proposed Rule

This proposed rule would remove the requirements contained in § 610.20 (21 CFR 610.20) from the regulations. FDA is proposing this action because the standard preparations listed in the regulation are obsolete, no longer available, or described on a product specific basis in BLAs. In addition, FDA believes that it would no longer be necessary to restrict the source of standard preparations to the Center for Biologics Evaluation and Research (CBER), since appropriate standard preparations can often be obtained from other sources. Furthermore, FDA is proposing to remove § 610.21 because these potency limits are either obsolete or best described on a product specific basis in the BLA. FDA is proposing to revise § 610.50 to remove references to §§ 610.20 and 610.21 and official potency tests and to reflect FDA’s updated approach to establishing dates of manufacture. FDA is proposing to amend § 610.53 to remove products no longer manufactured and products for which dating information is identified in the BLA of each individual product, and to reflect updated practices for the remaining products.

C. Legal Authority

FDA is proposing this action under the biological products provisions of the Public Health Service Act (PHS Act), and the drugs and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

D. Costs and Benefits

Because this proposed rule would not impose any additional regulatory burdens, this regulation is not anticipated to result in any compliance costs and the economic impact is expected to be minimal.

II. Companion Document to Direct Final Rulemaking

This proposed rule is a companion to the direct final rule published in the rules section of this issue of the **Federal Register**. This companion proposed rule

provides the procedural framework to finalize the rule in the event that the direct final rule receives any significant adverse comment and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received in response to this companion proposed rule will also be considered as comments regarding the direct final rule. FDA is publishing the direct final rule because we believe the rule contains noncontroversial changes and there is little likelihood that there will be significant adverse comments opposing the rule.

A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the direct final rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to a part of the direct final rule and that part can be severed from the remainder of the rule (e.g., where, as here, a direct final rule deletes several unrelated regulations), we may adopt as final those provisions of the rule that are not the subject of the significant adverse comment.

If any significant adverse comments to the direct final rule are received during the comment period, FDA will publish, within 30 days after the comment period ends, a document withdrawing the direct final rule. If we withdraw the direct final rule, any comments received will be considered comments on the proposed rule and will be considered in developing a final rule using the usual notice-and-comment procedures.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, we will publish a document confirming the effective date within 30 days after the comment period ends. Additional information about direct final

rulemaking procedures is set forth in the document entitled “Guidance for FDA and Industry: Direct Final Rule Procedures,” announced and provided in the **Federal Register** of November 21, 1997 (62 FR 62466). The guidance may be accessed at: <http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm>.

III. Background

On January 18, 2011, President Barack Obama issued Executive Order 13563, “Improving Regulation and Regulatory Review” (76 FR 3821, January 21, 2011). One of the provisions in the Executive Order requires Agencies to consider how best to promote the retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned (76 FR 3821 at 3822). As one step in implementing the Executive Order, FDA published a notice in the **Federal Register** of April 27, 2011 (76 FR 23520), entitled “Periodic Review of Existing Regulations; Retrospective Review Under E.O. 13563.” In that notice, FDA announced that it was conducting a review of existing regulations to determine, in part, whether they can be made more effective in light of current public health needs and to take advantage of, and support, advances in innovation that have occurred since those regulations took effect. As part of this initiative, FDA is proposing to update outdated regulations as specified in this proposed rule.

FDA’s general biological products standards in part 610 (21 CFR part 610) are intended to help ensure the safety, purity, and potency of biological products administered to humans. The proposed revision and removal of certain general biological products standards are designed to update outdated requirements and accommodate new and evolving manufacturing and control testing technology. The proposed rule provides manufacturers of biological products with flexibility, as appropriate, to employ advances in science and technology as they become available, without diminishing public health protections.

A. Sections 610.20 and 610.21

Standard preparations are generally used to perform lot release testing or other specific product characterization assays. Under the current standard preparations, § 610.20, FDA requires specific standard preparations to be used for a small number of the biological products FDA regulates

unless a modification is permitted under § 610.9. Specifically, according to current § 610.20 *Standard preparations*, made available by CBER, are required to be used in the testing of potency or opacity of certain biological products, mostly biological products that were initially licensed several decades ago. Most of these standard preparations requirements are now obsolete, because either CBER no longer provides the listed standard preparations, or the specific biological products are no longer manufactured, or both. In addition, standard preparations to help ensure the safety, purity, and potency of particular biological products can often be obtained from sources other than CBER now, including international sources, or can be developed internally by the applicant. Thus, FDA believes it is no longer necessary to specify CBER as the source of standard preparations in § 610.20. For these reasons, FDA proposes to remove § 610.20. Consistent with current practice and BLAs, CBER will continue to make and supply standard preparations when appropriate, as well as continue to collaborate with external organizations in the development and assessment of physical standard preparations for biological products.

Under the current § 610.21 *Limits of potency*, FDA specifies minimal potency limits to be met for the antibodies and antigens listed. However, most of the biological products subject to the specified potency limits are no longer manufactured. In addition, for those that are still manufactured, or for anyone wanting to manufacture the listed products, FDA’s updated practice is to have the potency limit also be specified in the BLA. For this reason, FDA proposes to remove § 610.21. As a result of removing §§ 610.20 and 610.21, we are proposing to remove and reserve part 610, subpart C.

In addition to sometimes being duplicative of information provided in the BLA and unnecessarily restrictive regarding the source of standard preparations, the codification by regulation of many of the standard preparations and limits of potency for certain biological products sometimes does not keep abreast of technological advances in science related to manufacturing and testing. For many years, because of the potential for impeding scientific progress, FDA has not codified additional specific standard preparations and limits of potency for licensed biological products, but instead the standards are established in the BLA. Failure to conform to applicable standards established in the license is grounds for revocation under

§ 601.5(b)(1)(iv) (21 CFR 601.5(b)(1)(iv)). If the changes proposed in this proposed rule go into effect, FDA will continue to require that each biological product meet standards to assure that the product is safe, pure, and potent, and will continue to require that each lot demonstrate conformance with the standards applicable to that product (see § 610.1) through appropriate testing. Therefore, we expect that standard preparations and potency limits will be established in the BLA and may be changed only in accordance with regulations for reporting post-approval changes (see § 601.12). Furthermore, no lot of any licensed product may be released by the manufacturer prior to the completion of tests for conformity with standards applicable to such product (see § 610.1).

FDA is therefore proposing to amend its regulations to remove §§ 610.20 and 610.21 because appropriate standard preparations and potency limits for any listed product are specified during the licensing process on a product specific basis. The removal of §§ 610.20 and 610.21 will also increase regulatory flexibility by allowing industry and FDA to more readily use and incorporate current scientific technology and other appropriate reference materials in the manufacture and regulation of licensed biological products.

B. Sections 610.50 and 610.53

A biological product is expected to remain stable and retain its identity, strength, quality, and purity for a period of time after manufacture when it is properly stored. The dating period limitations regulations provided at §§ 610.50 and 610.53 specify how the date of manufacture for biological products will be determined, when the dating begins, and dating periods for certain biological products. The existing § 610.50 prescribes how the date of manufacture is determined for biological products and relies in part upon §§ 610.20 and 610.21 or official standards of potency (*i.e.*, a specific test method described in regulation). With the proposed removal of §§ 610.20 and 610.21 for reasons described in this document, and as official potency tests no longer exist, FDA is proposing to revise § 610.50 to reflect FDA’s updated approach to establishing dates of manufacture.

In addition, current § 610.50(b) does not provide FDA or applicants with flexibility to consider the variety of manufacturing situations and technologies that exist today and which may occur in the future. Since 1977, when the regulation was last amended,

new methods of manufacture and testing often associated with new biological products have been developed. The proposed revision to § 610.50 would allow additional manufacturing activities other than those currently listed to be used to determine the date of manufacture.

The proposed regulatory provision would require the date of manufacture to be identified in the approved BLA. FDA recommends that applicants discuss a suitable date of manufacture with FDA during late clinical development and propose a date of manufacture in the BLA. We consider the underlying science and manufacturing process testing methods in determining the date of manufacture for each specific product. The approved BLA would specify how the date of manufacture would be determined. A proposed paragraph, § 610.50(c), would be added, specifying how the date of manufacture for Whole Blood and blood components would be determined. This provision would assist in complying with the dating periods prescribed for Whole Blood and blood components in the proposed table in redesignated § 610.53(b).

The current table at § 610.53(c) lists dating periods, manufacturer's storage periods, and storage conditions for many biological products. FDA is proposing to revise the current table in § 610.53(c) (which would be redesignated as § 610.53(b)) to remove products where storage conditions and dating periods are established to help ensure the continued safety, potency, and purity of each individual product, based upon information submitted in the relevant BLA. The dating period and storage conditions for these products would be identified in the BLA. FDA is also proposing to revise the current table in § 610.53(c) to delete those products that are no longer manufactured. We are proposing to retain those products, specifically Whole Blood and blood components, whose dating periods are based upon data relating to the anticoagulant or preservative solution in the product, usage, clinical experience, laboratory testing, or further processing. The proposed list has been updated to include currently licensed Whole Blood and blood component products with their applicable storage temperatures and dating periods.

In listing the dating periods for Whole Blood and blood component products, we took into account existing regulations, guidance documents, package inserts for solutions used for manufacture or storage of Whole Blood and blood components, and operator

instruction manuals for devices used in the manufacture of Whole Blood and blood component products. Because we understand from these materials that these dating periods are in current use, and because blood establishments can request an exception under § 640.120 (21 CFR 640.120), we do not anticipate significant objections to codifying this information. Similarly, we are proposing to remove § 610.53(d) because it is duplicative of § 640.120. In addition, we recognize that future scientific understanding and new technology, such as the implementation of pathogen reduction technology or the approval of extended storage systems, could affect what dating periods would be necessary, as a scientific matter, for Whole Blood and blood components. For this reason, the proposed rule would allow for changes to the dating periods specified in proposed § 610.53(b) when the dating period is otherwise specified in the instructions for use by the blood collection, processing, and storage system approved or cleared for such use by FDA.

In conclusion, the proposed amendments to the regulations are designed to be consistent with updated practices in the biological product industry and to remove unnecessary or outdated requirements. FDA is proposing this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations to provide flexibility without diminishing public health protection. If finalized, FDA does not anticipate that applicants for licensed biological products would need to revise information in BLAs in order to conform to the proposed revised regulations. Applicants must inform the Agency of any change to an approved application in accordance with § 601.12.

IV. Highlights of the Proposed Rule

FDA is proposing to revise the general biological products standards relating to dating periods and proposing to remove certain standard preparations and limits of potency. These proposed changes are designed to remove unnecessary or outdated requirements, and accommodate new and evolving technology and testing capabilities without diminishing public health protections.

FDA is proposing to remove § 610.20 because the standard preparations listed are obsolete or no longer available; standard preparations to ensure the safety, purity, and potency of a product can best be determined on a product specific basis; and standard

preparations may be obtained from other sources. Applicants for biological product licenses currently identify standard preparations for the product and purpose (e.g., potency) in the BLA, and the proposed standard preparations are reviewed by FDA during the regulatory process. The standard preparations may include standard preparations developed by the applicant as well as appropriate standard preparations that can be obtained from other sources. Consistent with current practice, CBER will continue to make and supply standard preparations when appropriate, as well as continue to collaborate with external organizations in the development and assessment of physical standard preparations for licensed biological products.

We are proposing to remove § 610.21 because these potency limits are best described in the BLAs on a product specific basis. Applicants for biological product licenses already identify standards for potency to help ensure the safety, purity, and potency of the product and purpose within their BLA, and the proposed standards are reviewed by FDA during the regulatory process. The use of a potency limit is suitably described in the specific product's BLA and allows for its continued and appropriate use in the absence of § 610.21.

We are proposing to revise § 610.50 by making a minor amendment to the section heading, removing the current language, redesignating § 610.53(b) as § 610.50(a) with edits, revising § 610.50(b), and adding new § 610.50(c). Current § 610.53(b), which applies to all biological products, would be moved to § 610.50(a) and edits will be made for better organization and clarification. Section 610.50(b) would be revised and § 610.50(c) would be added to clarify how the date of manufacture is set for purposes of determining the dating period for general biological products and for Whole Blood and blood components, respectively.

We are proposing to amend the section heading of § 610.53 to reflect that it would only address dating periods for Whole Blood and blood components. We are proposing to revise § 610.53(a) since this section would only apply to the dating periods for Whole Blood and blood components. We are proposing to redesignate current § 610.53(c) as § 610.53(b) and revise the text to provide an explanation on using the table and to correspond with 21 CFR 606.121(c)(7). We are proposing to revise the text and table to eliminate those products for which storage periods, storage conditions, and dating periods are better established by data

submitted in the BLA, and to delete those products which are no longer manufactured. The dating period and storage conditions for these products would be identified in the BLA. We are proposing to include an updated list of Whole Blood and blood component products with their applicable storage temperatures and dating periods, which are based upon available information, including data relating to the anticoagulant or preservative solution in the product, usage, clinical experience, laboratory testing, or further processing. The proposed table contains a list of storage temperatures and dating periods for Whole Blood and blood components that FDA has reviewed and determined to be necessary to help ensure the safety, potency, and purity of these products. In listing the dating periods for the Whole Blood and blood component products, we took into account existing guidance documents, package inserts for solutions used for manufacture or storage of Whole Blood and blood components, and operator instruction manuals for devices used in the manufacture of Whole Blood and blood component products. We are proposing to redesignate § 610.53(c) as § 610.53(b) and to remove all products regulated by FDA's Center for Drug Evaluation and Research (CDER) from the table. Finally, we are proposing to remove § 610.53(d) because it is duplicative of § 640.120.

V. Legal Authority

FDA is issuing this proposed rule under the biological products provisions of the PHS Act (42 U.S.C. 216, 262, 263, 263a, and 264) and the drugs and general administrative provisions of the FD&C Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, and 381). Under these provisions of the PHS Act and the FD&C Act, we have the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, and potent, and prevent the introduction, transmission, and spread of communicable disease.

VI. Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, and 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 us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule would remove regulations and revise regulations to be consistent with updated practice, 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.

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.31(h) 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.

VIII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains 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 part 610 have been approved under OMB control number 0910–0338. The proposed removal of § 610.53(d) would impact OMB control number 0910–0338. We would remove § 610.53(d) because it is duplicative of § 640.120, which is also approved under the same collection of information. While there would be no net change in the burden estimate, the current approved collection of information would be updated to reflect this removal. The actions that we propose to take in this proposed rule would not create a substantive or material modification to this approved collection of information. Therefore, FDA tentatively concludes that OMB has already approved the information collection proposed here and the proposed requirements in this document are not subject to additional review by OMB.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 610 be amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 1. The authority citation for part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

Subpart C [Removed and Reserved]

■ 2. Remove and reserve subpart C, consisting of §§ 610.20 and 610.21.
■ 3. Revise § 610.50 to read as follows:

§ 610.50 Date of manufacture for biological products.

(a) When the dating period begins. The dating period for a product must begin on the date of manufacture as described in paragraphs (b) and (c) of this section. The dating period for a combination of two or more products must be no longer than the dating period of the component with the shortest dating period.

(b) Determining the date of manufacture for biological products other than Whole Blood and blood components. The date of manufacture for biological products, other than Whole Blood and blood components, must be identified in the approved

biologics license application as one of the following, whichever is applicable: The date of:

- (1) Potency test or other specific test as described in a biologics license application or supplement to the application;
 - (2) Removal from animals or humans
 - (3) Extraction;
 - (4) Solution;
 - (5) Cessation of growth;
 - (6) Final sterile filtration of a bulk solution;
 - (7) Manufacture as described in part 660 of this chapter; or
 - (8) Other specific manufacturing activity described in a biologics license application or supplement to the biologics license application.
- (c) Determining the date of manufacture for Whole Blood and blood components. (1) The date of manufacture for Whole Blood and blood components must be one of the following, whichever is applicable:

- (i) Collection date and/or time;
 - (ii) Irradiation date;
 - (iii) The time the red blood cell product was removed from frozen storage for deglycerolization;
 - (iv) The time the additive or rejuvenation solution was added;
 - (v) The time the product was entered for washing or removing plasma (if prepared in an open system);
 - (vi) As specified in the instructions for use by the blood collection, processing, and storage system approved or cleared for such use by FDA; or
 - (vii) As approved by the Director, Center for Biologics Evaluation and Research, in a biologics license application or supplement to the application.
- (2) For licensed Whole Blood and blood components, the date of manufacture must be identified in the

approved biologics license application or supplement to the application.

■ 4. Revise § 610.53 to read as follows:

§ 610.53 Dating periods for Whole Blood and blood components.

(a) *General.* Dating periods for Whole Blood and blood components are specified in the table in paragraph (b) of this section.

(b) *Table of dating periods.* In using the table in this paragraph, when a product in column A is stored at the storage temperature prescribed in column B, storage of a product must not exceed the dating period specified in column C, unless a different dating period is specified in the instructions for use by the blood collection, processing, and storage system approved or cleared for such use by FDA. Container labels for each product must include the recommended storage temperatures.

WHOLE BLOOD AND BLOOD COMPONENTS STORAGE TEMPERATURES AND DATING PERIODS

A	B	C
Product	Storage temperature	Dating period
Whole Blood		
ACD, CPD, CP2D	Between 1 and 6 °C	21 days from date of collection.
CPDA-1	do ¹	35 days from date of collection.
Red Blood Cells		
ACD, CPD, CP2D	Between 1 and 6 °C	21 days from date of collection.
CPDA-1	do	35 days from date of collection.
Additive solutions	do	42 days from date of collection.
Open system (e.g., deglycerolized, washed)	do	24 hours after entering bag.
Deglycerolized in closed system with additive solution added.	do	14 days after entering bag.
Irradiated	do	28 days from date of irradiation or original dating, whichever is shorter.
Frozen	–65 °C or colder	10 years from date of collection.
Platelets		
Platelets	Between 20 and 24 °C	5 days from date of collection.
Platelets	Other temperatures according to storage bag instructions.	As specified in the instructions for use by the blood collection, processing, and storage system approved or cleared for such use by FDA.
Plasma		
Fresh Frozen Plasma	–18 °C or colder	1 year from date of collection.
Plasma Frozen Within 24 Hours After Phlebotomy.	do	1 year from date of collection.
Plasma Frozen Within 24 Hours After Phlebotomy Held at Room Temperature Up To 24 Hours After Phlebotomy.	do	1 year from date of collection.
Plasma Cryoprecipitate Reduced	do	1 year from date of collection.
Plasma	do	5 years from date of collection.
Liquid Plasma	Between 1 and 6 °C	5 days from end of Whole Blood dating period.
Source Plasma (frozen injectable)	–20 °C or colder	10 years from date of collection.
Source Plasma Liquid (injectable)	10 °C or colder	According to approved biologics license application.
Source Plasma (noninjectable)	Temperature appropriate for final product	10 years from date of collection.
Therapeutic Exchange Plasma	–20 °C or colder	10 years from date of collection.

WHOLE BLOOD AND BLOOD COMPONENTS STORAGE TEMPERATURES AND DATING PERIODS—Continued

A	B	C
Product	Storage temperature	Dating period
Cryoprecipitated AHF		
Cryoprecipitated AHF	–18 °C or colder	1 year from date of collection of source blood or from date of collection of oldest source blood in pre-storage pool.
Source Leukocytes		
Source Leukocytes	Temperature appropriate for final product	In lieu of expiration date, the collection date must appear on the label.

¹ The abbreviation “do.” for ditto is used in the table to indicate that the previous line is being repeated.

Dated: April 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–10386 Filed 5–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–5928–N–01]

Notice of Demonstration To Test Proposed New Method of Assessing the Physical Conditions of Voucher-Assisted Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: Through this document, HUD solicits comment on a demonstration designed to test a new method of assessing the physical condition of housing assisted by HUD vouchers (voucher-assisted housing). In the Joint Explanatory Statement accompanying the act appropriating funds for HUD in Fiscal Year (FY 2016), Congress directed HUD to implement a single inspection protocol for public housing and voucher units. This demonstration would commence the process for implementing a single inspection protocol.

DATES: *Comments Due Date:* July 5, 2016.

ADDRESSES: Interested persons are invited to submit comments to the Office of the General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title and should contain the information specified in the “Request for

Comments” section. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

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

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

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

Public Inspection of Comments. All comments and communications submitted to HUD will be available, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the

HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Daniel R. Williams, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington DC 20410–4000; telephone number 202–475–8586 (this is not a toll-free number). Persons with hearing or speech impairments may contact this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Structure of the Notice

The following four sections discuss the background through the solicitation of comments. Section II below provides background information on oversight of the Housing Choice Voucher inspection program and explains the origins of the Uniform Physical Condition Standards for Vouchers (UPCS–V), an alternative approach for ensuring safe, habitable voucher-assisted housing. In Section III, the notice explains the three main areas that will be evaluated during the demonstration, which are: The objective condition standards including a list of life threatening and emergency items that must be addressed, the revised information technology (IT) processes, and the new oversight approach. Also in Section III, HUD discusses the general public housing agency (PHA) participation criteria it will use to select a representative mix of volunteer PHAs. In Section IV, HUD describes the process by which HUD will assess the results of the demonstration. In the last section of this notice, Section V, HUD

solicits public comment generally as well as on several questions of specific interest.

II. Background

HUD's Housing Choice Voucher (HCV) program serves approximately 2.2 million households nationwide. The HCV program is administered by PHAs at the State and local levels and allows participants the opportunity to rent from private landlords in the neighborhood of their choosing. The goal of the HCV program is to enable access to decent, safe and sanitary affordable housing for low-income families. In the 1970's HUD established housing quality standards (HQS) in accordance with the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437 *et seq.*). Section 8(o)(8)(B) of the 1937 Act (42 U.S.C. 1437f(o)(8)(B)), directs HUD to establish standards for safe and habitable housing. These standards are codified in HUD regulations at 24 CFR 982.401. PHAs use these standards to determine if housing meets the minimum criteria necessary for the safety and habitability of occupants assisted under the program.

The HUD Office of Inspector General (OIG) has released several audit reports and evaluations that identified weakness in the HCV inspection program.¹ These OIG reports and other factors led to the report of the Senate Committee on Appropriations, Report 113-045, that accompanied the Senate bill for HUD's 2014 appropriations, and directed HUD to "... move to a consistent inspection standard across housing assistance programs, as well as [for] oversight of Section 8 units."² In response to this directive, HUD conducted a quality assurance review of HCV units using its current HQS inspection model.³ The results of these inspections showed that the current HQS protocol lacked objective, well-defined deficiency descriptions, was unable to capture granular unit conditions, and relied on a paper inspection form. In addition, there was an absence of modern health standards such as carbon monoxide detectors and sprinkler systems, and an absence of a universal list of life threatening or emergency deficiencies. HUD determined that these factors resulted in inconsistent application of HQS standards, and there was potential for inconsistent housing outcomes and

exposure of families to health and safety hazards.

At the conclusion of the quality control review, HUD accelerated the search for a replacement to the Housing Quality Standards, leading to the eventual development of UPCS-V. In the Joint Explanatory Statement accompanying the Consolidated Appropriations Act of 2016, Public Law 114-113, approved December 18, 2015, Congress directed HUD to implement a single inspection protocol for public housing and voucher units.⁴ This demonstration would commence the process for implementing a single inspection protocol by soliciting PHAs to voluntarily move to the single inspection protocol, conduct field testing, and participate in oversight and monitoring activities related to the new standard. In addition to improving outcomes for families and aligning program standards, this demonstration will provide valuable feedback to HUD about how to efficiently and effectively implement UPCS-V at all PHAs. Congress has provided HUD with funding to improve its oversight of the HCV inspection program and to move the inspection standard for the HCV program to one that is consistent with other affordable housing programs and that incorporates modern health and safety practices.⁵

III. The Demonstration

A. Overview

In response to Congressional direction and HUD's own goal to improve the effectiveness of the inspection of public and assisted housing while minimizing burdens, HUD is developing a new inspection and oversight approach called UPCS-V. UPCS-V incorporates housing health and safety constructs, concepts from the Uniform Physical Condition Standard (UPCS), codified in HUD regulations at 24 CFR 5.703, and HQS, codified at 24 CFR 982.401. The new UPCS-V will include deficiency definitions and decision criteria, and tailored standards and protocols to better meet HCV program needs. The UPCS protocol is currently recognized by industry stakeholders as the benchmark for government-assisted and affordable housing inspections. This Demonstration is the first step in implementing an aligned inspection protocol for public housing/multi-

family housing and voucher programs, and will test the UPCS-V inspection model's ability to assess the physical condition of assisted housing, improve service delivery, enhance oversight and risk management capabilities, and better identify health and safety hazards in the home.

B. The New Inspection Model and Demonstration Protocols

Under this Demonstration, HUD will test, for up to three years, with up to 250 PHAs, the UPCS-V model as a new method of assessing the physical condition of voucher-assisted housing.

In addition to hands-on training and technical assistance that will be provided by HUD to participating PHAs, some additional benefits of participating in the Demonstration include the opportunity to provide input to HUD on further refining the UPCS-V standards and processes, and the ability to evaluate, test, and refine internal PHA systems and processes.

There are three components to the Demonstration, each of which may run concurrently:

- Evaluation of Revised Inspection Model (UPCS-V)
- Data Standardization and Information Exchange
- Oversight and Performance Improvement

Component 1: Evaluation of the Revised Inspection Model (UPCS-V)

For the past 17 years, HUD has used the UPCS protocol when conducting over 310,000 physical inspections of public housing (PH) and subsidized multifamily housing (MFH) developments, solidifying UPCS as the industry standard for government-assisted and affordable housing inspections. HUD leveraged its experience with UPCS and developed a product tailored to the objectives of the HCV program. The scope of the inspection, the procedural guidelines, and the individual deficiencies have been modified to emphasize those areas that present the highest risk of harm to the family living in the HCV assisted unit.

UPCS-V seeks to utilize well-defined and objective deficiency descriptions that can be used consistently within and across PHAs. The following table summarizes some of the high-level similarities and differences between UPCS-V and HQS.

¹ See e.g., HUD OIG Reports: 2008-AT-003; 2012-BO-1005.

² See page 100 of <https://www.gpo.gov/fdsys/pkg/CRPT-113srt45/pdf/CRPT-113srt45.pdf>.

³ See http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/oed.

⁴ See page 41 of Division L of the FY2016 Joint Explanatory Statement. See <https://rules.house.gov/bill/114/hr-2029-sa>.

⁵ See Title II of Division K of the FY2015 Joint Explanatory Statement. See <https://www.congress.gov/congressional-record/2014/12/11/house-section/article/H9307-1>.

Item	HQS	UPCS-V
Provides standardized list of deficiencies and measurable criteria .....	.....	X
Defined standardized list of Life Threatening and Emergency items .....	.....	X
Up-to-date health and safety standards .....	.....	X
Designed as a unit-based inspection standard for federally assisted units	X	X
Inspection standard aligned with other federally assisted programs .....	.....	X
Pass/Fail results for all deficiencies	X	X
PHA ability to adopt HUD-approved variances	X	X
Uniform inspector training and registration .....	.....	X
Includes guidance through the use of decision trees that lead to more consistent observations .....	.....	X
Captures level of severity for line item deficiencies .....	.....	X
Unit and room acceptability criteria	X	X
Standardized criteria for PHA submission of electronic inspection data to HUD .....	.....	X
Customized unit condition index to provide value added analytics of inspection data to PHAs and stakeholders .....	.....	X
Photo requirements for fail deficiencies .....	.....	X
Allow PHAs the use photo and document evidence to ensure <i>all</i> fail deficiencies have been mitigated .....	.....	X

Like UPCS, HUD anticipates that the new inspection model will enable a PHA inspector to more consistently identify and accurately describe those items that pose a risk to tenant health and safety in the home. The new inspection model developed by HUD has updated standards and a well-defined list of itemized deficiencies enabling inspectors to make more accurate and objective decisions on a consistent basis. The new inspection model differs from the current HQS inspection model in that it incorporates standards based on UPCS and uses a classification system that collects a more detailed level of data resulting in

a better representation of the condition of the unit.

The new inspection protocol will capture levels of severity for line item deficiencies on an escalating scale of severity (L1, L2, L3). The classifications of minor (L1), major (L2) or significant (L3) would be used to determine the level of severity for each deficiency and to develop a unit condition index score. When considered in conjunction with a Pass/Fail determination, the unit condition index score would give residents, owners, PHAs, and HUD better insight into the overall condition of the unit. In addition to capturing a level of severity for all deficiencies, HUD will create a minimum,

standardized list of life threatening items that PHAs participating in the demonstration must treat as “24 Hour” deficiencies.

When an inspector finds Life Threatening or Emergency (LTE) deficiencies during an inspection, the inspector is to provide a list of such deficiencies to the responsible party—either tenant or owner—for repair within 24 hours. A specific set of deficiencies that must be addressed within 24 hours is not currently defined in HQS. UPCS-V will provide a list of LTE categories to use when inspecting HCV units during the Demonstration. PHAs will be responsible for additional items to this list.

GENERAL CATEGORIES OF LIFE THREATENING AND EMERGENCY ITEMS

Life threatening

- ☐ Natural or Liquid Petroleum (LP) gas leak or fumes
- ☐ Electrical problems which could result in shock or fire
- ☐ Inoperable/missing smoke or carbon monoxide detector
- ☐ Gas/Oil Fired Water Heater/HVAC with missing or misaligned chimney
- ☐ Fire extinguishers expired or missing
- ☐ Building lacks an alternate means of exit in case of fire/blocked egress

Emergency

- ☐ Missing entry door
- ☐ The HVAC system fails to meet established criteria for emergency heating or cooling with consideration for ambient temperature range and ventilation
- ☐ Absence of at least one functioning sink and toilet in unit
- ☐ No working refrigerator
- ☐ No working stove/oven or other method of heating/preparing food
- ☐ Waterlogged/damaged ceilings, floor or walls in imminent danger of potential collapse
- ☐ Major plumbing leaks or flooding
- ☐ Utilities not in service (e.g., electricity, gas (LP/natural), water or oil)
- ☐ No running hot water
- ☐ Structural integrity condition where the building, or a component of the building, is in imminent danger of potential collapse

With the inclusion of a level of severity classification and a standardized list of life threatening items, the inspection report will be able to provide a more detailed description of the unit.

As part of the Demonstration, HUD will conduct extensive field tests of the standards and protocol with a representative sample of HCV units to verify that the UPCS-V model consistently, accurately, and objectively evaluates housing conditions. The

feasibility of implementing the protocol will also be evaluated to identify potential barriers that would prevent PHAs from successfully implementing UPCS-V. After HUD's initial round of testing has been completed, PHAs participating in this component of the

Demonstration will conduct a portion, depending on the PHA's capabilities, of up to 100 percent of their required HCV physical inspections using UPCS-V in place of HQS. This component will continue throughout the up to three-year duration of the Demonstration until HUD has sufficient information to evaluate the success of PHAs using UPCS-V and assurance that the new method is achieving consistent results.

Component 2: Data Standardization and Information Exchange of UPCS-V Inspections

UPCS-V is designed as an electronic inspection model. This component of the Demonstration will test the transition from a paper-based to an electronic inspection approach. Initially, the UPCS-V inspections will be performed electronically using HUD-provided software, and all inspections will include photos of the most severe deficiencies. For PHAs with their own IT systems, including PHA-produced or provided inspection software, HUD also will test the feasibility of different methods of transferring physical inspection information between PHA and HUD systems.

PHAs participating in this component will be required to document and submit to HUD all UPCS-V inspections electronically. HUD anticipates that it will then review, analyze, and where appropriate, transform the inspection data into value-added information, such as a scoring report, healthy homes report, and relative risk reports, for electronic transmission back to the PHA for its use.

PHAs participating in this component of the Demonstration and that use non-HUD provided software will be required to have and maintain the information technology resources and support necessary to interface with HUD's systems using industry standard file transfer protocols such as Simple Object Access Protocol (SOAP) and Representational State Transfer (REST) standards. Some data exchange may be via transfer of flat files.

Component 3: Oversight and Performance Improvement

In this component of the Demonstration, HUD seeks to ensure PHAs are consistently identifying substandard housing, remedying such cases appropriately and in a timely manner, and accurately reporting HCV unit-based inspection outcomes to HUD. Selected PHAs will be required to participate in quality assurance and internal controls reviews, technical assistance, and training activities. As part of the Demonstration, HUD will

analyze PHAs' capacity, competencies, inspection processes and systems that are in place to effectively manage and evaluate HCV units as decent, safe, and sanitary. Further, HUD will test the capacity of the UPCS-V model to identify properties that are at risk of falling into non-compliance before the next regularly scheduled biennial inspection.

To develop an inspector performance baseline, HUD seeks to determine the acceptable variation between inspectors. HUD will conduct quality assurance inspections on HCV units to ensure inspector adherence to UPCS-V inspection standards and provide technical assistance where needed. HUD also will test both PHA and its own management controls to provide reasonable assurance that the process for planning, organizing, directing, and controlling the HCV unit-based inspection program will meet the requirements prescribed by UPCS-V.

C. Selection Criteria and General Participation Requirements

General Participation Requirements

To participate in this Demonstration, a PHA must administer a housing choice voucher program. PHAs participating in any aspect of the Demonstration will be required to participate in focus groups, conference calls, and training sessions on policies and procedures. HUD will train each participating PHA's inspectors, administrators, and quality control staff on the new inspection protocol, including how to use the inspection software. The PHAs will be responsible for scheduling inspections with all the participants, assigning inspectors, and conducting inspections. The PHA must conduct at least 10 inspections per week, and the geographic spread of those inspections should be such that 90 percent of inspections are accessible within a 30 mile (or 1 hour) driving range.

If selected, the PHA must participate in the Demonstration throughout the duration of the testing period for at least one (1) calendar year with the possibility of an extension, as determined by HUD, for a maximum total of three (3) years. PHAs that participate will also need to provide an internet connected, internet operating system (iOS) or Android based electronic handheld device (smart phone or tablet) for each PHA staff inspector participating with capability to download the required HUD-provided inspection software.

Selection Criteria

All PHAs must meet, at minimum, the general participation requirements described above. The strategic objectives for the Demonstration are for HUD to identify a diverse set of participants that will be representative of the different types of PHAs, properties and tenants found nationwide. HUD will use the following criteria to consider PHAs that have expressed an interest in participating in the Demonstration to ensure that participants represent the universe of PHAs that run HCV programs.

Participants will be selected based on the characteristics of the organization (PHA) and the type of properties and tenants it administers:

1. Characteristics of the PHA:

- Is the PHA a local or state agency?
- What percentage of HQS inspections are conducted annually?
- What percentage of the HCV housing stock is urban and what percentage is rural?
- What percentage of the PHAs inspections are HCV inspections?
- What is the number of monthly HCV inspections conducted?

2. Characteristics of the Properties & Tenants:

- What is the number of HCV voucher holders?
- What is the average rent amount?
- What is the percentage of PHA's HCV program that is Veterans Affairs Supportive Housing (VASH), Family Unification Program (FUP), and Non-Elderly Disabled (NED) participants?
- What is the average HCV family size?
- What type of housing is leased by HCV participants (single family, apartment, condo, high-rise, row house, duplex, townhouse, etc.)?
- What is the average age of the housing stock?
- What is the HCV tenant mix (by age, disability, elderly, family type, children, income level/hap amount)?

The criteria are designed to capture the variation in PHAs and market characteristics that could affect the implementation of UPCS-V. Depending on the applications for participation received and the characteristics of the PHAs applying, the criteria may be adjusted to more accurately represent the diversity of PHAs. Not all 250 participants may be selected in the first round of testing. Accordingly, as the Demonstration proceeds, HUD may expand the number of participating PHAs, revise the selection criteria, or both, to reflect HUD's experience in implementing the Demonstration.

IV. Evaluating the Demonstration

The Demonstration will provide HUD insight into the UPCS-V model, including its ability to expand HUD's oversight and risk management capabilities through a reliable, repeatable inspection process that better identifies health and safety risks to families, before implementing such a program nationwide. The Demonstration is anticipated to begin 60 days following the date of publication of this notice, with PHAs being added on a rolling basis until a representative sample has been reached. At the conclusion of the demonstration, HUD will assess its success and determine whether to implement UPCS-V on a permanent basis throughout the country.

In the evaluation of the Demonstration, HUD will assess such factors as whether the use of the new UPCS-V protocol produces (1) more consistent and accurate results, (2) data standardization and a reliable method for information exchange, and (3) increased oversight and administration of the HCV Program. The demonstration also will review the feasibility of a PHA to implement the UPCS-V protocol, a factor HUD considers necessary for an accurate evaluation of the Demonstration's success.

V. Solicitation of Public Comment

In accordance with section 470 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 3542), HUD is seeking comment on the Demonstration. Section 470 provides that HUD may not begin a demonstration program not expressly authorized by statute until a description of the demonstration program is published in the **Federal Register** and a 60-day period expires following the date of publication, during which time HUD solicits public comment and considers the comments submitted. HUD has established a public comment period of 60 days. The public comment period provided allows HUD the opportunity to consider those comments during the 60-day period, and be in a position to commence implementation of the demonstration following the conclusion of the 60-day period.

While HUD solicits comment on all aspects of the Demonstration, HUD specifically solicits comment on the following:

1. HUD is considering selecting for participation only PHAs that do not utilize contract inspectors. Are there any instances where an exception to this criterion might be useful?
2. Will utilizing commercial, off-the-shelf hardware, such as internet

connected tablets or smartphones, reduce the barriers to participation for PHAs as opposed to having PHAs use more specific devices such as those required for other HUD UPCS inspections?

3. Are there other PHA characteristics that HUD should consider in selecting PHAs to participate in the demonstration?

4. Are there other revisions outside of the UPCS criteria that HUD should consider when moving toward a single inspection protocol?

HUD requests that PHAs interested in participating in the Demonstration notify HUD by the public comment deadline for this Demonstration notice by emailing HUD at UPCSV@hud.gov, and providing the PHA name, PHA address, contact name, contact phone number, and email address.

Dated: April 28, 2016.

Lourdes Castro Ramirez,
Principal Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2016-10460 Filed 5-3-16; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-114307-15]

RIN 1545-BM77

Self-Employment Tax Treatment of Partners in a Partnership That Owns a Disregarded Entity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that clarify the employment tax treatment of partners in a partnership that owns a disregarded entity. These regulations affect partners in a partnership that owns a disregarded entity. The text of those temporary regulations serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by August 2, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-114307-15), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions

may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-114307-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-114307-15).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Andrew K. Holubeck at (202) 317-4774; concerning submission of comments, or a request for a public hearing please contact Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) relating to section 7701. The temporary regulations clarify that an entity disregarded as separate from its owner (a disregarded entity), that is treated as a corporation for purposes of employment taxes imposed under subtitle C, is not treated as a corporation for purposes of employing its individual owner (who is treated as a sole proprietor) or for purposes of employing an individual that is a partner in a partnership that owns the disregarded entity. Rather, the entity is disregarded as an entity separate from its owner for this purpose. The partners are subject to the same self-employment tax rules as partners in a partnership that does not own an entity that is disregarded as separate from its owner. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analysis

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted

to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Andrew Holubeck of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be 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 301.7701–2 is amended by revising paragraphs (c)(2)(iv)(C)(2) and adding paragraph (e)(8)(i) to read as follows:

§ 301.7701–2 Business entities; definitions

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(C) * * *

(2) [The text of the proposed amendment to § 301.7701–2(c)(2)(iv)(C)(2) is the same as the text of § 301.7701–2T(c)(2)(iv)(C)(2)

published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) * * *

(8)(i) [The text of the proposed amendments to § 301.7701–2(e)(8)(i) is the same as the text of § 301.7701–2T(e)(8)(i) published elsewhere in this issue of the **Federal Register**].

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–10384 Filed 5–3–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Parts 478 and 479

[Docket No. ATF 29P]

RIN 1140–AA33

Identification Markings Placed on Firearm Silencers and Firearm Mufflers

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Justice is considering amending the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to require licensed manufacturers, licensed importers, and nonlicensed makers to place identification markings on the outer tube of firearm silencers and firearm mufflers. The Department wishes to gather information and comments from the public and industry concerning whether or not the regulations should be amended.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before August 2, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by docket number (ATF 29P), by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** (202) 648–9741.
- **Mail:** Shermaine Kenner, Mailstop 6N–518, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue

NE., Washington, DC 20226; **ATTN:** ATF29P.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to the Federal eRulemaking portal, <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Shermaine Kenner, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648–7070.

SUPPLEMENTARY INFORMATION:

I. Background

Section 923(i) of the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. chapter 44), requires licensed importers and licensed manufacturers to identify, by means of a serial number, each firearm imported or manufactured by such importer or manufacturer. The serial number must be engraved or cast on the receiver or frame of the weapon in such manner as the Attorney General prescribes by regulation. As defined in section 921(a)(3) of the GCA, the term “firearm” includes any firearm muffler or firearm silencer. The terms “firearm silencer” and “firearm muffler” are also defined in section 921(a)(24), as follows:

[A]ny device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

With respect to certain firearms subject to the National Firearms Act (NFA) (26 U.S.C. chapter 53) (e.g., machine guns, any silencer (as defined in section 921(a)(24) of the GCA)), 26 U.S.C. 5842(a) requires each manufacturer and importer and anyone making a firearm to identify by a serial number each firearm manufactured, imported, or made. The serial number may not be readily removed, obliterated, or altered. Section 5842(a) also requires the firearm to be identified by the name of the manufacturer, importer, or maker, and such other identification as the Attorney General may prescribe by regulation.

Regulations that implement 18 U.S.C. 923(i) are set forth in 27 CFR 478.92. In general, § 478.92(a)(1)(i) requires licensed manufacturers and licensed importers of firearms to legibly identify each firearm manufactured or imported by engraving, casting, stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed and must not duplicate any serial number placed by a licensed importer or manufacturer on any other firearm. For firearms manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than $\frac{1}{16}$ inch.

In addition, § 478.92(a)(1)(ii) requires licensed manufacturers and licensed importers to conspicuously place additional identification markings on the frame, receiver, or barrel of each firearm imported or manufactured in a manner not susceptible of being readily obliterated, altered, or removed. For firearms manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of this information must be to a minimum depth of .003 inch. The additional information includes:

1. The model, if such designation has been made;
2. The caliber or gauge;
3. The name of the licensed manufacturer or licensed importer (or recognized abbreviation) and, when applicable, the name of the foreign manufacturer;
4. In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where the licensed manufacturer maintains his place of business; and
5. In the case of an imported firearm, the name of the country in which it was manufactured and the city and State (or recognized abbreviation thereof) where the licensed importer maintains his place of business.

The same marking requirements apply to manufacturers, importers or makers of NFA firearms pursuant to 27 CFR 479.102(a).

The current regulations do not specify the placement of required identification markings on firearm silencers and firearm mufflers. However, ATF has provided the industry with some guidance on this issue. In its “Frequently Asked Questions—Silencers,” dated April 17, 2008, ATF stated the following:

The silencer must be marked in accordance with 27 CFR 478.92 and 479.102. The regulations require that the markings be conspicuous and legible, meaning that the markings may be placed on any external part, such as the outer tube or end cap. ATF strongly recommends that manufacturers place all required markings on the outer tube of the silencer, as this is the accepted industry standard. Moreover, this practice eliminates the need to remark in the event an end cap bearing the markings is damaged and requires replacement.

II. National Firearms Act Trade and Collectors Association Petition

On April 27, 2008, ATF received a petition filed on behalf of the National Firearms Act Trade and Collectors Association (NFATCA). NFATCA is a trade group representing the firearms and import community. Some of its members primarily manufacture, transport, and possess silencers for lawful use.

Although in its April 2008 guidance ATF recommended that manufacturers place all required markings on the outer tube of the silencer, it stated that the required markings could also be placed on any external part of the silencer, including the end cap, provided the required markings are conspicuous and legible. According to the petitioner, the industry’s response to ATF’s guidance was not favorable:

There has been an overwhelmingly negative response from the members of our trade to this particular guidance . . . there is strong policy agreement between ATF and our trade that only the silencer [outer] tube should be marked in accordance with the marking requirements of Parts 478 and 479 of Title 27 of the Code of Federal Regulations. . . . Allowing end caps to be the possible marking location for silencers does constitute a serious public safety issue in the areas of diversion, tracing, and evasion of other NFA rules.

In addition, the petitioner stated that “[w]e have also been further advised that the Bureau does not see how they would be able to take any adverse legal action against a person or entity that should decide to mark the end caps of a silencer without promulgating a change in the regulations.”

Accordingly, the petitioner requested that the relevant regulations be amended to require that a silencer be marked on the outer tube (as opposed to other locations), unless a variance is granted by the Director on a case-by-case basis for good cause. ATF finds that the petitioner has raised valid concerns and it believes that an amendment of the regulations is warranted. Therefore, based upon the statutory language and the facts as outlined below, ATF seeks to address the marking requirements of silencers to ensure that the serial

numbers are placed on the part of the silencer that is least likely to be destroyed or removed, and therefore most likely to ensure that law enforcement are able to identify and trace a particular firearm silencer or firearm muffler.

III. Discussion

ATF is requesting information from industry members, trade associations, consumers, and all other interested parties to determine whether to require placement of identification markings on the outer tube of firearm silencers and firearm mufflers. Along with industry members, ATF considers the term “outer tube” to mean the largest external part of a silencer and is that portion of a silencer which encapsulates all components of the silencing unit and which contains and controls the expansion of the escaping gases.

As indicated, placing all required markings on the outer tube of a completed firearm silencer or firearm muffler is the accepted industry standard. In addition, requiring identification markings to be placed on a single part provides consistency of markings throughout the industry and eliminates the need to remark a device in the event an end cap bearing the markings is damaged and requires replacement. If a silencer is not aligned with the barrel, the end cap might be damaged when a projectile passes through it. Outer tubes are rarely damaged in this way. Such damage often requires replacement of the end cap. Further, end caps are often removable so that processors may access the internal components within the silencer. Permitting serialization of a removable and fungible component may facilitate trafficking or illegal transfer of silencers by permitting registrants to use the serialized end cap of a registered silencer with an otherwise unregistered silencer.

Although ATF is soliciting comments on the following specific questions, it is also requesting any relevant information on the subject.

1. What percentage of manufacturers mark the end cap? If an outer tube is present, why do manufacturers mark the end cap instead of the outer tube of the silencer?

2. If there is an additional cost (fixed or variable) between marking the end cap instead of the outer tube, how would ATF estimate such costs across the entire industry?

3. Are there other parts or locations where the markings may be placed and still meet the requirements? If so, where?

4. Are there silencer designs for a completed device for which marking the outer tube would be impossible? If so, what are those designs?

5. When there are multiple outer tubes that make up one complete device, how should they be marked?

IV. Statutory and Executive Order Review

This advance notice of proposed rulemaking (ANPRM) has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation.

The Department of Justice has determined that this ANPRM is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this ANPRM has been reviewed by the Office of Management and Budget. However, this action does not propose or impose any requirements. The ANPRM is being published to seek information from the public about the feasibility of marking silencer tubes.

Furthermore, the requirements of section 603 of the Regulatory Flexibility Act do not apply to this action because, at this stage, it is an ANPRM and not a "rule" as defined in section 601 of the Regulatory Flexibility Act. Following review of the comments received in response to this ANPRM, if ATF promulgates a notice or notices of proposed rulemaking regarding this matter, ATF will conduct all analyses required by the Regulatory Flexibility Act, Executive Order 12866, and any other statutes or Executive Orders relevant to those rules and in effect at the time of promulgation.

Public Participation

A. Comments Sought

ATF requests comments on this ANPRM from all interested persons. ATF specifically requests comments on the clarity of this ANPRM and how easy it is to understand. Additional comments are sought on the costs or benefits of the proposal in this ANPRM and on the appropriate methodology and data for calculating those costs and benefits.

All comments must reference the docket number (ATF 29P), be legible, and include the commenter's complete first and last name and full mailing address. ATF will not consider, or respond to, comments that do not meet these requirements or comments

containing profanity. In addition, if ATF cannot read your comment due to technical difficulties and cannot contact you for clarification, ATF may not be able to consider your comment.

ATF will carefully consider all comments, as appropriate, received on or before the closing date, and will give comments received after that date the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not acknowledge receipt of comments.

B. Confidentiality

ATF will make all comments meeting the requirements of this section available for public viewing at ATF and on the Internet as part of the eRulemaking initiative, and subject to the Freedom of Information Act. ATF will not redact personal identifying information that appears within the comment and it will appear on the Internet.

The commenter should not include material that is considered confidential or inappropriate for disclosure to the public. Any person submitting a comment containing confidential material shall specifically designate that portion of the comment that contains material that is confidential under law (e.g., trade secrets, processes). The commenter shall place any portion of a comment that is confidential under law on pages separate from the balance of the comment with each page prominently marked "confidential" at the top of the page.

Confidential information will be included in the rulemaking administrative record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, a commenter's full first and last name and complete mailing address are not exempt from disclosure.

C. Submitting Comments

Submit comments in any of three ways (but do not submit the same comments multiple times or by more than one method).

- **Federal eRulemaking Portal:** We strongly recommend that you submit your comments to ATF via the Federal eRulemaking portal. Visit <http://www.regulations.gov> and follow the instructions for submitting comments. Comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to

several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

- **Mail:** Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments must appear in minimum 12 point font size (.17 inches), include the commenter's complete first and last name and full mailing address, be signed, and may be of any length.

- **Facsimile:** Submit comments by facsimile transmission to (202) 648-9741. Faxed comments must:

- (1) Be legible and appear in minimum 12-point font size (.17 inches);
- (2) Be on 8½" x 11" paper;
- (3) Be signed and contain the commenter's complete first and last name and full mailing address; and
- (4) Be no more than five pages long.

D. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director of ATF within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of the petition, this advance notice, and the comments received will be available at <http://www.regulations.gov> (search for Docket No. ATF 29P) and for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E-063, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648-8740.

Drafting Information

The author of this document is Shermaine Kenner, Office of Regulatory Affairs, Enforcement Programs and Service; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects

27 CFR Part 478

Administrative practice and procedure, Arms and munitions, Customs duties and inspection, Exports, Imports, Intergovernmental relations, Law enforcement officers, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Customs duties and inspection, Excise taxes, Exports, Imports, Military

personnel, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Transportation.

Authority and Issuance

This notice is issued under the authority of 5 U.S.C. 552(a); 18 U.S.C. 847, 921–931; and 44 U.S.C. 3504(h).

Dated: April 28, 2016.

Thomas E. Brandon,

Deputy Director.

[FR Doc. 2016–10382 Filed 5–3–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0267]

RIN 1625–AA00

Safety Zone; Tall Ships Challenge Great Lakes 2016, Fairport Harbor, OH, Bay City, MI, Chicago, IL, Green Bay, WI, Duluth, MN, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create safety zones around each tall ship visiting the Great Lakes during the Tall Ships Challenge 2016 race series. These safety zones will provide for the regulation of vessel traffic in the vicinity of each tall ship in the navigable waters of the United States. The Coast Guard is taking this action to safeguard participants and spectators from the hazards associated with the limited maneuverability of these tall ships and to ensure public safety during tall ships events. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 3, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0267 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 Mark Bobal, Ninth District Inspections and Investigations Branch, Passenger Vessel Safety Specialist, U.S. Coast Guard;

telephone 216–902–6052, email Mark.D.Bobal@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

During the Tall Ships Challenge Great Lakes 2016, tall ships will be participating in parades and then mooring in the harbors of Fairport Harbor, OH, Bay City, MI, Chicago, IL, Green Bay, WI, Duluth, MN, and Erie, PA. This is a tri-annual event that teaches character building and leadership through sail training. The Tall Ships event seeks to educate the public about both the historical aspects of sailing ships as well as their current use as training vessels for students. Tall ships are large, traditionally-rigged sailing vessels. The event will consist of festivals at each port of call, sail training cruises, tall ship parades, and races between the ports. More information regarding the Tall Ships Challenge 2016 and the participating vessels can be found at <http://www.sailtraining.org/tallships/2016greatlakes/TSC2016index.php>.

At 12:01 a.m. July 6, 2016, a safety zone will be established around each tall ship participating in this event. The safety zone around each ship will remain in effect as the tall ships travel throughout the Great Lakes. The safety zones will terminate at 12:01 a.m. on September 12, 2016.

These safety zones are necessary to protect the tall ships from potential harm and to protect the public from the hazards associated with the limited maneuverability of tall sailing ships. When operating under sail they require a substantial crew to manually turn the rudder and adjust the sails, therefore they cannot react as quickly as modern ships. Additionally, during parades of sail the tall ships will be following a set course through a crowded harbor, it is imperative that spectator craft stay clear since maneuvering the tall ships to avoid large crowds of spectator craft would not be possible. Due to the high profile nature and extensive publicity associated with this event, each Captain of the Port (COTP) expects a large number of spectators in confined areas adjacent to the tall ships. The combination of large numbers of recreational boaters, congested waterways, boaters crossing

commercially transited waterways and low maneuverability of the tall ships could easily result in serious injuries or fatalities. Therefore, the Coast Guard will enforce a safety zone around each ship to ensure the safety of both participants and spectators in these areas. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish safety zones from 12:01 a.m. on July 6, 2016 until 12:01 a.m. on September 12, 2016. The safety zones would cover all navigable waters within 100 yards of a tall ship in the Great Lakes. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during the 2016 Tall Ships Challenge. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. If the tall ships are operating in a confined area such as a small harbor and there is not adequate room for vessels to stay out of the safety zone because of a lack of navigable water, then vessels will be permitted to operate within the safety zone and shall travel at the minimum speed necessary to maintain a safe course. The navigation rules shall apply at all times within the safety zone. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders 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 safety zone. Vessel traffic would be able to safely

transit around this safety zone or through it at slow speed in congested areas. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

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

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.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting more than one week. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.ID. 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 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0073 to Ninth Coast Guard District to read as follows:

§ 165.T09–0073 Safety Zone; Tall Ships Challenge Great Lakes 2016; Fairport Harbor, OH, Bay City, MI, Chicago, IL, Green Bay, WI, Sturgeon Bay, WI, Duluth, MN, Erie, PA.

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

(1) *Navigation rules* means the Navigation Rules, International and Inland (See, 1972 COLREGS and 33 U.S.C. 2001 *et seq.*).

(2) *Official patrol* means those persons designated by Captain of the Port Buffalo, Detroit, Sault Ste. Marie, Duluth and Lake Michigan to monitor a tall ship safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone, and take other actions authorized by the cognizant Captain of the Port.

(3) *Public vessel* means vessels owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(4) *Tall ship* means any sailing vessel participating in the Tall Ships Challenge 2016 in the Great Lakes.

(b) *Location.* The following areas are safety zones: All navigable waters of the United States located in the Ninth Coast Guard District within a 100 yard radius of any tall ship.

(c) *Regulations.* (1) No person or vessel is allowed within the safety zone unless authorized by the cognizant Captain of the Port, their designated representative, or the on-scene official patrol.

(2) Persons or vessels operating within a confined harbor or channel, where there is not sufficient navigable water outside of the safety zone to safely maneuver are allowed to operate within the safety zone and shall travel at the minimum speed necessary to maintain a safe course. Vessels operating within the safety zone shall not come within 25 yards of a tall ship unless authorized by the cognizant Captain of the Port, their designated representative, or the on-scene official patrol.

(3) When a tall ship approaches any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the tall ship's safety zone unless ordered by or given permission from the cognizant

Captain of the Port, their designated representative, or the on-scene official patrol to do otherwise.

(d) *Effective period.* This rule is effective from 12:01 a.m. on Wednesday, July 6, 2016 through 12:01 a.m. on Monday September 12, 2016.

(e) *Navigation Rules.* The Navigation Rules shall apply at all times within a tall ships safety zone.

Dated: April 8, 2016.

J.E. Ryan,
Rear Admiral, U.S. Coast Guard, Commander,
Ninth Coast Guard District.

[FR Doc. 2016–10453 Filed 5–3–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS–HQ–ES–2015–0171;
FF09E40000 167 FXES11150900000]

RIN 1018–BB25

Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Candidate Conservation Agreements With Assurances

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), propose changes to the regulations concerning enhancement of survival permits issued under the Endangered Species Act of 1973, as amended (ESA), associated with Candidate Conservation Agreements with Assurances. We propose to add the term “net conservation benefit” to the Candidate Conservation Agreements with Assurances regulations, and to eliminate references to “other necessary properties” to clarify the level of conservation effort we require each agreement to include in order for us to approve a Candidate Conservation Agreement with Assurances. We are also proposing these changes to the Candidate Conservation Agreement with Assurances policy in a separate document published in today's **Federal Register**.

DATES: We will accept comments that we receive on or before July 5, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

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

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter the docket number for this proposed rule, which is FWS–HQ–ES–2015–0171. Then click on the Search button. In the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!” Please ensure that you have found the correct document before submitting your comment.

- *By hard copy:* Submit by U.S. mail or hand delivery to: Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2015–0171, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Jim Serfis, Chief, Branch of Conservation and Communications, U.S. Fish and Wildlife Service Headquarters, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:**Background**

Through its Candidate Conservation program, one of the FWS's goals is to encourage the public to take specific conservation actions for declining species prior to them being listed under the ESA (16 U.S.C. 1531 *et seq.*). The cumulative outcome of such conservation actions may result in not needing to list a species; or may result in listing a species as threatened instead of endangered, and provide the basis for the species' recovery and eventual removal from the Federal List of Endangered and Threatened Wildlife. The Service put in place a voluntary conservation program for non-Federal property owners to help accomplish this goal: Candidate Conservation Agreements with Assurances (CCAAs). On June 17, 1999, the policy for this type of agreement (64 FR 32726) and implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) (64 FR 32706) were made final. On May 3, 2004, we published a final rule (69 FR 24084) to revise the CCAA regulations to make

them easier to understand and implement by, among other things, defining “property owner” and by clarifying several points, including the transfer of permits, permit revocation, and advanced notification of take.

To participate in a CCAA, non-Federal property owners agree to implement specific conservation actions on their land that reduce or eliminate threats to the species that are covered under the agreement. An ESA section 10(a)(1)(A) Enhancement of Survival permit is issued to the agreement participant providing a specific level of incidental take coverage should the property owner’s agreed-upon conservation actions and routine property management actions (*e.g.*, agricultural, ranching, or forestry activities) result in take of the covered species if listed. Property owners receive assurances that they will not be required to undertake any conservation actions other than those agreed to if new information indicates that additional or revised conservation measures are needed for the species, and they will not be subject to additional resource use or land use restrictions.

Based on our experience reviewing and approving CCAs over the past 16 years, we are proposing changes to the regulations that will clarify the level of conservation effort each agreement needs to include in order for FWS to approve an agreement and issue a permit.

Purpose of Proposed Changes to Current Regulations at 50 CFR 17.22 and 17.32

We are proposing changes to the CCAA regulations at 50 CFR 17.22(d) and 17.32(d) consistent with the proposed revisions to the CCAA policy published separately in today’s **Federal Register**. The regulation changes are to (1) include the term “net conservation benefit” to clarify the level of conservation effort that is necessary in order to issue a permit associated with a CCAA and (2) eliminate references to “other necessary properties.”

Under the current policy and regulations, to approve a CCAA we must “determine that the benefits of the conservation measures implemented by a property owner under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species.” The confusion created by the hypothetical concept of conservation measures needing to be implemented on “other necessary properties” is why we

are clarifying and revising the CCAA standard to require a net conservation benefit to the covered species specifically on the property to be enrolled and eliminating references to “other necessary properties.”

In concert with the proposed revisions to our CCAs policy, published elsewhere in today’s **Federal Register**, these changes to the regulations would help reassure landowners participating in CCAs that additional conservation measures above and beyond those contained in the CCAA would not be required, and that additional land, water, or resource use restrictions would not be imposed upon them should a species that resides on their property become listed in the future.

Request for Information

Any final rule based on this proposal will consider information and recommendations submitted in a timely manner from all interested parties. We solicit comments, information, and recommendations from governmental agencies, Native American tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties on this proposed rule. All comments and materials we receive by the date listed in **DATES**, above, will be considered prior to the approval of a final rule.

You may submit your information concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and supporting documentation that we receive in response to this proposed rule will be available for you to review at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service Headquarters (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget’s

Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This proposed rule is consistent with Executive Order 13563, and in particular with the requirement of retrospective analysis of existing rules, designed “to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or his or her designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that, if adopted as proposed, this proposed rule would not have a significant economic effect on a substantial number of small entities.

The proposed rule would revise the regulations governing issuance of an enhancement of survival permit in conjunction with a CCAA to clarify but

not change current practice and does not place any new requirements on any non-Federal property owner that may seek to apply for approval of a CCAA.

Paperwork Reduction Act of 1995 (PRA)

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 *et seq.*). This proposed rule will not impose new recordkeeping or reporting requirements on State, local, or tribal governments; individuals; businesses; or organizations. OMB has reviewed and approved the application form that property owners use to apply for approval of a CCAA and associated enhancement of survival permit (Form 3–200–54) and assigned OMB Control Number 1018–0094, which expires January 31, 2017. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*): (a) On the basis of information contained in the *Regulatory Flexibility Act* section above, this proposed rule would not “significantly or uniquely” affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed rule would not place additional requirements on any city, county, or other local municipalities.

(b) This proposed rule would not produce a Federal mandate on State, local, or tribal governments or the private sector of \$100 million or greater in any year; that is, this proposed rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act. This proposed rule would impose no obligations on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule would not pertain to “taking” of private property interests, nor would it directly affect private property. A takings implication

assessment is not required because this proposed rule (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This proposed rule would substantially advance a legitimate government interest (conservation and recovery of endangered and threatened species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule would have significant Federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule pertains only to approving enhancement of survival permits in conjunction with a CCAA under the ESA, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This proposed rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This proposed rule would clarify the issuance criteria for an enhancement of survival permit associated with a CCAA under the ESA.

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have considered possible effects on federally recognized Indian tribes and have preliminarily determined that there are no potential adverse effects of issuing this proposed rule. Our intent is to provide clarity in regard to the net conservation benefit requirements for a CCAA to be approved, including any agreements in which Tribes may choose to participate. We will continue to keep our tribal obligations in mind as we finalize this proposed rule.

National Environmental Policy Act

We analyzed the proposed regulations in accordance with the criteria of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality’s Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508), and the Department of the Interior’s NEPA procedures (516 DM 2 and 8; 43 CFR part 46) and determined that the proposed regulations are categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4 and 43 CFR 46.210(i). This categorical exclusion applies to policies, directives, regulations, and guidelines that are “of an administrative, financial, legal, technical, or procedural nature.” This action does not trigger an extraordinary circumstance, as outlined in 43 CFR 46.215, applicable to the categorical exclusion. Therefore, the proposed regulations do not constitute a major Federal action significantly affecting the quality of the human environment.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule, if made final, is not expected to affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of This Proposed Rule

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 or policy 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 **ADDRESSES**. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend part 17, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

- 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. Amend § 17.22 by revising paragraph (d)(8) to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(d) * * *

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to achieve a net conservation benefit, which is defined as the cumulative benefits of specific conservation measures designed to improve the status of a covered species by removing or minimizing threats, stabilizing populations, and increasing its numbers and improving its habitat.

(i) The benefit would be measured by the projected increase in the species' population or improvement of the species' habitat, taking into account the duration of the Agreement and any off-setting adverse effects attributable to the incidental taking allowed by the enhancement of survival permit.

(ii) The conservation measures and management activities covered by the agreement must be designed to reduce or eliminate those current and future threats on the property that are under the property owner's control, in order to increase the species populations or improve its habitat.

(iii) In the case where the species and habitat is already adequately managed to the benefit of the species, a net conservation benefit will be achieved when the property owner commits to manage the species for a specified period of time with the anticipation that the population will increase or habitat quality will improve.

* * * * *

- 3. Amend § 17.32 by revising paragraph (d)(8) to read as follows:

§ 17.32 Permits—general.

* * * * *

(d) * * *

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to achieve a net conservation benefit, which is defined as the cumulative

benefits of specific conservation measures designed to improve the status of a covered species by removing or minimizing threats, stabilizing populations, and increasing its numbers and improving its habitat.

(i) The benefit would be measured by the projected increase in the species' population or improvement of the species' habitat, taking into account the duration of the Agreement and any off-setting adverse effects attributable to the incidental taking allowed by the enhancement of survival permit.

(ii) The conservation measures and management activities covered by the agreement must be designed to reduce or eliminate those current and future threats on the property that are under the property owner's control, in order to increase the species populations or improve its habitat.

(iii) In the case where the species and habitat is already adequately managed to the benefit of the species, a net conservation benefit will be achieved when the property owner commits to manage the species for a specified period of time with the anticipation that the population will increase or habitat quality will improve.

Dated: April 13, 2016.

Noah Matson,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–10483 Filed 5–3–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 81, No. 86

Wednesday, May 4, 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

Rural Utility Service

Submission for OMB Review; Comment Request

April 28, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 3, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Operating Reports for Telecommunications and Broadband Borrowers.

OMB Control Number: 0572-0031.

Summary of Collection: The Rural Utilities Service's (RUS) is a credit agency of the Department of Agriculture. The Rural Electrification Act of 1936, as amended (RE Act) (7 U.S.C. 901 *et seq.*) authorizes the Secretary to make mortgage loans and loan guarantees to finance electric, telecommunications, broadband, and water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of RUS' main objectives is to safeguard loan security until the loan is repaid. The RE Act also authorizes the Secretary to make studies, investigations, and reports concerning the progress of borrowers' furnishing of adequate telephone service and publish and disseminate this information.

Need and Use of the Information: Information from the Operating Report for both telecommunication and broadband borrowers provides RUS with vital financial information needed to ensure the maintenance of the security for the Government's loans and service data which enables RUS to ensure the provision of quality telecommunications and broadband service as mandated by the RE Act of 1936. Form 674, "Certificate of Authority to Submit or Grant Access to Data" will allow telecommunication and broadband borrowers to file electronic Operating Reports with the agency using the new USDA Data Collection System. Accompanied by a Board Resolution, it will identify the name and USDA e-Authentication ID for a certifier and security administrator that will have access to the system for purposes of filing electronic Operating Reports.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 647.

Frequency of Responses: Reporting: On occasion; Quarterly; Annually.

Total Burden Hours: 8,525.

Rural Utilities Service

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572-0041.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA) that makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. RUS manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended (RE Act). A 1949 amendment to the RE Act established the telephone program in RUS with the purpose of making loans to furnish and improve rural telephone service. Section 201 of the RE Act provides that loans shall not be made unless RUS finds and certifies that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed. In addition to providing loans and loan guarantees, one of RUS main objectives is to safeguard loan security until the loan is repaid.

Need and Use of the Information: A borrower's assets provide the security for a Government loan. The selling of assets reduces the security and increases the risk of loss to the Government. A borrower seeking permission to sell some of its assets uses RUS Form 793. The form contains detailed information regarding the proposed sale. If the information in Form 793 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level. This increases the risk of loss to the Government in the case of a default.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 40.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 100.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016-10419 Filed 5-3-16; 8:45 am]

BILLING CODE 3410-15-P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the Illinois Advisory Committee To Discuss Approval of a Draft Advisory Memorandum Regarding Civil Rights and Environmental Justice in the State**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting on Friday, May 06, 2016, at 12:00 p.m. CDT. The purpose of this meeting is to review and discuss approval of an advisory memorandum to be issued to the Commission regarding civil rights and environmental justice in the State. This memorandum is in support of the Commission's nationally focused 2016 statutory enforcement study.

This meeting is available to the public through the following toll-free call-in number: 888-427-9419, conference ID: 7143536. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement at the end of the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and conference ID number.

Member of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353-8324, or emailed to Carolyn Allen at callen@usccr.gov. Persons who desire additional information may contact the

Regional Programs Unit at (312) 353-8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at <https://database.faca.gov/committee/meetings.aspx?cid=246>. Click on the "Meeting Details" and "Documents" links to download. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introductions
Review and Discussion of Advisory Memorandum: Environmental Justice in Illinois
Open Comment
Future Plans and Actions
Adjournment

Date: The meeting will be held on Friday, May 06, 2016, at 12:00 p.m. CDT.

Public Call Information:

Dial: 888-427-9419

Conference ID: 7143536.

Exceptional Circumstance: Pursuant to 41 CFR 102-3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of providing expedited information to the Commission for use in the agency's 2016 statutory enforcement report. Given the exceptional urgency of the events, the agency and advisory committee deem it important for the advisory committee to meet on the date given.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski at mwojnaroski@usccr.gov or 312-353-8311.

Dated: April 28, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016-10378 Filed 5-3-16; 8:45 am]

BILLING CODE 6335-01-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, May 18, 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 proposed recommendations by the Trade, Tax Policy, and Export Growth Subcommittee focused on tax policy and the Trans-Pacific Partnership and a proposed recommendation by the Workforce Subcommittee focused on career pathways to 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, May 18, 12 p.m.-1 p.m. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EDT on May 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 p.m. EDT on May 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 p.m. EDT on May 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: April 29, 2016.

Archana Sahgal,

Executive Secretary, U.S. Manufacturing Council.

[FR Doc. 2016-10545 Filed 5-2-16; 4:15 pm]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent To Grant Exclusive License

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), intends to grant to Picarro, Inc. of Santa Clara, California, an exclusive global license to its rights in "Methods For Rapid Gas Sampling With High Horizontal Spatial Resolution In A Manner Suitable For Subsequent Constituent Gas Analysis".

DATES: Comments must be received on or before May 31, 2016.

ADDRESSES: Send comments to NOAA Technology Partnerships Office, SSMC4 Room 7606, 1305 East West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT:

Derek Parks, NOAA Technology Transfer Program Manager, at: derek.parks@noaa.gov.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this invention are assigned to the United States of America, as represented by the Secretary of Commerce. It is in the public interest to so license this invention, as Picarro, Inc. of Santa Clara, California, is a co-developer and co-patent holder for this technology. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the NOAA Technology Partnerships Office receives written evidence and argument which establishes the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: April 28, 2016.

Jason Donaldson,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2016-10372 Filed 5-3-16; 8:45 am]

BILLING CODE 3510-KD-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE525

Endangered and Threatened Species; Take of Anadromous Fish; Reopening of Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; availability of hatchery plan and request for comment; reopening of public comment period.

SUMMARY: On March 28, 2016, the National Marine Fisheries Service (NMFS) announced the availability of a Hatchery and Genetic Management Plan (HGMP) pursuant to the protective regulations promulgated for Pacific salmon and steelhead under the Endangered Species Act (ESA). The HGMP, provided by the California

Department of Fish and Wildlife, specifies the operation of a hatchery program rearing steelhead in the Mad River subbasin within the State of California. The announcement opened a 30-day public comment period on the HGMP and associated draft environmental assessment (EA). In response to a request received from the public, NMFS is reopening the comment period for an additional 15 days. This action reopens the comment period for the notice that published March 28, 2016.

DATES: The comment period for the notice that published on March 28, 2016 (81 FR 17143) is reopened. Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m. Pacific time on May 19, 2016.

ADDRESSES: Written comments on the application should be addressed to the NMFS NOAA Fisheries West Coast Region California Coastal Office, 1655 Heindon Road, Arcata, California 95521, or faxed to 707-825-4840. Comments may be submitted by email. The mailbox address for providing email comments is:

MadRiverHatcheryPlan.wcr@noaa.gov.

Include in the subject line of the email comment the following identifier: Comments on the Mad River hatchery plan. The HGMP and associated draft EA are available on the Internet at www.westcoast.fisheries.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dan Free, at phone number: (707) 825-5164, or via email: dan.free@noaa.gov.

SUPPLEMENTARY INFORMATION:

Reopening

The notice (81 FR 17143) published in the **Federal Register** on March 28, 2016, with a 30-day comment period that closed on April 27, 2016. In response to a request received from the public, NMFS is reopening the comment period for an additional 15 days.

Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated California Coastal.

Coho salmon (*O. kisutch*): threatened, naturally produced and artificially propagated Southern Oregon/Northern California (SONCC).

Steelhead (*O. mykiss*): threatened, naturally produced and artificially propagated Northern California.

Background

CDFW has submitted to NMFS an HGMP describing a hatchery program that releases steelhead into the Mad

River, in northern California, for consideration pursuant to limit 5 of the ESA 4(d) rule for salmon and steelhead.

The hatchery program that is the subject of the NMFS evaluation would operate to provide steelhead for harvest in freshwater recreational fisheries in the Mad River. The program would propagate steelhead that are derived from the local steelhead population in the Mad River, ensuring that at least half of the MRH winter-run steelhead spawning pairs are hatchery spawned natural-origin and to match natural-origin steelhead with their natural counterparts whenever possible. Measures would be applied in the hatchery program to reduce the risk of incidental adverse genetic, ecological, and demographic effects on natural-origin steelhead and salmon populations.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422) and updated June 28, 2005 (70 FR 37160), NMFS may approve an HGMP if it meets criteria set forth in 50 CFR 223.203(b)(5)(i)(A) through (K). Prior to final approval of an HGMP, NMFS must publish notification announcing its availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as she deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 5 of the updated 4(d) rule (50 CFR 223.203(b)(5)) further provides that the prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to activities associated with artificial propagation programs provided that an HGMP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005).

Dated: April 28, 2016.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016-10380 Filed 5-3-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE581

Fisheries of the Exclusive Economic Zone Off Alaska; Stock Assessment of Eastern Bering Sea Pollock; Peer Review Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: NMFS has requested the Center for Independent Experts (CIE) to conduct a peer review of the agency's stock assessment of Eastern Bering Sea walleye pollock (*Theragra chalcogramma*). The CIE is a group affiliated with the University of Miami that provides independent peer reviews of NMFS science nationwide, including reviews of stock assessments for fish and marine mammals. The Eastern Bering Sea pollock stock assessment is reviewed annually by the Alaska Fisheries Science Center, the North Pacific Fishery Management Council (NPFMC) Plan Team, and the NPFMC Scientific and Statistical Committee. The CIE review will examine whether the assessment incorporates the best available scientific information and provides a reasonable approach to understanding the population dynamics and stock status of Eastern Bering Sea pollock. The public is invited to attend and observe the presentations and discussions between the CIE panel and the NMFS scientists who collected and processed the data, and designed the underlying model.

DATES: The public meeting will be held from May 16 through May 19, 2016, 9 a.m. to 5 p.m. Pacific Daylight Time.

ADDRESSES: The review will be held at the NMFS Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Seattle, WA 98115. Photo identification is required to enter this facility.

FOR FURTHER INFORMATION CONTACT: James Ianelli, 206-526-6510.

SUPPLEMENTARY INFORMATION: The CIE panel will consist of three peer reviewers who will assess materials related to the topic, participate in a review workshop with the NMFS scientists who developed the model and the analytical approach, and produce a report. This review will be highly technical in nature and will cover mathematical details of the analytical approach. More information about the

CIE is available on its Web site at www.ciereviews.org.

Members of the public are invited to observe, and will be provided opportunities to contribute each day from May 16 through May 19, 2016. The final report will be available prior to the September NPFMC Plan Team meetings and will consist of individual reports from each panelist and a summary report. The results of the review will be presented during the September 2016 NPFMC Plan Team meeting, which will be announced at a later time in the **Federal Register**.

Special Accommodations

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ron Felthoven, 206-526-4114, at least 10 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 29, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016-10445 Filed 5-3-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE592

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an Environmental Impact Statement; request for comments.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), this notice announces that NMFS intends to obtain information necessary to prepare an Environmental Impact Statement (EIS) for 10 Hatchery and Genetic Management Plans (HGMPs) for salmon and steelhead hatchery programs jointly submitted by the Washington Department of Fish and Wildlife (WDFW) with the Muckleshoot Indian Tribe and the Suquamish Tribe (referred to as the co-managers), for NMFS's evaluation and determination under Limit 6 of the Endangered Species Act (ESA) 4(d) Rule for threatened salmon and steelhead. The HGMPs specify the propagation of salmon and steelhead in

the Duwamish-Green River basin in Washington State.

NMFS provides this notice to advise other agencies and the public of its plans to analyze effects related to the action, and obtain suggestions and information that may be useful to the scope of issues and alternatives to include in the EIS.

DATES: Written or electronic scoping comments must be received at the appropriate address or email mailbox (see **ADDRESSES**) no later than 5 p.m. Pacific Time June 3, 2016.

ADDRESSES: Written comments may be sent by any of the following methods:

- Email to the following address: GreenHatcheriesEIS.wcr@noaa.gov with the following identifier in the subject line: Green Hatcheries EIS.

- Mail or hand-deliver to NMFS Sustainable Fisheries Division, 510 Desmond Drive SE., Suite 103, Lacey, WA 98503.

- Fax to (360) 753-9517.

Comments received will be available for public inspection, by appointment, during normal business hours at the above address. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Steve Leider, NMFS, by phone at (360) 753-4650, or email to steve.leider@noaa.gov.

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Steelhead (*Oncorhynchus mykiss*): threatened, naturally and artificially produced in Puget Sound.

Chinook salmon (*O. tshawytscha*): threatened, naturally and artificially produced in Puget Sound.

Chum salmon (*O. keta*): threatened, naturally and artificially produced Hood Canal summer-run.

Bull trout (*Salvelinus confluentus*): threatened Puget Sound/Washington Coast.

Background

The WDFW, Muckleshoot Indian Tribe, and Suquamish Tribe have jointly submitted to NMFS HGMPs for 10 hatchery programs in the Duwamish-Green River basin in Washington State. The HGMPs were submitted to NMFS from 2013 to 2015, pursuant to limit 6 of the 4(d) Rule for salmon and steelhead. The hatchery programs include releases of ESA-listed Chinook salmon and winter-run steelhead into

the Duwamish-Green River basin. The hatchery programs also release non-listed coho and fall-run chum salmon and summer-run steelhead into the Duwamish-Green River basin. One hatchery program releases coho salmon into marine waters adjacent to the Duwamish-Green River basin. Seven of the programs are currently operating, and three are new.

NEPA requires Federal agencies to conduct environmental analyses of their proposed major actions to determine if the actions may affect the human environment. NMFS's action of determining under Limit 6 of the 4(d) Rule for salmon and steelhead that implementation of the co-managers' HGMPs would not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs is a major Federal action subject to environmental review under NEPA. Therefore, NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives, recommendations for relevant analysis methods, and information associated with impacts of the alternatives to the resources listed below or other relevant resources.

NMFS will perform an environmental review of the HGMPs and prepare an EIS that will identify potentially significant direct, indirect, and cumulative impacts on the following resources identified to have a potential for effect from the proposed action:

- Listed and Non-listed Species and their habitats
- Water Quantity
- Socioeconomics
- Environmental Justice
- Cumulative Impacts

NMFS will rigorously explore and objectively evaluate a full range of reasonable alternatives in the EIS, including the proposed action and a no-action alternative. Other alternatives may include a decreased production alternative.

For all potentially significant impacts, the EIS will identify measures to avoid, minimize, and mitigate the impacts, where feasible.

Request for Comments

NMFS provides this notice to: (1) Advise other agencies and the public of its plans to analyze effects related to the action, and (2) obtain suggestions and information that may be useful to the scope of issues and the full range of alternatives to include in the EIS.

NMFS invites comment from all interested parties to ensure that the full range of issues related to the 10 salmon and steelhead HGMPs is identified.

Comments should be as specific as possible.

Written comments concerning the proposed action and the environmental review should be directed to NMFS as described above (see **ADDRESSES**). All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public.

Authority

The environmental review of the 10 salmon and steelhead HGMPs in the Duwamish-Green River basin of Washington State will be conducted in accordance with requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500 through 1508), other appropriate Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS.

Dated: April 29, 2016.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016-10426 Filed 5-3-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE601

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow eight commercial fishing vessels to fish outside of the limited access sea scallop regulations in support of a study on seasonal bycatch distribution and optimal scallop meat yield on Georges Bank.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before May 19, 2016.

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

- *Email:* nmfs.gar.efp@noaa.gov.

Include in the subject line "DA16-024 CFF Georges Bank Optimization Study EFP."

- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "DA16-024 CFF Georges Bank Optimization Study EFP."

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fisheries Management Specialist, 978-282-8456.

SUPPLEMENTARY INFORMATION: Coonamesset Farm Foundation (CFF) has submitted a proposal titled "Optimizing the Georges Bank Scallop Fishery by Maximizing Meat Yield and Minimizing Bycatch," that has been favorably reviewed and is pending final approval by NOAA's Grants Management Division under the 2016 Atlantic Sea Scallop Research Set-Aside (RSA) Program.

CFF submitted a complete application for an exempted fishing permit (EFP) on March 7, 2016. The project would look primarily at seasonal distribution of bycatch on the northern part of Georges Bank in relation to sea scallop meat weight yield while minimizing impacts to other stocks. Additional objectives include continued testing of a modified scallop dredge bag design to reduce flatfish bycatch and collecting biological samples to examine scallop meat quality and yellowtail flounder liver disease. Project investigators working on this

project would also work in cooperation with New Hampshire Fish and Game (NHFG) and the Atlantic Offshore Lobstermen's Association (AOLA) to tag lobsters. CFF is requesting exemptions that would exempt eight commercial fishing vessels from the Atlantic sea scallop days-at-sea (DAS) allocations at 50 CFR 648.53(b); crew size restrictions at § 648.51(c); observer program requirements at § 648.11(g); Closed Area II (CAII) scallop gear restrictions specified at 648.81(b); and access area program requirements at § 648.60(a)(4). It would also exempt vessels from possession limits and minimum size requirements specified in 50 CFR part 648, subsections B and D through O, and 50 CFR 697.20 for sampling and tagging purposes only.

Vessels would conduct scallop dredging in a year-round seasonal study on a total of eight 7-day trips, for a total of 56 DAS. Each trip would complete approximately 70 paired tows per trip for an overall total of 520 tows for the project. Closed Area II tows would take place in the central portion situated below the Closed Area II Habitat Closure Area, including the northern portion of Atlantic Sea Scallop Closed Area II Rotational Closed Area. Open area tows would be conducted on the northern half of Georges Bank, west of the boundary of Closed Area II. Although the proposed project included tow locations inside the Closed Area II Habitat Closure Area, we will not be authorizing tows in that area, consistent with previous requests by CFF to conduct dredging in this area. We will not grant access to the Habitat Closure Area for this project until a final outcome from the Omnibus Habitat Amendment II is determined.

There is a potential for gear conflict with lobster gear in the central portion of Closed Area II. In an effort to help mitigate gear interactions, the project coordinator would distribute the time and location of stations to the lobster industry, work only during daylight

hours, post an extra lookout to avoid gear, and conduct fishing operations in a way that avoids tangling in stationary gear. We do not expect the DAS, crew size, possession limits, or minimum size exemptions to generate any controversy or concern about the potential catch of egg-bearing female lobsters in this area during the months of June–October. The project would work in cooperation with NHFG and AOLA to tag lobsters with the primary goal of documenting their movement on and off Georges Bank. CFF would like to use data from the tagging project to provide data on the discard mortality of lobsters in the scallop fishery.

All tows would be conducted with two tandem 15-foot (4.6-m) turtle deflector dredges for a duration of 30 minutes using an average tow speed of 4.8 knots. One dredge would be rigged with a 7-row apron and twine top hanging ratio of 2:1, while the other dredge would be rigged with a 5-row apron and 1.5:1 twine top hanging ratio. Both dredge frames would be rigged with identical rock and tickler chain configurations, 10-inch (25.4-cm) twine top, and 4-inch (10.2-cm) ring bag.

For all tows the entire sea scallop catch would be counted into baskets and weighed. One basket from each dredge would be randomly selected and the scallops would be measured in 5-millimeter increments to determine size selectivity. All finfish catch would be sorted by species and then counted and measured. Weight, sex, and reproductive state would be determined for a random subsample ($n = 10$) of yellowtail, winter, and windowpane flounders. Lobsters would be measured, sexed, and evaluated for damage and shell disease. With the exception of samples retained for further processing, no catch would be retained for longer than needed to conduct sampling and no catch would be landed for sale. All catch estimates for the project are listed in the table below.

PROJECT CATCH ESTIMATES

Species	lb	kg
Scallops	7,500	3,402
Yellowtail Flounder	1,600	726
Winter Flounder	2,500	1,134
Windowpane Flounder	6,300	2,858
Summer Flounder	2,800	1,270
Fourspot Flounder	400	181
American Plaice Flounder	50	23
Witch Flounder	100	45
Haddock	100	45
Atlantic Cod	100	45
Monkfish	9,600	4,354
Spiny Dogfish	300	136
Barndoor Skate	2,800	1,270

PROJECT CATCH ESTIMATES—Continued

Species	lb	kg
Northeast Skate Complex	140,000	63,503
American Lobster	900*	.....

* American lobster value is number of individuals.

CFF needs these exemptions to allow them to conduct experimental dredge towing without being charged DAS, as well as deploy gear in areas that are currently closed to scallop fishing. Participating vessels need crew size waivers to accommodate science personnel. Possession waivers would enable researchers to sample finfish and lobster catch that exceeds possession limits or prohibitions. The project would be exempt from the sea scallop observer program requirements because activities conducted on the trip are not consistent with normal fishing operations.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016-10449 Filed 5-3-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the Presidential Aircraft Recapitalization Program at Joint Base Andrews-Naval Air Facility, Washington, Maryland

AGENCY: United States Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The United States Air Force (Air Force) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) for the Presidential Aircraft Recapitalization (PAR) Program at Joint Base Andrews-Naval Air Facility,

Washington, Maryland (JBA). The EIS will assess the potential environmental consequences of the proposal to beddown versions of the Boeing 747-8 passenger aircraft at JBA as replacements to the two existing VC-25A aircraft currently used to transport the President of the United States (POTUS).

DATES: The Air Force plans to hold one daytime and one nighttime public scoping meeting, at the locations and times below:

1. Daytime Scoping Meeting: Veterans of Foreign Wars Post 9619, 6527 Suitland Road, Morningside, MD 20746, on Tuesday, May 24th, 2016 from 9:00–11:00 a.m.

2. Nighttime Scoping Meeting: Veterans of Foreign Wars Post 9619, 6527 Suitland Road, Morningside, MD 20746, on Monday, May 23rd, 2016 from 6:00–8:00 p.m.

ADDRESSES: Additional information on the PAR Program and the EIS/EIAP process can be accessed at the project Web site at www.parprogrameis.com, and the JBA Web site at www.andrews.af.mil. Inquiries and comments-by-mail regarding the USAF proposal should be directed to AFCEC/CZN, 2261 Hughes Ave., Ste. 155, JBAS-Lackland, TX 78236-9853, ATTN: Mr. John Guerra.

The project Web site can also be used to submit scoping comments and scoping comments may also be submitted by mail to the address listed below. Comments will be accepted at any time during the Environmental Impact Analysis Process (EIAP). However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, scoping comments should be submitted to the Web site or the address listed below by May 28th, 2016.

SUPPLEMENTARY INFORMATION: The aircraft replacement was requested by the White House in April 2006 and was approved by the Secretary of the Air Force in a Strategic Basing decision on June 12, 2012. The EIS will assess the potential environmental consequences of bedding down the new aircraft, including construction of a new Presidential Complex with a multi-bay hangar facility, other necessary facility improvements and relocation of select

facilities displaced by PAR activities. Facilities potentially requiring relocation include the Hazardous Cargo Pad (HCP), the Explosive Ordnance Disposal (EOD) Proficiency Range, the Joint Air Defense Operations Center (JADOC) Satellite Site, areas of the existing golf course, and the Military Working Dog (MWD) Kennel. The EIS will analyze various alternatives for implementing the Proposed Action at JBA (beddown and operations of a new aircraft) including a No Action Alternative. The Air Force is preparing this EIS in accordance with National Environmental Policy Act (NEPA) of 1969; 40 Code of Federal Regulations (CFR), Parts 1500–1508, the Council on Environmental Quality (CEQ) regulations implementing NEPA; and the USAF Environmental Impact Analysis Process (EIAP) [32 CFR part 989].

Scoping and Agency Coordination: To effectively define the full range of issues and concerns to be evaluated in the EIS, the Air Force is soliciting scoping comments from interested local, state and federal agencies and interested members of the public. This NOI also serves to provide early notice of compliance with Executive Order (EO) 11990, “Protection of Wetlands” and EO 11988, “Floodplain Management.” State and federal regulatory agencies with special expertise in wetlands and floodplains have been contacted to request comment. The Air Force will hold two scoping meetings to inform the public as well as to solicit comments and concerns about the proposal. Scoping meetings will be held in the local community. Scheduled dates, locations, and addresses for each meeting will be published in the Washington Post, Prince George’s County Gazette, and the Andrews Gazette newspapers a minimum of fifteen (15) days prior to each meeting.

Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2016-10401 Filed 5-3-16; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of the time and location of a meeting.

SUMMARY: This meeting notice is an update to the previous notice published in the **Federal Register** (81 FR 14846) on March 18, 2016, and sets forth the time and location for the June 22–24, 2016 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). The notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act of 1965 (HEA), as amended.

DATES: The NACIQI meeting will be held on June 22–24, 2016, from 8:30 a.m. to 5:30 p.m., at the DoubleTree by Hilton Washington DC Crystal City, 300 Army Navy Drive, Arlington, VA 22202.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 6W250, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Jennifer Hong, Executive Director/ Designated Federal Official, NACIQI, U.S. Department of Education, 400 Maryland Avenue SW., Room 6W250, Washington, DC 20202, telephone: (202) 453–7805, or email: Jennifer.Hong@ed.gov.

SUPPLEMENTARY INFORMATION:

NACIQI's Statutory Authority and Function: The NACIQI is established under Section 114 of the HEA of 1965, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, of the HEA, as amended.
- The recognition of specific accrediting agencies or associations or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, of the HEA, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher

education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.

- Any other advisory function relating to accreditation and institutional eligibility that the Secretary may prescribe.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI Web site 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 400 Maryland Avenue SW., Washington, DC 20202, by emailing aslrecordsmanager@ed.gov or by calling (202) 453–7110 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1011c.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Planning, Policy, and Innovation, delegated the duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–10414 Filed 5–3–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Data Disaggregation Initiative Program

AGENCY: Office of English Language Acquisition (OELA), Department of Education.

ACTION: Notice.

Overview Information: Title III National Activities—Asian American and Pacific Islander Data Disaggregation Initiative. Notice inviting applications for new awards for fiscal year (FY 2016).

Catalog of Federal Domestic Assistance (CFDA) Number: 84.365D.

Dates:

Applications Available: May 4, 2016.

Deadline for Notice of Intent to Apply: May 24, 2016.

Deadline for Transmittal of Applications: July 5, 2016.

Deadline for Intergovernmental Review: September 1, 2016.

Full Text of Announcement*I. Funding Opportunity Description*

Purpose of Program: In FY 2016, the Department will, from the Elementary and Secondary Education Act Title III National Activities funds, award grants on a competitive basis for the Asian American and Pacific Islander (AAPI) Data Disaggregation (D2) program. The grants will be awarded to State educational agencies (SEAs) in consortia with local educational agencies (LEAs) to obtain and evaluate disaggregated data on English Learner (EL) AAPI subpopulations beyond the existing seven racial and ethnic categories¹ within the school community.

Background: There has been ongoing and increasing interest among States in using data to identify effective practices that can be used by educators to improve student outcomes in our education system and in disseminating those practices. Comprehensive data collection systems are integral to enabling States to identify and disseminate such practices.

In addition, a number of States have found that disaggregated data on student performance is critical for identifying and developing strategies for closing

¹ In 1997, the Office of Management and Budget created five categories for data on race: American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White; and two categories for data on ethnicity: "Hispanic or Latino" and "Not Hispanic or Latino." These data standards stemmed in large measure from new responsibilities to enforce civil rights laws. Data are needed to monitor equal access in housing, education, employment, and other areas, for populations that historically had experienced discrimination and differential treatment because of their race or ethnicity.

educational opportunity gaps among different student groups. These efforts have included collecting additional data about K–12 students, disaggregating these data, and making this information available to educators and the public. Based on the educational gaps highlighted by disaggregated data, States, universities, and colleges have created programs to improve the college and career readiness of K–12 students who previously were underrepresented among those enrolled in higher education institutions.

The AAPI population is one of the fastest² growing groups of students and includes a significant number of ELs. Some public universities have identified AAPI subgroups by socioeconomic characteristics and educational attainment. Using these disaggregated AAPI data has helped SEAs and LEAs identify barriers certain groups of underserved students face in K–12 and postsecondary education. Additional granular data on the AAPI subgroup, as shown by existing State and postsecondary efforts, enable SEAs and LEAs to make strategic and informed decisions on interventions for underserved populations that include ELs. Data that show disparities within subpopulations of the AAPI population can help demonstrate the need for differentiated instructional approaches and other effective intervention approaches for different components of the AAPI population—all with the result of improving outcomes for high-need EL students.

To better serve all ELs, this competition encourages SEAs to partner with LEAs to further disaggregate the data beyond the seven racial and ethnic categories and analyze and evaluate that data, or analyze and evaluate already-disaggregated data as a first step to inform targeted services and instructional support for underserved students, and to increase transparency in order to spotlight hidden achievement and opportunity gaps for AAPI ELs.

The Department is establishing two absolute priorities for this competition. Applicants must address one of the two absolute priorities: One for applications proposing to further disaggregate and evaluate data regarding AAPI EL students, and the other for applications proposing to identify improvements to instructional programs, initiatives, or other services for AAPI EL students

based on an analysis of already disaggregated data.

The Department also has included one invitational priority for projects that will establish sustained partnerships with non-profit organizations and other private entities. An applicant may address the invitational priority regardless of which absolute priority it addresses.

To improve the quality of data available to inform the future activities of SEAs and LEAs to improve student learning outcomes, D2-funded projects must use a portion of their budgets to conduct a project evaluation. The detailed requirements for this evaluation can be found in the Program Requirements section of this notice.

Priorities: We are establishing these priorities for the FY 2016 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priorities: These priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities. Under this competition, each absolute priority constitutes its own funding category. The Secretary intends to award grants under each absolute priority for which applications of sufficient quality are submitted. Applicants must choose one of the two absolute priorities, and must clearly identify the specific absolute priority that the proposed project addresses.

These priorities are:

Absolute Priority 1:

The purpose of this priority is to fund projects proposed by SEAs that do not currently disaggregate AAPI data on EL AAPI subpopulations beyond the existing seven racial and ethnic categories. Applicants must propose projects that will, consistent with applicable privacy requirements, improve the SEA's system of data collection by further disaggregating the AAPI subgroup and other subgroups as determined by the applicant, beyond the existing seven racial and ethnic categories and report, analyze, and evaluate the results of this effort for underserved populations including EL AAPI students.

Absolute Priority 2:

The purpose of this priority is to fund projects proposed by SEAs whose data systems, consistent with applicable privacy requirements, currently disaggregate AAPI data on EL AAPI subpopulations beyond the existing seven racial and ethnic categories

inclusive of other subgroups, if applicable. Applicants must propose projects that will analyze and evaluate the data to identify opportunity gaps, interventions, improvements to instructional programs, and other initiatives that will improve outcomes for underserved populations including EL AAPI students.

Invitational Priority: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority:

Projects that will establish sustained partnerships with non-profits or other private entities, including philanthropic organizations, to sustain the project beyond the life of the grant.

Program Requirements:

Applicants must provide a high-quality plan for disseminating the evaluative findings from their projects to inform educators, parents, families, and other stakeholders and to highlight lessons learned that may be used by other SEAs that undertake similar disaggregation efforts. SEA applicants must apply as part of a consortium with one or more LEAs, and also must identify the LEAs they intend to partner with for the purposes of this program.

In addition, grantees funded under Absolute Priority 1 must, by the end of the five-year award period, conduct, complete, and report the findings of an evaluation of the project that includes the elements described in paragraphs 1 through 7, below. Grantees funded under Absolute Priority 2 must address the elements described in paragraphs 1 through 9, below, even though some of the described activities may have been conducted prior to the D2 award or may have otherwise been conducted with other funds not connected to the D2 project.

This evaluation must be submitted within 90 days of the end of the project period.

Required elements for both Absolute Priority 1 and 2:

1. A description of the activities the project has undertaken.

2. A description, including documentation, of the steps the SEA or partner LEA(s) took to identify the additional disaggregations for students in the AAPI subgroup as well as any other disaggregations that were undertaken.

² Cox, W. (January 12, 2015). Asians: America's Fastest Growing Minority. www.newgeography.com/content/004825-asians-americas-fastest-growing-minority.

3. A description of how the SEA or partner LEA(s) identified the achievement and opportunity gaps between students in the AAPI subgroups and students in other racial/ethnic groups, including the source(s) of the data used for the comparison.

4. A description of how achievement and opportunity gaps between ELs and non-ELs were identified, including the source of the data. (The SEA or partner LEA(s) must use the most recent available data for all public schools in the jurisdiction.)

5. A discussion of the likely cause(s) of the identified achievement and opportunity gaps.

6. A description of how the SEA or partner LEA(s) will publicly report on the identified achievement and opportunity gaps and causes, including timelines for this reporting.

7. A plan for how the SEA or partner LEA(s) will use the information to eliminate the identified achievement and opportunity gaps, including how the SEA determined that these strategies will be effective. The plan must justify these proposed activities by tying them back to State/local needs and explain how ELs will be supported, in particular, through these activities. Additionally, grantees funded under Absolute Priority 2 must include the following elements:

8. A description of the measures that the SEA or partner LEA(s) will use to evaluate the progress toward eliminating the identified achievement and opportunity gaps including the method and timeline for the evaluation and how the continued evaluation of this progress will be built into existing strategic plans (or other guidance documents).

9. A description of how the SEA or partner LEA(s) will publicly report on its progress in eliminating the identified gaps, including timelines for this reporting.

Definitions: The following definitions are from 34 CFR 77.1, section 8101 of the ESEA, as amended by the Every Student Succeeds Act (ESSA) (20 U.S.C. 7801), or 2 CFR 200.90, except that the definition for Asian American and Pacific Islander is being established under the waiver of rulemaking for this program.³ These definitions apply to the priorities and selection criteria in this notice. The source of each definition is

noted in parentheses following the text of the definition.

Asian American and Pacific Islander means persons within the jurisdiction of the United States having ancestry of any of the original peoples of East Asia, Southeast Asia, or South Asia, or any of the aboriginal, indigenous, or native peoples of Hawaii and other Pacific Islands.

Baseline means the starting point from which performance is measured and targets are set. (34 CFR 77.1)

English learner, when used with respect to an individual, means an individual—

(a) Who is aged 3 through 21;

(b) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(c)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(I) Who is a Native American or Alaska Native, or a Native resident of the outlying areas; and

(II) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(d) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the State's challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society. (Section 8101 of the ESEA, as amended by the ESSA)

Local educational agency means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Education. (Section 8101 of the ESEA, as amended by the ESSA)

Outlying area means:

(a) American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands;

(b) The Republic of Palau, to the extent permitted under section 105(f)(1)(B)(ix) of the Compact of Free Association Amendments Act of 2003 (Pub. L. 108–188; 117 Stat. 2751) and until an agreement for the extension of United States education assistance under the Compact of Free Association becomes effective for the Republic of Palau; and

(c) The Republic of the Marshall Islands and the Federated States of Micronesia, to the extent permitted under section 105(f)(1)(B)(viii) of the Compact of Free Association Amendments Act of 2003 (Pub. L. 108–188; 117 Stat. 2751). (Section 8101 of the ESEA, as amended by the ESSA)

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. (Section 8101 of the ESEA, as amended by the ESSA)

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, requirements, and definitions. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 3111(c)(1)(C) of the ESEA, as reauthorized by the No Child Left Behind Act, 20 U.S.C. 6821(c)(1)(C), and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priorities, requirements, and definition under section 437(d)(1) of

³ The definition for "Asian American and Pacific Islander" included in this notice also was set forth in Executive Order 13515, October 14, 2009 and can also be found on the White House Initiative for Asian American and Pacific Islanders Web site at: www.whitehouse.gov/aapi.

GEPA. These priorities, and definition will apply to the FY 2016 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: 20 U.S.C. 6821.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds:

\$1,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 or later years from the list of unfunded applications from this competition.

Estimated Range of Awards: Absolute Priority 1: \$200,000–\$400,000; Absolute Priority 2: \$100,000–\$250,000.

Estimated Average Size of Awards: Absolute Priority 1: \$300,000; Absolute Priority 2: \$175,000

Estimated Number of Awards: Up to 4 total.

NOTE: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs in consortia with one or more LEAs. (20 U.S.C. 6821)

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: www.ed.gov/fund/grant/apply/grantapps/index.html. To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1-877-433-7827. FAX: (703) 605-6794. If you use a telecommunications

device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: www.EDPubs.gov or at its email address: edpubs@inet.ed.gov.

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA 84.365D.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person listed under *Accessible Format* in section VIII of this notice.

2. a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent To Apply: May 24, 2016.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application by emailing OELEA.D2.2016@ed.gov with the subject line "Intent to Apply" and include in the content of the email the following information: (1) The applicant organization's name and address, (2) the absolute priority the applicant is planning to address in the application, and (3) whether the applicant plans to address the invitational priority. In addition, applicants should identify the LEA(s) they intend to partner with. Applicants that do not provide notice of their intent to apply may still submit an application. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We strongly recommend that you limit the application narrative to no more than 35 pages. Applicants are also strongly encouraged not to include lengthy appendices that contain information that they were unable to include within the page limits for the narrative.

Applicants must use the following standards:

- A "page" is 8.5"; x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit for the application does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the bibliography, or the letters of support of the application. However, the page limit does apply to all of the application narrative section of the application.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the D2 program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Consistent with the process followed in the prior OELEA competitions, we may post the project narrative section of funded D2 applications on the Department's Web site. Therefore, you may wish to request confidentiality of business information. Identifying proprietary information in the submitted application will help facilitate this public disclosure process.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*
Applications Available: May 4, 2016.
Deadline for Notice of Intent to Apply: May 24, 2016.

Informational Meetings: The D2 program intends to hold Webinars designed to provide technical assistance to interested applicants. Detailed information regarding these meetings will be provided on the D2 Web site at <http://www2.ed.gov/programs/d2/index.html>.

Deadline for Transmittal of Applications: July 5, 2016.

Applications for grants under this competition must be submitted electronically using the Grants.gov application site. For information

(including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 1, 2016.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: <http://fedgov.dnb.com/webform>. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue

Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at www.SAM.gov. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: www2.ed.gov/fund/grant/apply/sam-faqs.html.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: www.grants.gov/web/grants/register.html.

7. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the D2 program, CFDA number 84.365D, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the D2 program at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.365, not 84.365D).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures

pertaining to Grants.gov under News and Events on the Department's G5 system home page at www.G5.gov. In addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: www.grants.gov/web/grants/applicants/apply-for-grants.html.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (e.g., Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still

meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by Grants.gov, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Grants.gov system; and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Melissa Escalante, U.S. Department of Education, 400 Maryland Avenue SW., Room 5C153, Washington, DC 20202-6510. FAX: (202) 205-1229.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.365D), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center, Attention:
(CFDA Number 84.365D), 550 12th
Street SW., Room 7039, Potomac Center
Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34

CFR 75.210. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Quality of the project design.* (Up to 45 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies including information about the effectiveness of the approach or strategies employed by the project.

(b) *Quality of project personnel.* (Up to 10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of key project personnel.

(c) *Quality of the management plan.* (Up to 20 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(d) *Quality of the project evaluation.* (Up to 25 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

(1) The extent to which the methods of evaluation are thorough, feasible, and

appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

2. *Review and Selection Process:* The Department will screen applications that are submitted for D2 grants in accordance with the requirements in this notice and determine which applications meet the eligibility and other requirements. Reviewers will review all eligible applications for D2 grants that are submitted by the established deadline.

Applicants should note, however, that the Department may screen for eligibility at multiple points during the competition process, including before and after peer review; applicants that are determined to be ineligible will not receive a grant award regardless of peer reviewer scores or comments. If we determine that a D2 grant application does not meet a D2 requirement, the application will not be considered for funding.

For D2 grant applications, the Department intends to conduct a process to review and score all eligible applications. Reviewers will review and score all eligible applications on the following four selection criteria: (a) Quality of the project design; (b) Quality of project personnel; (c) Quality of the management plan; and (d) Quality of evaluation.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in

appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) Within 90 days of the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The elements of the report are detailed in the *Program Requirements* section of this notice above.

If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms.html.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Reporting:* All grantees must submit an annual performance report that should contain the following elements on the project's progress: Preface, introduction, background, and data information/explanation; and a final performance report (see the section on Program Requirements) that includes performance measures established by the grantee. The Department will consider this data in making annual continuation awards. 34 CFR 75.110(b).

Consistent with 34 CFR 75.591, grantees funded under this program shall comply with the requirements of any evaluation of the program conducted by the Department or an evaluator selected by the Department.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT:

Melissa Escalante, U.S. Department of Education, 400 Maryland Avenue SW., Room 5C153, Washington, DC 20202. Telephone: (202) 401-4300. FAX: (202) 205-1229 or by email at OELA.D2.2016@ed.gov.

If you use a TDD or a TTY, call the Federal Relay Service, toll free, at 1-800-877-8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register**

and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or 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: April 28, 2016.

Libia S. Gil,

Assistant Deputy Secretary and Director for the Office of English Language Acquisition.

[FR Doc. 2016-10345 Filed 5-3-16; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

H2 Refuel H-Prize Schedule Update

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Schedule Update to the H2 Refuel H-Prize Competition Guidelines.

SUMMARY: In this notice, DOE is extending the completion schedule for its H2 Refuel H-Prize competition. On October 28, 2014, the Department of Energy (DOE) announced the \$1 million competition in the **Federal Register**, allowing teams from across the United States to compete to develop systems that generate and dispense hydrogen from resources commonly available to residences (electricity or natural gas) for use in homes, community centers, businesses or similar locations, to supplement the current infrastructure roll-out and reduce barriers to using hydrogen fuel cell electric vehicles. These Guidelines were updated in a September 3, 2015, **Federal Register** notice. Both the original and updated guidelines included a competition schedule. A delay in announcing the finalist selection significantly reduced the period for system construction before the start of the originally planned testing period. The announcement was originally planned for December 2015 to provide seven months for the system build as described by the guidelines. However, the announcement was delayed until January 29, 2016.

Therefore, DOE is updating the completion schedule to allow a reasonable construction period.

DATES: Key Upcoming Dates.

- Summer 2016: Finalist system testing begins
- Fall 2016: Competition ends, data will be analyzed to determine winner
- Early 2017: Anticipated award of \$1 million prize, if the Panel of Judges determines that there is a winning entry.

ADDRESSES: The H-Prize Web site is <http://hydrogenprize.org>, where updates and announcements will be posted throughout the competition.

FOR FURTHER INFORMATION CONTACT:

Questions may be directed to—
Technical information: Katie Randolph at 240–562–1759 or by email at HPrize@ee.doe.gov.

Prize contest: Emanuel Wagner, Contest Manager, Hydrogen Education Foundation, at 202–457–0868 x360 or by email at EWAGNER@ttcorp.com.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) announced the \$1 million H2 Refuel H-Prize competition in the **Federal Register** on October 28, 2014 (79 FR 64179). The Guidelines were updated in a September 3, 2015 **Federal Register** notice (80 FR 53286). The competition opened on October 29, 2014. The preliminary data submission date was October 29, 2015. In this notice, DOE updates the completion schedule for the competition, as described in the **DATES** section.

Issued in Washington, DC, on April 28, 2016.

Sunita Satyapal,

Fuel Cell Technology Office Director.

[FR Doc. 2016–10425 Filed 5–3–16; 8:45 am]

BILLING CODE 6450–01–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: RP16–838–000.
Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Calpine Energy Services to be effective 5/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5201.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–839–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Daily Service April 13–30 2016 to be effective 4/13/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5236.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–840–000.

Applicants: Southeast Supply Header, LLC.

Description: Compliance filing SESH RP16–511 Compliance Filing to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5245.

Comments Due: 5 p.m. ET 4/25/16.

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: RP16–415–001.
Applicants: Florida Gas Transmission Company, LLC.

Description: Compliance filing Compliance with RP16–415–000 NAESB Order to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5080.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–436–001.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Compliance filing Compliance with RP16–436–000 NAESB Order to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5081.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–444–001.

Applicants: Leaf River Energy Center LLC.

Description: Compliance filing Leaf River Energy Center LLC—Order No. 587–W Directed Changes to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5148.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–471–001.

Applicants: Gulf States Transmission LLC.

Description: Compliance filing Compliance with RP16–471 NAESB Order to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5084.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–546–001.

Applicants: Dominion Transmission, Inc.

Description: Compliance filing DTI—RP16–546 NAESB Compliance to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5083.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–547–001.

Applicants: Dominion Cove Point LNG, LP.

Description: Compliance filing DCP—(RP16–547) NAESB Compliance to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5079.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–550–001.

Applicants: Transwestern Pipeline Company, LLC.

Description: Compliance filing Compliance with RP16–550 NAESB Order to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5082.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–559–001.

Applicants: Horizon Pipeline Company, L.L.C.

Description: Compliance filing Compliance Filing to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5123.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–560–001.

Applicants: Kinder Morgan Louisiana Pipeline LLC.

Description: Compliance filing Compliance Filing to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5127.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–564–001.

Applicants: Natural Gas Pipeline Company of America.

Description: Compliance filing Compliance Filing to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5124.

Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–568–001.

Applicants: Kinder Morgan Illinois Pipeline LLC.

Description: Compliance filing Compliance Filing Substitute Sheets for Order 587–W to be effective 4/1/2016.

Filed Date: 4/13/16.

Accession Number: 20160413–5096.

Comments Due: 5 p.m. ET 4/25/16.

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: April 14, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016-10411 Filed 5-3-16; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9941-83-OEI]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Courtney Kerwin (202) 566-1669, or email at kerwin.courtney@epa.gov and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2449.02; Water Quality Standards Regulatory Clarifications (Final Rule); 40 CFR part 131; was approved without change on 12/31/2015; OMB Number 2040-0286; expires on 12/31/2018.

EPA ICR Number 1039.14; Monthly Progress Reports (Renewal); 48 CFR part 1552.211; was approved with change on 12/30/2015; OMB Number 2030-0005; expires on 12/31/2018.

EPA ICR Number 2137.07; NESHAP for Coal- and Oil-fired Electric Utility Steam Generating Units (Renewal); 40 CFR part 63, subparts A and UUUUU;

was approved without change on 12/23/2015; OMB Number 2060-0567; expires on 12/31/2018.

EPA ICR Number 2268.04; NESHAP for Paint Stripping and Miscellaneous Surface Coating at Area Sources (Renewal); 40 CFR part 63, subparts HHHHHH and A; was approved without change on 12/22/2015; OMB Number 2060-0607; expires on 12/31/2018.

EPA ICR Number 1983.07; NESHAP for Carbon Black, Ethylene, Cyanide, and Spandex (Renewal); 40 CFR part 63, subparts A and YY; was approved without change on 12/22/2015; OMB Number 2060-0489; expires on 12/31/2018.

EPA ICR Number 1055.11; NSPS for Kraft Pulp Mills (Renewal); 40 CFR part 60, subparts A and BB; was approved without change on 12/22/2015; OMB Number 2060-0021; expires on 12/31/2018.

EPA ICR Number 1831.06; NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese (Renewal); 40 CFR part 63, subpart XXX; was approved without change on 12/22/2015; OMB Number 2060-0391; expires on 12/31/2018.

EPA ICR Number 2237.04; NESHAP for Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities and Gasoline Dispensing Facilities (Renewal); 40 CFR part 63, subparts A, BBBB and CCCCCC; was approved without change on 12/22/2015; OMB Number 2060-0620; expires on 12/31/2018.

EPA ICR Number 2152.05; Clean Air Interstate Rule to Reduce Interstate Transport of Fine Particle Matter and Ozone (Renewal); 40 CFR parts 51 and 96; was approved without change on 12/22/2015; OMB Number 2060-0570; expires on 12/31/2018.

EPA ICR Number 2385.06; Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) units (Renewal); 40 CFR part 60, subpart DDDD; was approved without change on 12/22/2015; OMB Number 2060-0664; expires on 12/31/2018.

EPA ICR Number 2170.06; Revisions to the Air Emissions Reporting Requirements: Revisions to Lead (Pb) Reporting Threshold and Clarifications to Technical Reporting Details (Final Rule); 40 CFR part 51; was approved without change on 12/22/2015; OMB Number 2060-0580; expires on 12/31/2018.

EPA ICR Number 1748.10; State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP) Annual Reporting Form (Renewal); was approved without change on 12/21/

2015; OMB Number 2060-0337; expires on 12/31/2018.

EPA ICR Number 1676.06; Clean Air Act Tribal Authority (Renewal); 40 CFR parts 9, 35, 49, 50, and 81; was approved without change on 12/18/2015; OMB Number 2060-0306; expires on 12/31/2018.

EPA ICR Number 1617.08; Servicing of Motor Vehicle Air Conditioners (Renewal); 40 CFR part 82; was approved without change on 12/17/2015; OMB Number 2060-0247; expires on 12/31/2018.

EPA ICR Number 1395.09; Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304 (Renewal); 40 CFR part 355; was approved without change on 12/16/2015; OMB Number 2050-0092; expires on 12/31/2018.

EPA ICR Number 1352.13; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Renewal); 40 CFR part 370; was approved with change on 12/16/2015; OMB Number 2050-0072; expires on 12/31/2018.

EPA ICR Number 0370.25; Underground Injection Control (UIC) Program (Renewal); 40 CFR parts 144, 145, 146, 147, 148, and 124; was approved with change on 12/8/2015; OMB Number 2040-0042; expires on 12/31/2018.

EPA ICR Number 1506.12; NSPS for Municipal Waste Combustors (Renewal); 40 CFR part 60, subparts A, Ea, and Eb; was approved with change on 12/1/2015; OMB Number 2060-0210; expires on 12/31/2018.

EPA ICR Number 1985.06; NESHAP for Leather Finishing Operations (Renewal); 40 CFR part 63, subparts A and TTTT; was approved with change on 12/1/2015; OMB Number 2060-0478; expires on 12/31/2018.

EPA ICR Number 0982.11; NSPS for Metallic Mineral Processing Plants (Renewal); 40 CFR part 60, subparts A and LL; was approved with change on 12/1/2015; OMB Number 2060-0016; expires on 12/31/2018.

EPA ICR Number 1964.06; NESHAP for Wet-Formed Fiberglass Mat Production (Renewal); 40 CFR part 63, subparts A and HHHH; was approved with change on 12/1/2015; OMB Number 2060-0496; expires on 12/31/2018.

EPA ICR Number 1807.08; NESHAP for Pesticide Active Ingredient Production (Renewal); 40 CFR part 63, subparts A and MMM; was approved without change on 12/1/2015; OMB

Number 2060-0370; expires on 12/31/2018.

Comment Filed

EPA ICR Number 2519.01; Hazardous Waste Export-Import Revisions (Proposed Rule); 40 CFR part 262, subparts E, H, F; OMB filed comment on 12/15/2015.

EPA ICR Number 1692.08; NESHAP for Petroleum Refineries (Proposed Rule); 40 CFR part 63, subpart CC; OMB filed comment on 12/15/2015.

Courtney Kerwin,

Acting Director, Collections Strategies Division.

[FR Doc. 2016-10361 Filed 5-3-16; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Senior Executive Service Performance Review Board

As required by the Civil Service Reform Act of 1978 (Pub. L. 95-454), Chairman Thomas Wheeler appointed the following executive to the Senior Executive Service Performance Review Board (PRB): Jon S. Wilkins, Jr.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016-10355 Filed 5-3-16; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0292, 3060-0719]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before June 3, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A_Fraser@omb.eop.gov*; and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0292.

Title: Section 69.605, Reporting and Distribution of Pool Access Revenues, Part 69—Access Charges.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,064 respondents; 12,757 responses.

Estimated Time per Response: 0.75 hours—1 hour.

Frequency of Response: Annual and monthly reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 201, 202, 203, 205, 218 and 403 of the Communications Act of 1934, as amended.

Total Annual Burden: 9,568 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission is requesting approval for an extension (no change in the reporting and/or third party disclosure requirements).

Due to consolidation in the telecommunications marketplace, there is a decrease in the Commission's burden estimates. Section 69.605 requires that access revenues and cost data shall be reported by participants in association tariffs to the association for computation of monthly pool revenues distributions. The association shall submit a report on or before February 1 of each calendar year describing the associations' cost study review process for the preceding calendar year as well as the results of that process. For any revisions to the cost study results made or recommended by the association that would change the respective carrier's calculated annual common line or traffic sensitive revenue requirement by ten percent or more, the report shall include the following information:

- (1) Name of the carrier;
- (2) A detailed description of the revisions;
- (3) The amount of the revisions;
- (4) The impact of the revisions on the carrier's calculated common line and traffic sensitive revenue requirements; and
- (5) The carrier's total annual common line and traffic sensitive revenue requirement. The information is used to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without the information.

OMB Control Number: 3060-0719.

Title: Quarterly Report of Local Exchange Carriers Listing Payphone Automatic Number Identifications (ANIs).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 400 respondents; 1,600 responses.

Estimated Time per Response: 3.5 hours (8 hours for the initial submission; 2 hours per subsequent submission—for an average of 3.5 hours per response).

Frequency of Response: Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226 and 276 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,600 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the respondents wish confidential treatment of their information, they may request confidential treatment under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission adopted rules and policies governing the payphone industry under section 276(b)(1)(A) of the Telecommunications Act of 1996 (the Act) and established “a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call.” Pursuant to this mandate, and as required by section 64.1310(d) of the Commission's rules, Local Exchange Carriers (LECs) must provide to carriers required to pay compensation pursuant to section 64.1300(a), a quarterly report listing payphone ANIs. Without provision of this report, resolution of disputed ANIs would be rendered very difficult. Carriers would not be able to discern which ANIs pertain to payphones and therefore would not be able to ascertain which dial-around calls were originated by payphones for compensation purposes. There would be no way to guard against possible fraud. Without this collection, lengthy investigations would be necessary to verify claims. The report allows carriers to determine which dial-around calls

are made from payphones. The information must be provided to third parties. The requirement would be used to ensure that LECs and the carriers required to pay compensation pursuant to 47 CFR 64.1300(a) of the Commission's rules comply with their obligations under the Telecommunications Act of 1996.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 2016–10354 Filed 5–3–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0537]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before June 3, 2016. If

you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email Nicholas.A.Fraser@omb.eop.gov; and to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0537.

Title: Sections 13.9(c), 13.13(c), 13.17(b), 13.211(e) and 13.217, Commercial Operator License Examination Managers (COLEM) Records.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 659 respondents; 659 responses.

Estimated Time per Response: .44 hours to 30 hours.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154 and 303 of the Communications Act of 1934.

Total Annual Burden: 14,796 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission will submit this expiring information collection after this comment period to obtain the full, three year clearance from the Office of Management and Budget (OMB). The Commission is requesting approval for a three year extension. The rule sections approved under this collections are 47 CFR 13.9, 13.13, 13.17 13.211 and 13.217. If the information collection requirements were not kept or fulfilled it is conceivable that examinees could be overcharged and that fraud and deceit could be used for unjust enrichment of the examiners.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 2016-10353 Filed 5-3-16; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

[Docket No. 16-10]

Notice of Filing of Complaint and Assignment

Rush Truck Centers of Arizona, Inc., Rush Truck Centers of California, Inc., Rush Truck Centers of Colorado, Inc., Rush Truck Centers of Florida, Inc., Rush Truck Centers of Georgia, Inc., Rush Truck Centers of Idaho, Inc., Rush Truck Centers of Kansas, Inc., Rush Truck Centers of North Carolina, Inc., Rush Truck Centers of Ohio, Inc., Rush Truck Centers of Oklahoma, Inc., Rush Truck Centers of Texas, LP., Rush Truck Centers of Utah, Inc., On Behalf of Themselves and All others similarly situated V. Nippon Yusen Kabushiki Kaisha, Nyk Line (North America) Inc., Mitsui O.S.K. Lines, Ltd., Mitsui O.S.K. Bulk Shipping (USA), Inc., World Logistics Service (USA) Inc., Höegh Autoliners as, Höegh Autoliners, Inc., Nissan Motor Car Carriers Co. Ltd., Kawasaki Kisen Kaisha, Ltd., “K” Line America, Inc., Wallenius Wilhelmsen Logistics as, Wallenius Wilhelmsen Logistics Americas LLC, Eukor Car Carriers Inc., Compañía Sud Americana De Vapores S.A., and CSAV Agency North America, LLC.

Notice is given that a Complaint has been filed with the Federal Maritime Commission (Commission) by the above named Complainants, “on behalf of themselves and all others similarly situated, hereinafter “Complainants,” against the above named “providers of Vehicle Carrier Services”, hereinafter “Respondents.” The Complaint is brought as a proposed class action. Complainants “seek to represent classes of truck and heavy equipment dealers in approximately 30 states . . . who purchased new Vehicles . . . that included in their prices Vehicle Carrier

Services from any Respondent, unnamed co-conspirator, or any current or former subsidiary or affiliate thereof” Complainants allege that Respondents “transport large numbers of cars, medium- and heavy-duty trucks, and other new, assembled motor vehicles including buses, commercial vehicles, construction equipment, mining equipment, and agricultural equipment . . . across oceans and other large bodies of water using specialized cargo ships known as Roll On-Roll Off vessels (“RoRos”).”

Complainants allege that Respondents violated provisions of the Shipping Act of 1984, including 46 U.S.C. 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and the Commission’s regulations at 46 CFR 535.401 *et seq.*, because they “participated in a combination and conspiracy to suppress and eliminate competition in the Vehicle Carrier Services market by agreeing to fix, raise, stabilize and/or maintain the prices of, and allocation [sic] the market and customers for Vehicle Carrier Services sold to Vehicle manufacturers (“OEMs”) in the United States and elsewhere for the import and export of new, assembled Vehicles to and from the United States.”

Complainants request the following relief:

“(1) That Respondents be required to answer the charges herein;

(2) That after due investigation and hearing Respondents be found to have violated 46 U.S.C. 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and 46 CFR 535.401, *et seq.*, and such other provisions as to which violations may be proved hereunder;

(3) The FMC determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Truck and Equipment Dealer Class;

(4) That Complainants be awarded reparations in a sum to be proven under 46 U.S.C. 41305, with interest (46 U.S.C. 41305(a)) and reasonable attorneys’ fees (46 U.S.C. 41305(b));

(5) That Complainants be awarded double its proven actual injury under 46 U.S.C. 41305(c) because Respondents and their co-conspirators violated 46 U.S.C. 41102(b) and 41105(1);

(6) That Respondents be found jointly and severally liable for the conduct alleged herein, including that of their co-conspirators; and

(7) That such other and further order or orders be made as the FMC determines to be proper.

The full text of the complaint can be found in the Commission’s Electronic Reading Room at www.fmc.gov/16-10.

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by April 28, 2017 and the final decision of the Commission shall be issued by November 13, 2017.

Karen V. Gregory,
Secretary.

[FR Doc. 2016-10340 Filed 5-3-16; 8:45 am]

BILLING CODE 6731-AA-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission’s Web site (www.fmc.gov) or by contacting the Office of Agreements at (202)–523–5793 or tradeanalysis@fmc.gov.

Agreement No.: 012405.

Title: Crowley/Hoegh Space Charter Agreement.

Parties: Crowley Latin America Services, LLC and Hoegh Autoliners AS.

Filing Party: Wayne R. Rohde, Esq.; Cozen O’Connor LLP; 1200 Nineteenth St. NW., Washington, DC 20036.

Synopsis: The Agreement authorizes Hoegh to charter space to Crowley in the trade between the U.S. Atlantic Coast and ports in Panama.

Agreement No.: 012406.

Title: COSCON/PIL Slot Exchange Agreement Asia—USWC.

Parties: COSCO Container Lines Company, Limited and Pacific International Lines (PTE) Ltd.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500, Washington, DC 20001.

Synopsis: The agreement provides for the exchange of slots between COSCON and PIL on their respective services in the trade between the United States West Coast and China (including Hong Kong), Korea, Malaysia, Singapore, Vietnam, Sri Lanka, Togo, Ghana, Ivory Coast, and Nigeria.

By Order of the Federal Maritime Commission.

Dated: April 29, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016-10435 Filed 5-3-16; 8:45 am]

BILLING CODE 6731-AA-P

FEDERAL MARITIME COMMISSION

[Docket No. 16-11]

Notice of Filing of Complaint and Assignment

Landers Brothers Auto Group, Inc. D/B/A Landers Honda (Jonesboro), Landers Brothers Auto No. 4, LLC D/B/A/Landers Honda (Pine Bluff), Individually and on Behalf of Others Similarly Situated v. Nippon Yusen Kabushiki Kaisha, NYK Line (North America) Inc., Mitsui O.S.K. Lines, Ltd., Mitsui O.S.K. Bulk Shipping (USA), Inc., World Logistics Service (USA) Inc., Höegh Autoliners AS, Höegh Autoliners, Inc., Nissan Motor Car Carriers Co. Ltd., Kawasaki Kisen Kaisha, Ltd., "K" Line America, Inc., Wallenius Wilhelmsen Logistics AS, Wallenius Wilhelmsen Logistics Americas LLC, Eukor Car Carriers Inc., Compañía SUD Americana De Vapores S.A., and CSAV Agency North America, LLC

Notice is given that a Complaint has been filed with the Federal Maritime Commission (Commission) by the above named Complainants, "on behalf of themselves and all others similarly situated, hereinafter "Complainants," against the above named "providers of Vehicle Carrier Services", hereinafter "Respondents." The Complaint is brought as a proposed class action. Complainants "seek to represent all Automobile Dealers in the United States who purchased motor vehicles incorporating a Vehicle Carrier Service charge charged by any Respondent or any current or former subsidiary or affiliate thereof, or any co-conspirator" Complainants allege that Respondents "transport large numbers of cars, trucks, and other automotive vehicles including agriculture and construction equipment . . . across large bodies of water using specialized cargo ships known as Roll On-Roll Off vessels ("RoRos")."

Complainants allege that Respondents violated provisions of the Shipping Act of 1984, including 46 U.S.C. 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and the Commission's regulations at 46 CFR 535.401 *et seq.*, because they "participated in a combination and conspiracy to suppress and eliminate competition in the Vehicle Carrier Services market by agreeing to fix, raise, stabilize and/or maintain the prices of, and allocation [sic] the market and customers for Vehicle Carrier Services sold to automobile manufacturers and

others in the United States, and elsewhere, for the import and export of motor vehicles to and from the United States."

Complainants request the following relief:

(1) That Respondents be required to answer the charges herein;

(2) That after due investigation and hearing Respondents be found to have violated 46 U.S.C. 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and 46 CFR 535.401, *et seq.*, and such other provisions as to which violations may be proved hereunder;

(3) The FMC determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Class;

(4) That Complainants be awarded reparations in a sum to be proven under 46 U.S.C. 41305, with interest (46 U.S.C. 41305(a)) and reasonable attorneys' fees (46 U.S.C. 41305(b));

(5) That Complainants be awarded double its proven actual injury under 46 U.S.C. 41305(c) because Respondents and their co-conspirators violated 46 U.S.C. 41102(b) and 41105(1);

(6) That Respondents be found jointly and severally liable for the conduct alleged herein, including that of their co-conspirators; and

(7) That such other and further order or orders be made as the FMC determines to be proper.

The full text of the complaint can be found in the Commission's Electronic Reading Room at www.fmc.gov/16-11

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by April 28, 2017 and the final decision of the Commission shall be issued by November 13, 2017.

Karen V. Gregory,
Secretary.

[FR Doc. 2016-10341 Filed 5-3-16; 8:45 am]

BILLING CODE 6731-AA-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 May 16, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Henry Katz, Ada, Oklahoma and Sandra Beth Katz Sherry, Prairie Village, Kansas, Co-Trustees of the Barbara Katz Cobin Trust, Woodland Hills, California; Sandra Beth Sherry Trust, Prairie Village, Kansas; Marsha Katz Rothpan Trust, West Hills, California and Ronald D Lane Trust, Ada, Oklahoma, and all as members of the Vision Bancshares, Inc. Shareholders Agreement; to retain voting shares of Vision Bancshares, Inc., and thereby indirectly retain voting shares of Vision Bank, N.A., both in Ada, Oklahoma.*

Board of Governors of the Federal Reserve System, April 29, 2016.

Michael J. Lewandowski,
Associate Secretary of the Board.

[FR Doc. 2016-10433 Filed 5-3-16; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also

includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Ascent Bancorp*, Helena, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank of Helena, Helena, Montana.

Board of Governors of the Federal Reserve System, April 29, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016-10432 Filed 5-3-16; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention announces the following meeting of the aforementioned committee:

Time and Date

11:00 a.m.–2:00 p.m. EDT, Wednesday, May 25, 2016

Place: Audio Conference Call via FTS Conferencing.

Status: Open to the public. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number, 1-866-659-0537 and the passcode is 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the

President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines, which have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on March 22, 2016 pursuant to Executive Order 13708, and will expire on September 30, 2017.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters for Discussion: The agenda for the conference call includes: Work Group and Subcommittee Reports; SEC Petitions Update for the August 2016 Advisory Board Meeting; Plans for the August 2016 Advisory Board Meeting; and Advisory Board Correspondence.

Contact Person for More Information: Theodore M. Katz, M.P.A., Designated Federal Officer, NIOSH, CDC, 1600 Clifton Rd. NE., Mailstop: E-20, Atlanta, GA 30333, Telephone (513) 533-6800, Toll Free 1-800-CDC-INFO, Email ocas@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016-10420 Filed 5-3-16; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Health Promotion and Disease Prevention Research Centers: Special Interest Project Competitive Supplements (SIPS), DP16-006, initial review.

Summary: This document corrects a notice that was published in the **Federal Register** on April 21, 2016, Volume 81, Number 77, page 23497. This meeting is cancelled in its entirety.

Contact Person for More Information: Brenda Colley Gilbert, Ph.D., M.S.P.H., Director, Extramural Research Program Operations and Services, CDC, 4770 Buford Highway NE., Mailstop F-80, Atlanta, Georgia 30341, Telephone: (770) 488-6295, BJC4@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2016-10422 Filed 5-3-16; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC)

The Centers for Disease Control and Prevention (CDC) is soliciting

nominations for membership on the BCCEDCAC. The committee provides advice and guidance to the Secretary, HHS, and the Director, CDC, regarding the early detection and control of breast and cervical cancer. The committee makes recommendations regarding national program goals and objectives; implementation strategies; program priorities, including surveillance, epidemiologic investigations, education and training, information dissemination, professional interactions and collaborations, and policy.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. The Secretary, HHS, acting through the Director, CDC, shall appoint to the advisory committee nominees with expertise in breast cancer, cervical cancer, medicine, public health, behavioral science, epidemiology, radiology, pathology, clinical medical care, health education, and surveillance. Two members may be representatives of the general public with personal experience in issues related to breast or cervical cancer early detection and control. Members may be invited to serve for up to four years.

The next cycle of selection of candidates will conclude in the Summer of 2016, for selection of potential nominees to replace members whose terms will end on March 31, 2017.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of BCCEDCAC objectives. The U.S. Department of Health and Human Services will give close attention to equitable geographic distribution and to minority and female representation so long as the effectiveness of the Committee is not impaired. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, HIV status, disability, and cultural, religious, or socioeconomic status. Consideration is given to a broad representation of geographic areas within the U.S., with diverse representation of both genders, ethnic and racial minorities, and persons with disabilities. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government.

Candidates should submit the following items:

- Current curriculum vitae or resume, including complete contact information (name, affiliation, mailing address, telephone numbers, fax number, email address);
- A 150 word biography for the nominee;

- At least one letter of recommendation from a person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by HHS.

Nominations should be submitted (postmarked or received) by June 24, 2016:

- *Electronic submissions:* You may submit nominations, including attachments, electronically to bccedcac@cdc.gov.

■ *Regular, Express or Overnight Mail:* Written nominations may be submitted to the following addressee only: Ms. Jameka Reese Blackmon, MBA, CMP c/o BCCEDCAC Secretariat, Centers for Disease Control and Prevention, 3719 North Peachtree Road, Building 100, Chamblee, Georgia 30341.

Telephone and facsimile submissions cannot be accepted.

Contact Person for More Information: Jameka R. Blackmon, MBA, CMP, Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Hwy. NE., Mailstop F76, Atlanta, Georgia 30341, Telephone (770) 488-4880; Fax (770) 488-4760; Email: bccedcac@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016-10421 Filed 5-3-16; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-16-16AH1; Docket No. CDC-2016-0041]

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 a proposed information collection project entitled "Community-Based Organization Outcome Monitoring Projects for CBO HIV Prevention Services Clients".

DATES: Written comments must be received on or before July 5, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2016-0041 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

“Community-Based Organization Outcome Monitoring Projects for CBO HIV Prevention Services Clients”—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Community-Based Organizations (CBOs) play an essential role in reaching persons at high risk of transmitting and acquiring HIV infection. Through Cooperative Agreement #CDC-RFA-PS15-1502 (CBO-HPS), CDC funds 90 CBOs to provide comprehensive HIV prevention services to HIV-positive persons and high-risk HIV-negative persons. However, the CBO-HIV Prevention Services (HPS) awardees are not required to monitor or report on critical outcomes such as whether HIV-positive persons who are linked to HIV medical care were retained in care or prescribed ART, and whether high-risk

HIV-negative persons who were referred to Pre-Exposure Prophylaxis (PrEP) initiated its use. Also, CBO-HPS CBOs are not required to collect and report data about clients' perceived barriers to accessing HIV prevention services.

CBO-OMP will fund a subset of CBO-HPS awardees to collect and report data to CDC about the utilization and outcomes of the HIV prevention and support services. This will increase understanding of HIV prevention and support services received by CBO-HPS clients, the outcomes of these services, and successes and challenges related to service provision and utilization.

The respondent universe will comprise clients at 15–18 CBOs funded by CBO-HPS. CBO-OPM is organized in two categories: Category 1—HIV-positive clients and Category 2—high-risk HIV-negative clients.

This information collection will evaluate HIV-prevention services over time through participant interviews, record/chart review, CBO-HPS staff interviews, and focus groups. Participant interviews will include questions for participants living with HIV-positive and high-risk HIV-negative clients at CBOs funded by CBO-HPS about demographics, HIV-related risk behaviors, HIV prevention and support services received, service outcomes, and experiences with services over time; staff interviews about strategies for and barriers to recruiting and engaging clients in HIV prevention and support services; and focus groups with clients who are receiving HIV prevention services at CBOs.

For Category 1, self-reported client interview data will be collected at baseline, 3, 6, 9 and 15 months. For Category 2, self-reported client level data will be collected at baseline, 3, 6, and 9 months. Participants will complete a 30-minute, staff-facilitated interview at baseline and 20-minute staff-facilitated interviews at each follow-up, to assess the outcomes of HIV-prevention services they receive.

This project will also collect information from CBO-HPS Staff. Two CBO-HPS staff interviews will be conducted for Category 1 and two staff interviews will be conducted for Category 2. All interviews are expected to last 2.5 hours.

This project will also collect information from participant focus groups. Respondents will also complete a short demographic questionnaire. Focus groups will occur twice during the project period and will last approximately 90 minutes.

All electronic data will be password protected and accessible only to project staff and direct supervisors. Data will be

stored on network drives which are regularly backed up by staff. Participation in this project is strictly voluntary. The consent process will be implemented according to the local/state policies of the funded agencies. Consent forms are provided. The consent process for CBO-OMP involves the agency staff providing an overview of the project that includes a description of the benefits of as well as the risks and discomforts to participation as well as the protections for the respondent's privacy. Participants must sign the consent form prior to enrolling into the project.

The information collected by each funded agency may include personally identifiable information, such as name and contact information, in order to provide continuity of service, follow-up of referrals, schedule follow-up interviews and other outreach activities. Personally identifiable information will be kept in a locked file cabinet and will be accessible only to appropriate agency staff. Any individually identifiable information collected by funded agencies will not be submitted to CDC.

The category 1 information collection will occur over 33 months and will involve up to 15 CBOs. The population targeted by Category 1 are HIV-positive clients who are receiving CBO-HPS services and have been provided a CBO-HPS referral to HIV medical care. They will be screened, interviewed and CBO staff will collect their medical records related to their HIV-medical care visits, CD4 count and viral loads, and prescription to ART.

The Category 2 information collection will occur over 21 months and involve up to 3 CBOs who will target high-risk HIV-negative clients who are receiving CBO-HPS services. CBOs will screen 225 persons each year. CBO staff will collect their medical records about medical care visits, PrEP prescriptions and information about which CBO-HPS referrals. Participants will be administered a baseline interview as well as interviews at 3 months, 6 months, and 9 months. Each CBO will also conduct two focus groups over the project period, one in each year of the evaluation.

Each of the CBOs funded to participate in this project will be required to submit data they've collected each month to CDC, including the screener, medical records and CBO-HPS referrals, baseline interview, 3-month follow-up interview, 6-month follow-up interview, 9-month follow-up interview, focus groups, and staff interviews, respectively. There is no cost to respondents other than their time. Total burden hours are 1,125.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden response (hours)	Total burden (hours)
General public	Screener Participant Interview Category 1.	175	1	3/60	9
Facility office staff	Medical records abstraction Category 1.	120	3	3/60	18
CBO—HPS grantees	CBO—HPS Referrals Category 1	120	3	3/60	18
General public	Baseline Interview Category 1	150	1	40/60	100
General public	3,6,9, and 15 Month Follow-up Interview Category 1.	120	4	30/60	240
General public	Screener Focus Group Category 1	150	1	3/60	8
General Public	Focus Group Questionnaire Category 1.	90	1	2/60	3
General public	Focus Group Category 1	90	1	1.5	135
CBO—HPS grantees	Staff Interview Category 1	30	1	2.5	75
CBO—OMP CBOs	Data submission Category 1 and 2	18	12	10/60	36
General public	Screener Participant Interview Category 2.	225	1	3/60	12
Facility office staff	Medical records abstraction Category 2.	168	2	3/60	17
CBO—HPS grantees	CBO—HPS Referrals Category 2	168	2	3/60	17
General public	Baseline Interview Category 2	210	1	40/60	140
General public	3,6, and 9 Month Follow-up Interview Category 2.	168	3	30/60	252
General Public	Screener Focus group Category 2 ..	30	1	3/60	2
General Public	Focus Group Questionnaire Category 2.	18	1	2/60	1
General public	Focus Group Category 2	18	1	1.5	27
CBO—HPS grantees	Staff Interview Category 2	6	1	2.5	15
Total .....	.....	.....	.....	.....	1,125

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. 2016–10399 Filed 5–3–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Healthcare Infection Control Practices Advisory Committee (HICPAC)

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for possible membership on the Healthcare Infection Control Practices Advisory Committee (HICPAC).

The Committee provides advice and guidance to the Secretary, Department of Health and Human Services (HHS); the Director, Centers for Disease Control and Prevention (CDC); the Deputy Director, Office of Infectious Diseases (OID), CDC; the Director, National Center for Emerging and Zoonotic

Infectious Diseases (NCEZID), CDC; and the Director, Division of Healthcare Quality Promotion (DHQP), NCEZID, CDC, regarding the practice of infection control and strategies for surveillance, prevention, and control of healthcare-associated infections, antimicrobial resistance, and related events in settings where healthcare is provided, including hospitals, outpatient settings, long-term-care facilities, and home health agencies.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishment of HICPAC objectives.

The Secretary, HHS, acting through the Director, CDC, shall appoint to the advisory committee nominees with expertise to provide advice regarding the practice of healthcare infection control, strategies for surveillance and prevention and control of healthcare-associated infections in United States healthcare facilities. Consideration is given to professional training and background, points of view represented, and upcoming issues to be addressed by the committee. Nominees may be invited to serve for four-year terms. The next cycle of selection of candidates will begin in the spring of 2016, for selection of potential nominees to

replace members whose terms will end on June 30, 2017.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of HICPAC's objectives (<http://www.cdc.gov/hicpac/about.html>). The U.S. Department of Health and Human Services will give close attention to equitable geographic distribution and to minority and female representation so long as the effectiveness of the Committee is not impaired.

Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, HIV status, disability, and cultural, religious, or socioeconomic status. Consideration is given to a broad representation of geographic areas within the U.S., with diverse representation of both genders, ethnic and racial minorities, and persons with disabilities. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

Current curriculum vitae or resume, including complete contact information (name, affiliation, mailing address, telephone numbers, fax number, email address) ; At least one letter of recommendation stating the

qualifications of the candidate from person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by HHS.

Nominations should be submitted (postmarked or received) by August 15, 2016.

Electronic submissions: You may submit nominations, including attachments, electronically to hicpac@cdc.gov.

Regular, Express or Overnight Mail: Written nominations may be submitted to the following addressee only: Erin Stone, M.S., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE., Mailstop A-07, Atlanta, Georgia 30333.

Telephone and facsimile submissions cannot be accepted. Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016-10423 Filed 5-3-16; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10615]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on an information collection concerning CMS' Healthy Indiana Program (HIP) 2.0 Beneficiaries Survey. We are also announcing that the proposed information collection had

been submitted to OMB and was approved under control number 0938-1300 through September 30, 2016. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA) we requested emergency review under 5 CFR 1320.13(a)(2)(i) because public harm is reasonably likely to result if the regular clearance procedures were followed.

More specifically, the regular PRA clearance process would jeopardize the timely completion of CMS' evaluation of the State's upcoming non-emergency medical transportation (NEMT) waiver and other important waivers. Most importantly, it would potentially cause significant harm by depriving Medicaid beneficiaries—especially those affected by the NEMT waiver—of appropriate medical services and needed care.

Although we have already received OMB approval to test/develop the survey instruments, we are now soliciting public comment for 30-days prior to implementing the survey in order to meet the conditions of OMB's Terms of Clearance that were issued on March 21, 2016.

Under the PRA, federal agencies are required to publish notice in the **Federal Register** concerning each proposed information collection request (ICR). Interested persons are invited to send comments regarding our burden estimates or any other aspect of this ICR, including any of the following subjects: (1) The necessity and utility of the proposed ICR 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 June 3, 2016.

ADDRESSES: When commenting, please reference the document identifier (CMS-10615) or OMB control number (0938-1300). 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: CMS-10615/OMB Control Number 0938-1300, 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 ICR. More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10615 Healthy Indiana Program (HIP) 2.0 Beneficiaries Survey

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. In compliance with the requirement of section 3506(c)(2)(A) of the PRA, we submitted to OMB our request for emergency processing of this information collection. OMB approved the emergency ICR for testing/developing the survey on March 21, 2016. This iteration seeks emergency approval for fielding the survey and for conducting interviews and focus groups.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Healthy Indiana Program (HIP) 2.0 Beneficiaries Survey; *Use:* This is a request for emergency approval to field the surveys and to conduct key informant interviews and focus groups. The surveys were tested during the first week of April 2016, and

there was a week-long public comment period that was announced in the **Federal Register** on March 29, 2016 (81 FR 17460). This ICR contains the revised surveys based on testing and public comments provided during the survey testing period.

Emergency OMB approval is being sought, as permitted under 5 CFR 1320.13(a)(2)(i), since public harm is reasonably likely to occur if the regular nonemergency PRA clearance procedures are followed. Potential harm may result due to insufficient information to adequately support decision making that is required in November 2016. The clearance is particularly important for decisions about the renewal of precedent-setting waivers of Medicaid policy that assure important beneficiary protections regarding coverage and access to care; e.g., the NEMT waiver. That waiver ends or will be extended by no later than December 1, 2016. The survey effort is critical to supply more detail and information on HIP 2.0 beneficiary understanding and experiences (current and new enrollees as well as disenrollees/lockouts). Other information on other key policies under the Indiana HIP 2.0 demonstration, such as the 60 day beneficiary lock-out period, is also included in this information collection. Including this other information, as well as the interviews and focus groups, with the NEMT related information allows all this information to be collected during the same period of time; this will improve the efficiency of resources when compared to fielding separate surveys, interviews and focus groups at a later time which would be needed under the regular PRA process. *Form Number:* CMS-10615 (OMB control number: 0938-1300); *Frequency:* Once; *Affected Public:* Individuals and households, Private sector (Business or other for-profits and Not-for-profits institutions), and State, Local, or Tribal Governments; *Number of Respondents:* 5,240; *Total Annual Responses:* 5,240; *Total Annual Hours:* 1,442. (For policy questions regarding this collection contact Teresa DeCaro at 202-384-6309).

Written comments and recommendations will be considered from the public if received by the date and address noted above.

Dated: April 29, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016-10448 Filed 5-3-16; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-D-1174]

Special Protocol Assessment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Special Protocol Assessment.” This draft guidance provides information about the procedures and general policies adopted by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) for special protocol assessment (SPA). This draft guidance is intended to improve the quality of Requests for SPAs and accompanying submission materials, and the quality of the resulting interaction between sponsors and FDA. This draft guidance revises the guidance for industry entitled “Special Protocol Assessment” issued May 17, 2002.

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 July 5, 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. 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-D-1174 for “Special Protocol Assessment; Draft Guidance for Industry; Availability.” 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 Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002, or Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Amalia Himaya, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6439, Silver Spring, MD 20993-0002, 301-796-0700; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Special Protocol Assessment." SPA is a process by which sponsors may request to meet with FDA to reach agreement on the design and size of certain trials, clinical studies, or animal trials to determine if they adequately address scientific and regulatory requirements. After completing the SPA review, FDA issues a letter including an assessment of the protocol, agreement or nonagreement with the proposed protocol, and answers to the sponsor's relevant questions. Section 119 of the Food and Drug Administration Modernization Act of 1997 amended section 505(b) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(b)) and directed FDA to

meet with sponsors who request to meet, provided certain conditions are met, to reach agreement on the design and size of the well-controlled clinical trials intended to form the primary basis for a demonstration of effectiveness in a marketing application submitted under section 505(b) of the FD&C Act or section 351 of the Public Health Service (PHS) Act (42 U.S.C. 262). These provisions subsequently were amended in section 7002(d)(1) of the Biologics Price Competition and Innovation Act of 2009 to include any necessary clinical study or studies for biosimilar biological product applications under section 351(k) of the PHS Act. In 2013, the Pandemic and All Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113-5) further amended the SPA provisions to provide for SPA agreements regarding animal and associated clinical trials conducted in support of applications for products developed under 21 CFR part 314 subpart I, and 21 CFR part 601 subpart H (the animal rule). Such marketing applications include new drug applications (NDAs), biologics license applications (BLAs), and efficacy supplements to approved NDAs and BLAs.

In conjunction with the Prescription Drug User Fee Amendments of 2012 (PDUFA V), enacted as part of the Food and Drug Administration Safety and Innovation Act (FDASIA), and with the Biosimilar User Fee Act of 2012 (BsUFA), enacted as part of FDASIA, FDA agreed to specific performance goals (PDUFA V goals and BsUFA goals, respectively) for SPA. Per section 505(b)(5)(B) of the FD&C Act, the PDUFA V goals, and the BsUFA goals, the following protocols are eligible for SPA: (1) Animal carcinogenicity protocols; (2) drug substance and drug product stability protocols; (3) animal efficacy protocols for studies intended to provide primary evidence of effectiveness required for approval or for licensure for products developed under the animal rule; (4) protocols for clinical trials or studies intended to form the primary basis of an efficacy claim; and (5) protocols for clinical studies necessary to prove biosimilarity and/or interchangeability.

This draft guidance revises the guidance of the same name issued in May 2002. After it has been finalized, this guidance will replace the May 2002 guidance. Significant changes from the 2002 version include the following: (1) Clarifying which protocols are eligible for SPA; (2) adding animal rule efficacy protocols intended to support approval under part 314 subpart I, and part 601 subpart H, for drugs and biological

products, respectively; (3) adding protocols intended to support approval of a biosimilar biological product; (4) providing greater detail about the content of an SPA submission; and (5) clarifying the process for rescinding an SPA agreement. FDA seeks comments to aid in finalizing this draft guidance.

This 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 the procedural aspects of SPA. 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. The Paperwork Reduction Act of 1995

This draft guidance 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 (44 U.S.C. 3501-3520). The collections of information referred to in the guidance entitled "Special Protocol Assessment" have been approved under OMB control number 0910-0470. The collections of information for FDA Form 1571 have been approved under OMB control number 0910-0014.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm>, or <http://www.regulations.gov>.

Dated: April 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-10391 Filed 5-3-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-P-1654]

Determination That LEUCOVORIN CALCIUM (Leucovorin Calcium) Injectable and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT:

Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6207, Silver Spring, MD 20993-0002, 301-796-8363, Stacy.Kane@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417)

(the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends

approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed.

Application No.	Drug name	Active ingredient(s)	Strength(s)	Dosage form/route	Applicant
NDA 008107	LEUCOVORIN CALCIUM.	Leucovorin Cal- cium.	Equivalent to (EQ) 3 milligrams (mg) base/milliliter (mL); EQ 50 mg base/ vial; EQ 100 mg base/vial; EQ 350 mg base/vial.	Injectable; Injection	Hospira, Inc.
NDA 009986	DELTASONE	Prednisone	2.5 mg; 5 mg; 10 mg; 20 mg; 50 mg ..	Tablet; Oral	Pharmacia & Upjohn Co.
NDA 010392	ATARAX	Hydroxyzine Hy- drochloride.	10 mg; 25 mg; 50 mg; 100 mg	Tablet; Oral	Pfizer Inc.
NDA 016727	PROLIXIN DECANOATE.	Fluphenazine Decanoate.	25 mg/mL	Injectable; Injection	Bristol-Myers Squibb
NDA 018031	INDERIDE-40/25 and IINDERIDE 80/20.	Hydrochlorothiazid- e; Propranolol.	Hydrochloride 25 mg; 40 mg and 25 mg; 80 mg.	Tablet; Oral	Wyeth Pharma- ceuticals Inc.
NDA 019279	DIMETANE-DX	Brompheniramine Maleate; Dextromethorphan Hydrobromide; Pseudoephedrine Hydrochloride.	2 mg/5 mL; 10 mg/5 mL; 30 mg/5 mL	Syrup; Oral	A.H. Robins Com- pany
NDA 050007	VIBRAMYCIN	Doxycycline Hyclate.	EQ 50 mg base	Capsule; Oral	Pfizer Inc.
ANDA 061639 ..	E.E.S. 200 and E.E.S. 400.	Erythromycin Ethylsuccinate.	EQ 200 mg base/5 mL; EQ 400 mg base/5 mL.	Suspension; Oral ..	Arbor Pharma- ceuticals, LLC
ANDA 062736 ..	BACTOCILL	Oxacillin Sodium ...	EQ 1 gram (g) base/vial; EQ 2 g base/ vial.	Injectable; Injection	GlaxoSmithKline
ANDA 065012 ..	CEFOXITIN	Cefoxitin Sodium ..	EQ 1 g base/vial; EQ 2 g base/vial	Injectable; Injection	Fresenius Kabi USA

FDA has reviewed its records and, under § 314.161, and has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the "Discontinued Drug Product List" section of the Orange Book. The

"Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs and ANDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs and ANDAs. Additional ANDAs that refer to these

products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: April 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-10387 Filed 5-3-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-P-0159]

Medical Devices; Exemption From Premarket Notification: Method, Metallic Reduction, Glucose (Urinary, Non-Quantitative) Test System in a Reagent Tablet Format

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has received a petition requesting exemption from the premarket notification requirements for a method, metallic reduction, glucose (urinary, non-quantitative) test system in a reagent tablet format that is intended to measure glucosuria (glucose in urine). Method, metallic reduction, glucose (urinary, non-quantitative) test systems in a reagent tablet format are used in the diagnosis and treatment of carbohydrate metabolism disorders including diabetes mellitus, hypoglycemia, and hyperglycemia. FDA is publishing this notice to obtain comments in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit either electronic or written comments by June 3, 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. 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-P-0159 for "Medical Devices; Exemption From Premarket Notification: Method, Metallic Reduction, Glucose (Urinary, Non-Quantitative) Test System in a Reagent Tablet Format." 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: Ana Loloei Marsal, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4552, Silver Spring, MD 20993-0002, 301-796-8774, anahita.loloeimarsal@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (1976 amendments) (Pub. L. 94-295), as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101-629), devices are to be classified into class I (general controls) if there is information showing that the general controls of the FD&C Act are sufficient to assure safety and effectiveness; into class II (special controls) if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval) if there is insufficient information to support classifying a device into class I or class II and the device is a life sustaining or life supporting device, or is for a use which is of substantial importance in preventing impairment of human health or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of

the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the FD&C Act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the FD&C Act (21 U.S.C. 360(k)). Section 510(k) of the FD&C Act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification (510(k)) containing information that allows FDA to determine whether the new device is “substantially equivalent” within the meaning of section 513(i) of the FD&C Act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Pub. L. 105–115). Section 206 of FDAMA, in part, added a new section, 510(m), to the FD&C Act. Section 510(m)(1) of the FD&C Act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the FD&C Act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the FD&C Act provides that 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a

510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the Agency issued on February 19, 1998, entitled “Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff” (Ref. 1).

III. Proposed Class II Device Exemptions

FDA has received the following petition requesting an exemption from premarket notification for a class II device: Martin O'Connor, Germaine Laboratories, Inc., 11030 Wye Dr., San Antonio, TX 78217, for its Method, Metallic Reduction, Glucose (urinary, non-quantitative) classified under 21 CFR 862.1340.

IV. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at <http://www.regulations.gov>. FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. “Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff,” February 1998, (<http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM080199.pdf>).

Dated: April 26, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–10388 Filed 5–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0012]

Natural History Studies for Rare Disease Product Development: Orphan Products Research Project Grant (R01)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of FDA’s Office of Orphan Products Development (OOPD) Natural History Grants Program. The goal of the Orphan Products Natural History Grants

Program is to support studies that advance rare disease medical product development through characterization of the natural history of rare diseases/conditions, identification of genotypic and phenotypic subpopulations, and development and/or validation of clinical outcome measures, biomarkers and/or companion diagnostics. The ultimate goal of these natural history studies is to support clinical development of products for use in rare diseases or conditions where no current therapy exists or where the proposed product will be superior to the existing therapy. FDA provides grants for natural history studies that will either assist or substantially contribute to market approval of these products. Applicants must include in the application’s Background and Significance section documentation to support that the estimated prevalence of the orphan disease or condition in the United States is less than 200,000 (or in the case of a vaccine or diagnostic, information to support that the product will be administered to fewer than 200,000 people in the United States per year), and an explanation of how the proposed study will either help support product approval or provide essential data needed for product development.

DATES: Important dates are as follows:

1. The application due dates are October 14, 2016 and October 15, 2018.
2. The anticipated start dates are March 2017 and March 2019.
3. The opening dates are August 15, 2016 and August 15, 2018.
4. The expiration date is October 16, 2018.

ADDRESSES: Submit electronic applications to: <http://www.grants.gov>. For more information, see section III of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:

Katherine Needleman, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5295, Silver Spring, MD 20993–0002, 301–796–8660, email: katherine.needleman@fda.hhs.gov; or Daniel Lukash, Office of Acquisitions and Grant Services, 5630 Fishers Lane, Rockville, MD 20857, 240–402–7596, email: daniel.lukash@fda.hhs.gov.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at <http://grants.nih.gov/grants/guide> (select the “Request for Applications” link), <http://www.grants.gov> (see “For Applicants” section), and <http://www.fda.gov/orphan>.

SUPPLEMENTARY INFORMATION:**I. Funding Opportunity Description**

RFA-FD-16-043

93.103

A. Background

The OOPD was created to identify and promote the development of orphan products. Orphan products are drugs, biologics, medical devices, and medical foods that are indicated for a rare disease or condition. The term “rare disease or condition” is defined in section 528 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360ee). FDA generally considers drugs, devices, and medical foods potentially eligible for grants under the OOPD grant program if they are indicated for a disease or condition that has a prevalence, not incidence, of fewer than 200,000 people in the United States. Diagnostics and vaccines are considered potentially eligible for such grants only if the U.S. population to whom they will be administered is fewer than 200,000 people in the United States per year.

The natural history of a disease is the natural course of a disease from the time immediately prior to its inception, progressing through its pre-symptomatic phase and different clinical stages to the point where the disease has ended without external intervention. Natural history studies track the course of disease over time, identifying demographic, genetic, environmental, and other variables that correlate with its development and outcomes in the absence of treatment. Thorough understanding of disease natural history is the foundation upon which a clinical development program for drugs, biologics, medical foods or medical devices is built.

Rare diseases, as defined in the United States Orphan Drug Act (ODA) (Pub. L. 97-414), are diseases or conditions with a prevalence of fewer than 200,000 persons in the United States. Though individually rare, together there are approximately 30 million Americans affected by 7,000 known rare diseases. Unlike common diseases, there is little existing knowledge on the natural history of most rare diseases, which makes natural history studies of particular importance for rare diseases product development. In January 2014, the FDA organized a Public Workshop on Complex Issues in Developing Drugs for Rare Diseases. During the workshop, the lack of natural history studies was reconfirmed by all stakeholders (patients, industry, researchers and the FDA) as one of the most common and urgent issues that hinder treatment development for rare

diseases. The need for natural history studies was also emphasized in the recently published (August 17, 2015) draft FDA Guidance for Industry, “Rare Diseases: Common Issues in Drug Development,” available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM458485.pdf>.

B. Research Objectives

The objective of FDA’s Orphan Products Natural History Grants Program is to support studies that characterize the natural history of rare diseases/conditions, identify genotypic and phenotypic subpopulations, and develop and/or validate clinical outcome measures, biomarkers and/or companion diagnostics. The ultimate goal of these natural history studies is to support clinical development of products for use in serious rare diseases or conditions where no current therapy exists or where the proposed product will be superior to the existing therapy. FDA provides grants for natural history studies that will either assist or substantially contribute to market approval of these products. Applicants must include in the application’s Background and Significance section documentation to support that the estimated prevalence of the orphan disease or condition in the United States is less than 200,000 (or in the case of a vaccine or diagnostic, information to support that the product will be administered to fewer than 200,000 people in the United States per year), and an explanation of how the proposed study will either help support product approval or provide essential data needed for product development.

C. Eligibility Information

The grants are available to any foreign or domestic, public or private, for-profit or nonprofit entity (including State and local units of government). Federal Agencies may not apply.

II. Award Information/Funds Available**A. Award Amount**

Of the estimated FY 2017 funding (\$17.7 million), approximately \$2 million will fund 2 to 5 new awards, subject to availability of funds. Prospective Natural History Studies are eligible for grants of up to \$400,000 per year for up to 5 years. Retrospective Natural History Studies or Surveys are eligible for grants of up to \$150,000 per year for up to 2 years. Please note that the dollar limitation will apply to total costs (direct plus indirect). Budgets for each year of requested support may not

exceed the \$150,000 or \$400,000 total cost limit, whichever is applicable.

B. Length of Support

The length of support will depend on the nature of the study. For those studies with an expected duration of more than 1 year, all future years of noncompetitive continuation of support will depend on the following factors: (1) Performance during the preceding year; (2) compliance with regulatory requirements as applicable; and (3) availability of Federal funds.

III. Electronic Application, Registration, and Submission

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicants should first review the full announcement located at <http://grants.nih.gov/grants/guide>. For all electronically submitted applications, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With System for Award Management (SAM) (formerly Central Contractor Registration (CCR))
- Step 3: Obtain Username & Password on Grants.gov
- Step 4: Authorized Organization Representative (AOR) Authorization
- Step 5: Track AOR Status
- Step 6: Register With Electronic Research Administration (eRA) Commons

Steps 1 through 5, in detail, can be found at http://www07.grants.gov/applicants/organization_registration.jsp. Step 6, in detail, can be found at <https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp>. After you have followed these steps, submit electronic applications to: <http://www.grants.gov>.

Dated: April 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-10398 Filed 5-3-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2016-N-0001]

Quantitative Assessment of Assumptions To Support Extrapolation of Efficacy in Pediatrics; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), in collaboration with the University of Maryland Center of Excellence in Regulatory Science and Innovation (CERSI), is announcing a public workshop entitled “Quantitative Assessment of Assumptions to Support Extrapolation of Efficacy in Pediatrics.” The objective of the workshop is to discuss quantitative and qualitative approaches for verifying assumptions pertaining to disease and therapeutic response similarity between adults and children. The workshop will also provide a forum for discussion on the use of modeling and simulation for systematic assessment of extrapolation assumptions.

DATES: The public workshop will be held on June 1, 2016, from 8 a.m. to 5 p.m.

ADDRESSES: The public workshop will be held at FDA’s White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm>.

FOR FURTHER INFORMATION CONTACT:

Audrey Thomas, Office of Regulatory Science and Innovation, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4220, Silver Spring, MD 20993–0002, 301–796–3520, Audrey.Thomas@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The purpose of this public workshop is to provide an opportunity for relevant stakeholders, including clinicians, academia, industry, and FDA to discuss systematic assessment of data needed to support extrapolation of efficacy in pediatric product development. Specifically, the workshop will include: (1) Presentations on approaches for assessing disease and therapeutic response similarity between adults and pediatrics, and (2) discussion of alternative approaches to the assessment of extrapolation assumptions in pediatric product development, including the use of clinical trial simulation and Bayesian approaches. Examples in partial onset seizures, inflammatory bowel diseases, and polyarticular juvenile idiopathic

arthritis will be presented and discussed.

FDA has verified the Web site addresses in this document, but FDA is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

Agenda: The agenda is located at www.pharmacy.umaryland.edu/PedsExtrapolation.

Registration: There is a registration fee to attend this public workshop in person. Seats are limited and registration will be on a first-come, first-served basis. To register, please complete registration online at www.pharmacy.umaryland.edu/PedsExtrapolation. There will be no onsite registration. The costs of registration, to attend in person, for the different categories of attendees are as follows:

Category	Cost
Industry Representative	\$50
Nonprofit Organization and Academic other than University of Maryland	50
University of Maryland, College Park and Baltimore	0
Federal Government	0

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. There is no registration fee for access to the workshop via the Webcast, but registration is still required. Information regarding access to the Webcast link is available at www.pharmacy.umaryland.edu/PedsExtrapolation. If you have never attended a Connect Pro event before, test your connection at https://collaboration.fda.gov/common/help/en/support/meeting_test.htm. To get a quick overview of the Connect Pro program, visit http://www.adobe.com/go/connectpro_overview.

Accommodations: Attendees are responsible for their own hotel accommodations. If you need special accommodations while at FDA’s White Oak Campus due to a disability, please contact Shari Solomon at Shari.Solomon@fda.hhs.gov at least 7 days in advance.

Dated: April 26, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–10397 Filed 5–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA–2013–D–1170]

Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Drugs for Treatment; 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 guidance for industry entitled “Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Drugs for Treatment.” The purpose of this draft guidance is to assist sponsors in all phases of development of direct-acting antiviral (DAA) drugs for the treatment of chronic hepatitis C. This draft guidance revises the draft guidance of the same name that was issued on October 23, 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 July 5, 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. 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-2013-D-1170 for “Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Drugs for Treatment; Draft Guidance for Industry; Availability.” 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/>

www.regulations.gov/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 Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Murray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6360, Silver Spring, MD 20993-0002, 301-796-1500.

SUPPLEMENTARY INFORMATION

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Drugs for Treatment.” This draft guidance addresses nonclinical development, early phases of clinical development, and phase 3 protocol designs. Important issues addressed in this draft guidance include: Trial design options, noninferiority margin for active-controlled phase 3 trials in the evaluation of interferon (IFN)-free regimens, and trial design options and safety evaluation for specific populations, including patients with decompensated cirrhosis, patients either pre- or post-liver transplant, patients with chronic kidney disease, and clinical virology considerations.

This draft guidance revises the draft guidance of the same name that issued October 23, 2013 (78 FR 63218). Significant changes in this draft guidance compared to the previous version are:

- Modification of several sections to focus on IFN-free DAA regimens.
- Additional details on phase 2 and phase 3 trial design options for the evaluation of IFN-free regimens in treatment-naïve and treatment-experienced populations, including

DAA-experienced populations. Specifically, the guidance now recommends that each marketing application contain at least one active-controlled comparative trial.

- Additional clarification on DAA drug development in specific populations, including trial design options for human immunodeficiency virus/hepatitis C virus co-infected patients, pediatric patients, patients with advanced chronic kidney disease, patients with decompensated cirrhosis, patients either pre- or post-liver transplantation, and patients who failed to respond to a prior DAA-based regimen.

This 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 developing DAA drugs for treatment of chronic hepatitis C virus infection. 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. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget 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 0910-0014, the collections of information in 21 CFR part 314 have been approved under 0910-0001, and the collections of information referred to in the guidance for industry “Establishment and Operation of Clinical Trial Data Monitoring Committees” have been approved under 0910-0581.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: April 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-10390 Filed 5-3-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2015-N-2406]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Market Claims in Direct-to-Consumer Prescription Drug Print Ads**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 3, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910—NEW and title, “Market Claims in Direct-to-Consumer Prescription Drug Print Ads.” Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-002, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Market Claims in Direct-to-Consumer Prescription Drug Print Ads—OMB Control Number 0910—NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The marketing literature divides product attributes (“cues”) into intrinsic and extrinsic. Intrinsic cues are physical characteristics of the product (e.g., size, shape), whereas extrinsic cues are product-related but not part of the product (e.g., price and brand name) (Refs. 1 and 2). Research has found that both intrinsic and extrinsic cues can influence perceptions of product quality (Ref. 3). Consumers may rely on product cues in the absence of explicit quality information. The objective quality of prescription drugs is not easily obtained from promotional claims in direct-to-consumer (DTC) ads; thus consumers may rely upon extrinsic cues to inform their decisions. Market claims such as “#1 Prescribed” and “New” may act as extrinsic cues about the product’s quality, independent of the product’s intrinsic characteristics. Prior research has found that market leadership claims can affect consumer beliefs about product efficacy, as well as their beliefs about doctors’ judgments about product efficacy (Ref. 4). One limitation of these prior studies is the lack of quantitative information about product efficacy in

the information provided to respondents. Research indicates that providing consumers with efficacy information generally improves understanding and facilitates decisionmaking (Refs. 5 and 6). Efficacy information may moderate the effect of the extrinsic cue by providing insight into characteristics that would otherwise be unknown. Other research has shown that consumers are able to use information about efficacy to inform judgments about the product (Refs. 6 and 7).

The Office of Prescription Drug Promotion (OPDP) plans to investigate, through empirical research, the impact of market claims on prescription drug product perceptions with and without quantitative information about product efficacy. This will be investigated in DTC print advertising for prescription drugs.

I. Design Overview and Procedure

The design consists of two parts: A main study and a followup study. We will conduct two sequential pretest waves prior to the main study and one pretest prior to the followup study. The purpose of the pretests are to (1) ensure the stimuli are understandable and viewable, (2) identify and address any challenges to embedding the stimuli within the online survey, and (3) ensure the study questions are appropriate and meet the study’s goals.

Participants in the main study will be randomly assigned to view one of nine versions of an ad, as depicted in table 1. The two variables of interest are type of market claim (#1 Prescribed, New) and type of efficacy information (High, Low, or None). Efficacy information will be operationalized in the form of realistic quantitative information (for example, “46 percent of patients felt their nerve pain reduced by at least half, compared to baseline”).

TABLE 1—MAIN STUDY DESIGN

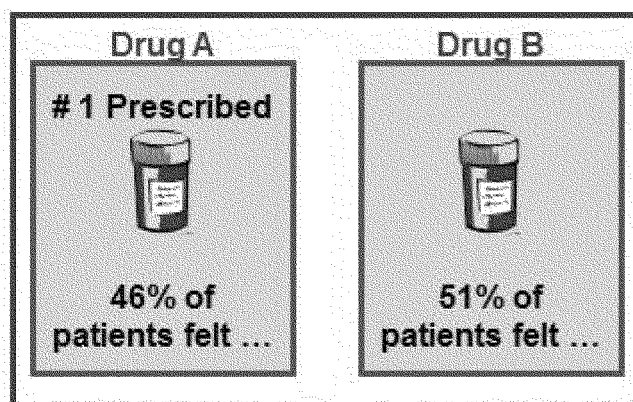
	Type of market claim		
	#1 Prescribed	New	None (control)
Efficacy Level Information:			
High	A	B	C
Low	D	E	F
None (control)	G	H	I

In the followup study, participants (n = 216) will complete a 15-minute paired choice experiment. Participants will be asked to choose between two hypothetical drugs based on print ads, one of which includes a market claim from the Main Study (#1 Prescribed or

New). The ads also include different efficacy information (for example, “46 percent of patients felt their nerve pain reduced by at least half, compared to baseline” versus “51 percent of patients felt their nerve pain reduced by at least half, compared to baseline”). Figure 1

depicts an example choice. Participants are asked to indicate which drug they would prefer. They are given 48 such choice sets, which vary in efficacy information and the presence of the market claim.

Figure 1.--Example Choice in the Followup Study



II. Procedure

Pretests: Each participant will be randomly assigned to view a print ad for a fictitious prescription drug indicated to treat diabetic neuropathy and will be asked to complete an online survey assessing their benefit/risk perceptions, intentions, and attitudes toward the drug. Based on the pretest findings, we will revise and remove poorly performing survey items prior to full-scale testing.

Main study: Each participant will be randomly assigned to view a print ad for a fictitious prescription drug for diabetic neuropathy and will be asked to complete an online survey assessing their benefit/risk perceptions, intentions, and attitudes toward the drug.

Followup study: Each participant will be asked to view a series of pairs of print ads for a product that treats diabetic neuropathy. One ad will contain a market claim. Both ads will contain quantitative efficacy information that varies along a continuum of effectiveness in a series of 48 trials. In each comparison, participants will be asked to choose one of the two drugs.

In the **Federal Register** of July 20, 2015 (80 FR 42823), FDA published a 60-day notice requesting public comment on the proposed collection of information. Six submissions were received; three from biopharmaceutical companies (AbbVie, Eli Lilly, Merck), two that were anonymous, and one from Danny Weiss, PharmD. The comments from the two anonymous submitters and Dr. Weiss requested the United States ban DTC advertising for pharmaceuticals. This is outside the scope of this project. We summarize and respond to the other comments as follows.

(Comment 1) From AbbVie: Respondents may view “benefits” and “risks” more generally versus “side effects” as a specific inquiry. For example, “side effects” could be interpreted as adverse effects or adverse events, and as such, elicit a much more specific response than “risks” which could be seen more broadly. We suggest that “side effects” be eliminated from question 4 to keep questions 3 and 4 as both general in nature.

(Response) We are interested in recall of both risks and side effects, and so we inquire about both. Inquiring about risks only may artificially reduce the quantity of recall. Moreover, we counterbalance the presentation of questions 3 and 4 in efforts to account for any influence of question ordering. It would be feasible to instead inquire about risks and side effects in separate questions; however, in our experience, we find that consumers tend to think about risks and side effects together, which makes sense given the typical presentation of risks and side effects in direct-to-consumer promotional materials.

(Comment 2) From AbbVie: The answers to questions 7 through 12 may be biased by attitudes toward advertising in general and may go well beyond the pharmaceutical ad they are shown.

(Response) By asking these questions, we hope to detect any differences in perceived effectiveness and risk between those exposed to different experimental conditions. For example, those exposed to an ad with a #1 Prescribed market claim may perceive the product to be more effective than those in the control condition. We acknowledge participants may bring their own opinions about advertising to the study. However, these opinions tend to be evenly distributed across experimental conditions based on

random assignment procedures. Thus, any differences result from the experimental manipulations.

(Comment 3) From AbbVie: We acknowledge we have not seen the test ad; but, we wish to point out that questions 13 and 17 rely on the ad presenting numeric efficacy and safety information that can be interpreted by respondents.

(Response) Prior research has shown that consumers can reach numeric judgments about efficacy and risk despite no numeric information being presented (Ref. 5). As described in our study design (see table 1), we are not manipulating quantitative safety information and not all test ads contain quantitative efficacy information. We have worked with an expert reviewer in OPDP to produce efficacy claims that are realistic for this drug product class.

(Comment 4) From AbbVie: Question 18 relies on the ad presenting information about the seriousness of one or more “side effects” that the respondent could rank. We do not usually see print ads that present details about the extent of the seriousness of one or more side effects. In the absence of this presentation, how are respondents to answer this question?

(Response) We find that consumers are generally able to differentiate between the seriousness of various risks and side effects, and also that they can make judgments about the overall (gist) seriousness of the risks and side effects. We ask this question with the intention to detect whether or not exposure to market claims and efficacy information impacts risk perceptions.

(Comment 5) From AbbVie: The answers to questions 21 to 26 may reflect a patient’s perception of their doctor rather than the ad. Therefore, the answers may not reflect what was communicated in the ad but rather

reflect the patient-doctor relationship (e.g., patient perception of their doctor).

(Response) We are endeavoring to replicate the results of Mitra et al. (Ref. 4), who found that market leadership claims affected consumer beliefs about doctor's judgments.

(Comment 6) From AbbVie: In the table headers for questions 27 and 28, please change "claim" to "statement" so that it matches the text in the question.

(Response) We will make this change.

(Comment 7) From AbbVie: It is beneficial to rotate the order of response choices in questions 27 and 28 as is done in prior questions. Some of the features a–h are broad (b. pictures and images) while some are specific (e. percentages). It would be better to compare the very general features in a question and group the very specific features into another question to compare like features.

(Response) We will make this change.

(Comment 8) From AbbVie: For questions 35 to 38, rather than rank from Strongly Disagree to Strongly Agree, which are absolutes, it would be better to rank by frequency from Never to Always; this moves the response to how often patients perceive this and away from absolutes.

(Response) We acknowledge that it is difficult to rank agree/disagree on all drugs. However, a scale range of Always–Never is unipolar; we can't assess whether respondents think the opposite, e.g., that New drugs tend to be *more* risky or that the #1 Prescribed drug is *more* risky. Our intention is to use these items as a moderator when examining the impact of the experimental manipulations (i.e., market claims, efficacy claims) on benefit and risk perceptions, intentions to take the product, and other outcomes. We believe the most relevant scale for this analysis is the current Strongly Disagree to Strongly Agree scale. Although it would be interesting to assess participant responding using both scales, doing so may not add significant value relative to the additional burden it would pose for participants.

(Comment 9) From AbbVie: We suggest that all the features of question 43a to h be stated in the affirmative/positive. For example, question 43h should be worded as "the drug has few side effects" to be consistent with features of question 43a to g that are positively stated.

(Response) The proposed item, "the drug has few side effects," assesses a different outcome than our current question, "the drug has serious side effects." We have also added items assessing "drug cost and/or copay" and "doctor's recommendation." For

consistency, we will change the wording so that all features are neutral (for instance: The drug's side effects, opinions of people I know, how often the drug is prescribed).

(Comment 10) From Lilly: Given the proposed FDA research questions, Lilly believes the design is appropriate and the sample size will allow for breakouts by each cell. In advertising A/B tests, in which this is similar to, all aspects of the stimulus not being tested are held the same in order to reduce bias and isolate the feature being tested. We strongly recommend that this guideline is followed in this study.

(Response) We intend to hold all features other than the manipulations constant in the stimuli.

(Comment 11) From Lilly: One research objective for the main study suggests that the study will measure perceptions of the doctors' acceptance of the drug by respondents. Since respondents will only be seeing a print ad and not interacting with a doctor, we believe the research setting will be too artificial to gain meaningful insights into this topic. We recommend removing the section (questions 21 to 26).

(Response) Please see response to Comment 5 from AbbVie.

(Comment 12) From Lilly: The details of the followup study are less clear than the main study. What are the techniques and what are the dependent measures on which the respondent will be asked to decide?

(Response) The followup study assesses the relative weighting of a market claim and efficacy in decisionmaking. Participants are asked to choose a drug out of two options that vary in (1) the presence of a market claim and (2) efficacy. We will examine product preference as a function of efficacy using logistic regression. The difference in efficacy between the two drugs on each choice set will be a continuous predictor variable and drug choice will be a binary outcome variable. Critically, we will examine whether, and to what extent, the efficacy-choice relationship varies as a function of an added market claim; thus, market claim presence will be an interaction term. The experiment uses a discrete choice approach common in psychology and economics (Ref. 8).

(Comment 13) From Lilly: We suggest FDA stratify the sample for both studies across demographic variables to ensure it is representative of the U.S. diabetic population.

(Response) We are applying demographic quotas to achieve a representative sample.

(Comment 14) From Lilly: The questionnaire employs a number of different Likert scales that differ on the number of scale values and definition of values. Lilly suggests using a standard five-point scale with a mid-point and definitions for each value for all scalar questions.

(Response) We have changed the Likert scales to be internally consistent.

(Comment 15) From Lilly: For questions 9 and 16, by asking the respondents to perceive overall quality of the drug, the survey risks introducing perceptions outside of experimental control into the study. Overall quality is a very broad topic and might be dependent on the graphics, wording, and personal biases that are outside of the market claims and efficacy levels being tested. We suggest removing these questions, or changing the question to "overall efficacy."

(Response) By asking these questions, we hope to detect any differences in perceived quality between those exposed to different experimental conditions. For example, those exposed to an ad with a #1 Prescribed market claim may perceive the product to be of higher quality than those in the control condition. By keeping all ad elements beyond the experimental manipulations (market claims, efficacy claims) constant, we can ensure that significant differences between conditions are a result of the manipulations rather than any extraneous factors. Random assignment to conditions should also distribute any random variance equally across all cells.

(Comment 16) From Lilly: We recommend removing questions 13 and 17 as they have the potential to be misinterpreted or simply difficult for the respondent to answer if the stimulus is not communicating prevalence of the drug's side effects or benefits using precise numbers.

(Response) Please see response to Comment 3 from AbbVie.

(Comment 17) From Lilly: For questions 27 and 28, we recommend slightly changing the wordings for the possible answer choices to "Yes/No, claim is/is not *mentioned as a benefit* in the ad" for question 27, and "Yes/No, claim is/is not *mentioned as a side effect or risk* in the ad" for question 28.

(Response) We agree that more specific wording would be helpful and have revised the answer choices to read "Yes, statement is mentioned in the ad" and "No, statement is not mentioned in the ad."

(Comment 18) From Lilly: Recommend removing question 31 as the question is an inverse of question 30 to avoid confounding data.

(Response) We have removed question 31 (skepticism).

(Comment 19) From Lilly: The instructions for the questions 35 through 38 section seem to have an omitted word. We recommend revising to “how much do you agree or disagree with the following statements?”

(Response) Thank you for pointing this out. We will correct this.

(Comment 20) From Lilly: We agree with placement of demographic questions (questions 39–44) at the end but recommend reevaluating them and consider removing them so as to avoid lack of response due to respondent fatigue.

(Response) The comment about respondent fatigue is well taken. However, we are adhering to good questionnaire design in putting our most important dependent measures first and are willing to accept the potential tradeoff in missing demographic data.

(Comment 21) From Lilly: We suggest providing a more complete list of choices for question 43 and placing this question earlier in the study.

(Response) We appreciate this suggestion and have added questions about cost.

(Comment 22) From Merck: Merck supports the importance of communicating information that can be understood by consumers so that they can make better decisions about prescription drugs. We believe that FDA should focus their efforts and research first on improving the health literacy of approved patient labeling and then on DTC print advertising. In addition, FDA should consider exploring the inclusion of benefit information in patient labeling, which may help improve consumer understanding and comprehension of patient labeling.

(Response) We share the goal of improving communications about prescription drugs. There are efforts underway within FDA examining ways to improve patient labeling (Ref. 9). Although this comment is outside the scope of this project, we will share this information internally.

(Comment 23) From Merck: Merck believes the current study design limits the practical utility of the information collected. The study proposes presenting efficacy information in the form of simple quantitative information. Prior OPDP research acknowledged the

limitations of studying simple quantitative information. For many prescription drugs, clinical trial outcomes are often more complicated than simple frequencies, which limit the applicability of this research. Numeracy challenges are common in people with inadequate health literacy. Numeracy challenges are not well represented in online research, and hence the proposed methodology may not detect a lack of comprehension.

(Response) We are pleased Merck has read FDA’s prior research in the area of communicating quantitative information. As this is the first study examining the impact of quantitative efficacy information on the perception of market share claims, we felt it was better to start with relatively straightforward, though not simplistic, quantitative efficacy information. We have worked with an expert reviewer in OPDP to product efficacy claims that are realistic for this drug product class. The efficacy claim communicates both the level of expected benefit and the likelihood of experiencing that benefit. We encourage additional research on this topic utilizing increasingly complex quantitative information.

We have included a measure of numeracy in our questionnaire. We acknowledge that online panels may underrepresent individuals with extremely low health literacy. Thus, any differences we find as a function of numeracy in our sample may be magnified in the general population.

(Comment 24) From Merck: Merck recommends a mixed-method approach to reach limited-literacy respondents. The phone or Web approach allows for a broad, diverse geographic sample. Respondents with low health literacy are not typically represented in these databases, and may need to be recruited in less traditional places, such as literacy centers, senior centers, and health clinics. Additionally, if a desktop computer is required, this may inadvertently eliminate respondents from low socioeconomic status, who are less likely to have a desktop computer and more likely to have internet only on their mobile device.

(Response) We acknowledge that internet administration is not perfect and have chosen this method to maximize our budget. We will permit the survey to be taken on a variety of devices. We are excluding phones

because the stimuli cannot be fully viewed on a very small screen.

(Comment 25) From Merck: For the followup study, we recommend reducing the number of trials for respondents across health literacy levels, as respondent fatigue can occur, resulting in reduced focus and unreliable responses. Refining the methodology to present fewer choices to each respondent, and assuring the clarity of the information presented, would help to enhance comprehension.

(Response) We agree that minimizing respondent burden is a priority. We estimate that the 48 trials and instructions would require less than 8 minutes, on average. Pretest data may reveal that the experiment can be shortened without loss to validity, in which case we will reduce the number of trials.

(Comment 26) From Merck: Questions 6, 32, and 50 include percentages. According to Health Literacy Missouri, natural frequencies (1 out of 10) may be more useful than percentages. Research suggests that less literate readers may interpret numbers as more risky when in frequency form (1 out of 10) versus percentage form (10 percent).

(Response) We have worked with an expert reviewer in OPDP to product efficacy claims that are realistic for this drug product class.

(Comment 27) From Merck: We suggest adding the following screener question to increase the odds of recruiting limited-literacy respondents: “How confident are you in filling out medical forms by yourself?”

(Response) We acknowledge that internet panels underrepresent individuals with very low literacy. Thus, it is important to acknowledge that our findings may not apply to very low literacy individuals. It would be prohibitively expensive for us to screen for literacy up front in order to establish quotas. We will measure health literacy and included it in analyses.

The first two pretests and main study are expected to last no more than 30 minutes. The third pretest and followup study are expected to last no more than 15 minutes. This will be a one-time (rather than annual) collection of information. FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total respondents	Average burden per response	Total hours
Sample Outgo (Pretests and Main Survey)	16,384	.....	.....	.....	.....
Screeners Completes	1,638	1	1,638	0.03 (2 minutes)	49.1
Eligible	1,556	.....	.....	.....	.....
Completes, Pretest 1	252	1	252	0.5 (30 minutes)	126
Completes, Pretest 2	252	1	252	0.5 (30 minutes)	126
Completes, Main Study	495	1	495	0.5 (30 minutes)	247.5
Completes, Pretest 3	108	1	108	0.25 (15 minutes) ..	27
Completes, Followup Study	216	1	216	0.25 (15 minutes) ...	54
Total .....	.....	.....	.....	.....	629.6

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

III. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing 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. Lee, M. and Y-C. Lou, "Consumer Reliance on Intrinsic and Extrinsic Cues in Product Evaluations: A Conjoint Approach," *Journal of Applied Business Research*, 12(1):21–29, 2011.
2. Teas, R.K. and S. Agarwal, "The Effects of Extrinsic Product Cues on Consumers' Perceptions of Quality, Sacrifice, and Value," *Journal of the Academy of Marketing Science*, 28(2):278–290, 2000.
3. Rao, A.R. and K.B. Monroe, "The Effect of Price, Brand Name, and Store Name on Buyers' Perceptions of Product Quality: An Integrative Review," *Journal of Marketing Research*, 26(3):351–357, 1989.
4. Mitra, A., J.L. Swasy, and K.J. Aikin, "How Do Consumers Interpret Market Leadership Claims in Direct-to-Consumer Advertising of Prescription Drugs?" *Advances in Consumer Research*, 33:381–387, 2006.
5. O'Donoghue, A.C., H.W. Sullivan, K.J. Aikin, et al., "Presenting Efficacy Information in Direct-to-Consumer Prescription Drug Advertisements," *Patient Education and Counseling*, 95(2):271–280, 2014.
6. Schwartz, L.M., S. Woloshin, and H.G. Welch, "Using a Drug Facts Box to Communicate Drug Benefits and Harms: Two Randomized Trials," *Annals of Internal Medicine*, 150(8):516–527, 2009.
7. Sullivan, H.W., A.C. O'Donoghue, and K.J. Aikin, "Presenting Quantitative Information About Placebo Rates to Patients," *JAMA Internal Medicine*, 173(2):2006–2007, 2013.
8. Train, K.E., *Discrete Choice Methods With Simulation*, Cambridge University Press, 2009.
9. Boudewyns, V., A.C. O'Donoghue, B.

Kelly, et al., "Influence of Patient Medication Information Format on Comprehension and Application of Medication Information: A Randomized, Controlled Experiment," *Patient Education and Counseling*, 98(12):1592–1599, 2015.

Dated: April 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–10396 Filed 5–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Preparedness and Response Science Board

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Preparedness and Response Science Board (NPRSB) will be holding a public teleconference.

DATES: The NPRSB will hold a public meeting on May 26, 2016, from 1:00 p.m. to 2:00 p.m. EST. The agenda is subject to change as priorities dictate.

ADDRESSES: Individuals who wish to participate should send an email to NPRSB@HHS.GOV with "NPRSB Registration" in the subject line. The meeting will occur by teleconference. To attend via teleconference and for further instructions, please visit the NPRSB Web site at WWW.PHE.GOV/NPRSB.

FOR FURTHER INFORMATION CONTACT: Please submit an inquiry via the NPRSB Contact Form located at www.phe.gov/NBSBComments.

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health

Service Act (42 U.S.C. 247d–7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), HHS established the NPRSB. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to HHS regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The NPRSB may also provide advice and guidance to the Secretary and/or the Assistant Secretary for Preparedness and Response (ASPR) on other matters related to public health emergency preparedness and response.

Background: This public meeting via teleconference will be dedicated to the NPRSB's deliberation and vote on the task letter received from the ASPR. Subsequent agenda topics will be added as priorities dictate. Any additional agenda topics will be available on the NPRSB May 26, 2016, meeting Web page, available at WWW.PHE.GOV/NPRSB.

Availability of Materials: The meeting agenda and materials will be posted prior to the meeting on the May 26th meeting Web page at WWW.PHE.GOV/NPRSB.

Procedures for Providing Public Input: Members of the public are invited to attend by teleconference via a toll-free call-in phone number which is available on the NPRSB Web site at WWW.PHE.GOV/NPRSB. All members of the public are encouraged to provide written comment to the NPRSB. All written comments must be received prior to May 26, 2016, and should be sent by email to NPRSB@HHS.GOV with "NPRSB Public Comment" as the subject line. Public comments received by close of business one week prior to each teleconference will be distributed to the NPRSB in advance.

Dated: April 28, 2016.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2016–10430 Filed 5–3–16; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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 Environmental Health Sciences Special Emphasis Panel; Research Opportunities in Environmental Health Sciences.

Date: May 16, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, KeyStone Building, 530 Davis Drive, Research Triangle Park, NC 27709.

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 27, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–10338 Filed 5–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Animal Model Resources.

Date: May 31, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, grimaldim2@mail.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel; Aging Research Networks.

Date: June 7, 2016.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601 (Telephone Conference Call).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, firthkm@mail.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel; Agitation in Alzheimer's Disease.

Date: June 9, 2016.

Time: 6:30 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601.

Contact Person: Jeannette L. Johnson, Ph.D., National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, johnsonj9@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 28, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–10336 Filed 5–3–16; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–PM–16–002: Precision Medicine Initiative Cohort Program Healthcare Provider Organization Enrollment Centers.

Date: May 25–26, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, steeleln@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics.

Date: June 1, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Careen K Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, tothct@csr.nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: June 2–3, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Tampa Marriott Waterside Hotel, 700 S. Florida Avenue, Tampa, FL 33602.

Contact Person: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, (301) 435–2889, rileyann@csr.nih.gov.

Name of Committee: Vascular and Hematology Integrated Review Group Atherosclerosis and Inflammation of the Cardiovascular System Study Section

Date: June 2–3, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Virginian Suites, 1500 Arlington Boulevard, Arlington, VA 22209.

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, komissar@mail.nih.gov.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.

Date: June 2–3, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, zargerma@csr.nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.

Date: June 2–3, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, tianbi@csr.nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Interventions to Prevent and Treat Addictions Study Section.

Date: June 2–3, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marines' Memorial Club and Hotel, 609 Sutter Street, San Francisco, CA 94102.

Contact Person: Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3108, Bethesda, MD 20892, (301) 523–0646, mintzermz@csr.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroimmunology and Brain Tumors Study Section.

Date: June 2–3, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, zhaow@csr.nih.gov.

Name of Committee: Immunology Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: June 2–3, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, jh377p@nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: June 2–3, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street, NW., Washington, DC 20001.

Contact Person: Julius Cinque, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, cinquej@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–10357 Filed 5–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Kidney Interagency Coordinating Committee Meeting

SUMMARY: The Kidney Interagency Coordinating Committee (KICC) will

hold a meeting on June 17, 2016, on improving access to kidney transplantation. The meeting is open to the public.

DATES: The meeting will be held on June 17, 2016, 9 a.m. to 12 p.m. Individuals wanting to present oral comments must notify the contact person at least 10 days before the meeting date.

ADDRESSES: The meeting will be held in the Natcher Conference Center on the NIH Campus at 9000 Rockville Pike, Bethesda, MD 20894.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, contact Dr. Andrew S. Narva, Executive Secretary of the Kidney Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A27, MSC 2560, Bethesda, MD 20892–2560, telephone: 301–594–8864; FAX: 301–480–0243; email: healthinfo@niddk.nih.gov.

SUPPLEMENTARY INFORMATION: The KICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), comprises members of the Department of Health and Human Services and other federal agencies that support kidney-related activities, facilitates cooperation, communication, and collaboration on kidney disease among government entities. KICC meetings, held twice a year, provide an opportunity for Committee members to learn about and discuss current and future kidney programs in KICC member organizations and to identify opportunities for collaboration. The June 17, 2016 KICC meeting will focus on improving access to kidney transplantation.

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional

affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future KICC meetings should send a request to healthinfo@niddk.nih.gov.

Date: March 23, 2016.

Camille M. Hoover,

Executive Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2016-10434 Filed 5-3-16; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Parkinson's Disease Biomarker Program (PDBP) Discovery Projects (U01) PAR-NS-14-259.

Date: May 4, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Joel Saydoff, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892-9529, 301-496-9223, lbenzingw@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the

Neurosciences, National Institutes of Health, HHS)

Dated: April 27, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-10339 Filed 5-3-16; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—B Study Section.

Date: May 25-26, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Hayden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301-435-1223, haydenb@csr.nih.gov.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Etiology Study Section.

Date: May 26-27, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4192, MSC 7806, Bethesda, MD 20892, 301-451-4467, howardz@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13-325: Development of Appropriate Pediatric Formulations.

Date: June 1, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613-2064, leepg@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-10335 Filed 5-3-16; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Biological Aging Review Committee.

Date: June 7-8, 2016.

Time: 1:30 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601.

Contact Person: Bitia Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301-402-7701, nakhaib@nia.nih.gov.

Name of Committee: National Institute on Aging Initial Review Group; Behavior and Social Science of Aging Review Committee.

Date: June 7-8, 2016.

Time: 3:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601.

Contact Person: Kimberly Firth, Ph.D., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301-402-7702, kimberly.firth@nih.gov.

Name of Committee: National Institute on Aging Initial Review Group; Neuroscience of Aging Review Committee.

Date: June 9–10, 2016.

Time: 3:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60604.

Contact Person: Jeannette L. Johnson, Ph.D., Deputy Review Branch Chief, National Institutes of Health, National Institute on Aging, Gateway Building, Bethesda, MD 20892, 301-402-7705, johnsonj9@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 28, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-10337 Filed 5-3-16; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2016-0019]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security Science & Technology Technology Acceptance and Evaluation Survey

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-Day notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on the data collection form for the DHS Science & Technology Directorate (S&T) Technology Acceptance and Evaluation (TAE) Survey. The TAE web based tool proposes to collect information from 1,200 members of an online Internet panel. All information collected will be on a voluntary basis. DHS will not receive any personally identifying information. As part of its core mission, DHS is tasked with preventing terrorism and enhancing security, securing and managing our borders, and ensuring resilience to disasters. In order to assist in those key mission spaces, the S&T managed work to create a Rapid DNA Technology that allows field testing of

DNA that is inexpensive and quick while performing with high accuracy in a non-laboratory setting. To ensure the effective implementation and diffusion of this new technology, DHS S&T seeks to better understand public perceptions of Rapid DNA, its use cases, and its collection through the TAE Survey. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until June 3, 2016.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS-2016-0019, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Please follow the instructions for submitting comments.

- *Email:* Kathleen.Deloughery@hq.dhs.gov. Please include docket number DHS-2016-0019 in the subject line of the message.

- *Fax:* (202) 254-6911. (Not a toll-free number).

- *Mail:* Science and Technology Directorate, ATTN: Kathleen Deloughery 6-055, 245 Murray Lane, Mail Stop 0210, Washington, DC 20528-0210.

FOR FURTHER INFORMATION CONTACT: DHS FRCoP Contact Kathleen Deloughery (202) 254-6189 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

- (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) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

- (4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Technology Acceptance and Evaluation Survey.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS S&T, First Responders Group.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals; the data will be gathered from individual who wish to participate in the online survey.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

- a. *Estimate of the total number of respondents:* 1,200.

- b. *An estimate of the time for an average respondent to respond:* 0.5 burden hours.

- c. *An estimate of the total public burden (in hours) associated with the collection:* 600 burden hours.

Dated: April 12, 2016.

Rick Stevens,

Chief Information Officer, Science and Technology Directorate.

[FR Doc. 2016-10352 Filed 5-3-16; 8:45 am]

BILLING CODE 9110-9F-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5932-N-03]

Request for Specific Policy Proposals and Methods of Research and Evaluation for MTW Demonstration Expansion; Extension of Comment Period

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice; extension of comment period.

SUMMARY: HUD is extending the comment period to solicit recommendations for specific policy proposals and methods of research and evaluation to be implemented as part of the expansion of the Moving to Work (MTW) demonstration program. The original comment period will end on May 4, 2016, but HUD is extending that period for 14 days to allow interested parties to prepare and submit their comments.

DATES: Comments on the April 4, 2016 Request for Specific Policy Proposals and Methods of Research and Evaluation for MTW Demonstration Expansion are due on or before May 18, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding specific policy and evaluation proposals to the Moving to Work Office, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4130, Washington, DC 20410-0001 or email at mtw-info@hud.gov. HUD strongly encourages commenters to submit comments electronically. Communications must refer to the above docket number and title and should contain the information specified in the "Request for Public Comments" section.

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

Public Inspection of Public Comments. A summary of all comments received by HUD will be made available on HUD's Web site at: <http://www.hud.gov/mtw>.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be directed to the Moving to Work Office, Office of Public and Indian Housing, Department of Housing and Urban Development at mtw-info@hud.gov.

SUPPLEMENTARY INFORMATION: On April 4, 2016 (81 FR 19233), HUD published an advanced notice seeking input from the general public, public housing agencies, HUD-assisted housing residents, researchers, and HUD stakeholders on two objectives, specific policy proposal recommendations, and research and evaluation proposal recommendations, as part of the expansion of the MTW demonstration. First, HUD seeks specific policy proposal recommendations related to the three MTW demonstration statutory objectives of cost effectiveness, self-sufficiency, and housing choice.

Second, HUD also seeks recommendations for research and evaluation methods to be utilized in association with specific policy proposals that will be implemented by MTW agencies in the expanded MTW demonstration. In response to several requests, HUD is extending the comment period for an additional 14 days.

Dated: April 28, 2016.

Lourdes Castro Ramírez,

Principal Deputy Assistant, Secretary for Public and Indian Housing.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2016-10454 Filed 5-3-16; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5909-N-33]

30-Day Notice of Proposed Information Collection: FHA Lender Approval, Annual Renewal, Periodic Updates and Required Reports by FHA-Approved Lenders

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:* June 3, 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@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 November 30, 2015 at 80 FR 74788.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing Involving the Loss Mitigation Program.

OMB Approval Number: 2502-0589.

Type of Request: Revision of currently approved collection.

Form Number: HUD-90035, 90041, 90045, 90051, 90052, 9539, 27011, 91022, 50002, 50012, HUD-PA-426 and HUD-1 Settlement Statement forms.

Description of the need for the information and proposed use: Pre-Foreclosure Sale and Deed in Lieu of Foreclosure policy changes outlined in Mortgagee Letter 2013-23 require significant changes to the forms and documents for consumers to align the disclosures with stated policies.

Respondents: Businesses or other for-profits.

Estimated Number of Respondents: 415,425.

Estimated Number of Responses: 1,283,879.

Frequency of Response: On occasion.

Average Hours per Response: 1.5 hours.

Total Estimated Burden Hours: 1,947,929.

B. Solicitation of Public Comment

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: April 26, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016-10450 Filed 5-3-16; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5909-N-34]

30-Day Notice of Proposed Information Collection: Screening and Eviction for Drug Abuse and Other Criminal Activity**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:* June 3, 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 February 8, 2016 at 81 FR 6535.

A. Overview of Information Collection

Title of Information Collection: Screening and Eviction for Drug Abuse and Other Criminal Activity.

OMB Approval Number: 2577-0232.

Type of Request: Reinstatement, with change, of a previously approved collection.

Form Number: None.

Description of the need for the information and proposed use: The information and collection requirements consist of PHAs screening requirements to obtain criminal conviction records from law enforcement agencies to prevent admission of criminals into the Public Housing and Section 8 programs and to assist in lease enforcement and eviction of those individuals in the Public Housing and Section 8 programs who engage in criminal activity.

Respondents: State, Local or Tribal Government, Public Housing Agencies (PHAs), Individuals or Households.

Information collection	Response type and number	Frequency of response	Frequency per annum	Burden hour per response	Annual burden hours
HUD-2577-0232	A. 93,289	1	93,289	1	93,289
	B. 1,711,933	0.04	68,477	9	616,293
	C. 124,821	1	124,821	1	124,821
	D. 3,567,789	0.04	142,712	9	1,284,408
Total	5,497,832 .....	.....	429,299	.....	2,118,811

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: April 26, 2016.

Colette Pollard,

*Department Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 2016-10446 Filed 5-3-16; 8:45 am]

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[Docket Nos. FWS-HQ-ES-2015-0177 and 160223138-6138-01; FF09E40000 156 FXES11150900000]

RIN 1018-BB08; 0648-BF79

Candidate Conservation Agreements With Assurances Policy

AGENCIES: U.S. Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), Commerce.

ACTION: Announcement of draft revised policy and solicitation of public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services when referring to both, and Service when referring to when the action is taken by

one agency), announce proposed revisions to the Candidate Conservation Agreements with Assurances policy under the Endangered Species Act of 1973, as amended. We propose to add a definition of “net conservation benefit” to this policy and to eliminate references to the confusing requirement of “other necessary properties” to clarify the level of conservation effort each agreement needs to include in order for the Service to approve an agreement. In a separate document published in today’s **Federal Register**, the U.S. Fish and Wildlife Service is proposing changes to its regulations regarding Candidate Conservation Agreements with Assurances to make them consistent with these proposed changes to the policy.

DATES: We will accept comments that we receive on or before July 5, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

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

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. In the Search box enter the Docket number for the draft policy, which is FWS–HQ–ES–2015–0177. You may enter a comment by clicking on “Comment Now!” Please ensure that you have found the correct document before submitting your comment.

- **U.S. mail or hand delivery:** Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2015–0177; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike; MS: BPHC; Falls Church, VA 22041.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Request for Information, below, for more information).

FOR FURTHER INFORMATION CONTACT: Jim Serfis, U.S. Fish and Wildlife Service, Chief, Branch of Conservation and Communications, U.S. Fish and Wildlife Service Headquarters, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–2171); or Angela Somma, National Marine Fisheries Service, Chief, Endangered Species Conservation Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910 (telephone 301–427–8403, facsimile 301–713–0376). Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) are charged with implementing the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA or Act); among the purposes of the ESA are to provide a means to conserve the ecosystems upon which species listed as endangered or threatened depend and a program for listed species conservation. Through the Candidate Conservation program, one of the Services’ goals is to encourage the public to implement specific conservation measures for declining species prior to them being listed under the ESA. The cumulative outcome of such conservation measures may result in not needing to list a species, or may result in listing a species as threatened instead of endangered and provide the basis for its recovery and eventual removal from the protections of the ESA. The Services put in place a voluntary conservation program for non-Federal property owners to help accomplish this goal: Candidate Conservation Agreements with Assurances (CCAAs). The policy for this type of agreement was finalized on June 17, 1999 (64 FR 32726), along with implementing regulations for FWS in part 17 of title 50 of the Code of Federal Regulations (CFR) (64 FR 32706). The FWS revised the CCAA regulations in 2004 (69 FR 24084; May 2, 2004) to make them easier to understand and implement by defining “property owner,” and clarifying several points, including the transfer of permits, permit revocation, and advanced notification of take.

To participate in a CCAA, non-Federal property owners agree to implement specific conservation measures on their land that reduce or eliminate threats to the species that are covered under the agreement. An ESA section 10(a)(1)(A) enhancement of survival permit is issued to the agreement participant providing a specific level of incidental take coverage should the property owner’s agreed-upon conservation measures and routine property management actions (e.g., agricultural, ranching, or forestry activities) result in take of the covered species if listed. Property owners receive assurances that they will not be required to undertake any other conservation measures than those agreed to, even if new information indicates that additional or revised conservation measures are needed for the species, and they will not be subject

to additional resource use or land use restrictions.

Under the current policy, to approve a CCAA we must “determine that the benefits of the conservation measures implemented by a property owner under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species.” The hypothetical concept of conservation measures needing to be implemented on “other necessary properties” has caused confusion, and therefore we are clarifying and revising the CCAA standard to require a net conservation benefit to the covered species specifically on the property to be enrolled and eliminating references to “other necessary properties.”

Proposed Revisions to Candidate Conservation Agreements With Assurances Policy

Based on our experience reviewing and approving CCAAs over the past 16 years, we are proposing changes to the policy that will clarify the level of conservation effort each agreement needs to include in order for the Service to approve an agreement. We are proposing the following changes to the policy primarily to (a) address confusion regarding the existing CCAA approval requirements (standards) and (b) make CCAAs more consistent with Safe Harbor Agreement requirements, because these agreements have similar purposes, which are to provide a conservation benefit to the covered species while providing assurances to non-Federal property owners:

(1) Add a new definition of “net conservation benefit” to *Part 2. What Definitions Apply to this Policy?*:

Net conservation benefit (for CCAA) is defined as the cumulative benefits of specific conservation measures designed to improve the status of a covered species by removing or minimizing threats, stabilizing populations, and increasing its numbers and improving its habitat. The benefit would be measured by the projected increase in the species’ population or improvement of the species’ habitat, taking into account the duration of the Agreement and any off-setting adverse effects attributable to the incidental taking allowed by the enhancement of survival permit. The conservation measures and property management activities covered by the agreement must be designed to reduce or eliminate those current and future threats on the property that are under the property owner’s control, in order to increase the species’

populations or improve its habitat. In the case where the species and habitat are already adequately managed to the benefit of the species, a net conservation benefit will be achieved when the property owner commits to manage the species for a specified period of time with the anticipation that the population will increase or habitat quality will improve.

(2) Delete the definition of “other necessary properties” under *Part 2. What Definitions Apply to this Policy?* and delete references to this term from the CCAA policy as follows:

- Revise the third sentence in the second paragraph of *Part 1. What is the Purpose of the Policy?* to read as follows: Accordingly, the Service will enter into an Agreement when we determine that the conservation measures to be implemented address the current and anticipated future threats that are under the property owner’s control and will result in a net conservation benefit to the covered species.

- Revise the fifth paragraph under *Part 1* to read as follows: The Service must determine that the benefits of the conservation measures to be implemented by a property owner under a CCAA are reasonably expected to result in a net conservation benefit to the covered species. Pursuant to section 7 of the ESA, the Service must also ensure that the conservation measures and ongoing property management activities included in a CCAA, and the incidental take allowed under the enhancement of survival section 10(a)(1)(A) permit for these measures and activities are not likely to jeopardize listed species or species proposed for listing and are not likely to destroy or adversely modify proposed or designated critical habitat.

- Revise section C of *Part 3. What Are Candidate Conservation Agreements With Assurances?* to read as follows: The benefits expected to result from the conservation measures described in B above (e.g., increase in population numbers; enhancement, or preservation of habitat; removal of threats) and from the conditions that the participating non-Federal property owner agrees to maintain. The Service must determine that the benefits of the conservation measures implemented by a property owner under a CCAA will reasonably be expected to provide a net conservation benefit.

- Revise *Part 4. What Are the Benefits to the Species?* to read as follows: Before entering into a CCAA, the Service must make a written finding that the benefits of the conservation measures to be implemented by a property owner under

a CCAA would result in a net conservation benefit to the covered species. If the Service and the participating property owner cannot agree on conservation measures that satisfy this requirement, the Service will not enter into the Agreement. Expected benefits of the specific conservation measures could include, but are not limited to: removal or reduction of current and anticipated future threats for a specified period of time; restoration, enhancement, or preservation of habitat; maintenance or increase of population numbers; and reduction or elimination of impacts to the species from agreed-upon, ongoing property management actions.

(3) Revise the definition of “Non-Federal property owner” in *Part 2. What Definitions Apply to this Policy?* to be consistent with the definition of “property owner” found at 50 CFR 17.3. The revised definition makes it clear that participants in a CCAA may include entities that own the property as well as entities that lease or hold other interests in the property, as long as they have the authority to carry out the proposed management activities on the land covered by the CCAA. Also note for purposes of this policy that “management activities” includes the conservation measures included in the CCAA. The revised definition reads as follows:

Property owner means a person with a fee simple, leasehold, or other property interest (including owners of water rights or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable State law, on non-Federal land.

(4) Add language to *Part 3* to further explain the assurances provided to a property owner who is enrolled in a CCAA if there are changed circumstances or unforeseen circumstances that could require changes to or additional conservation measures. This language is already included in FWS’s regulations at 50 CFR 17.22(d)(5) and 17.32(d)(5) and does not represent a change in current CCAA practice. Adding this language to the policy will make the policy and regulations consistent.

(5) Add language to *Part 8* to require that a property owner notify the Services prior to termination of their CCAA. Currently, the FWS includes this requirement as part of the conditions of the section 10(a)(1)(A) permit that is issued in conjunction with a CCAA. So while this is new language the Services are adding to the policy, it is not a new

practice in how the FWS administers CCAAs.

(6) Revise the first sentence of *Part 10* by adding “and meets the applicable permit issuance criteria” to make it clear that any property owner who agrees to become a party to an original Agreement, through a transfer, must meet the issuance criteria for a CCAA. While most of the issuance criteria would already be met, assuming the transferred CCAA was not changing in any major way, in particular, the FWS would need to ensure the new property owner would meet issuance criteria at 50 CFR 17.22(d)(2)(vi) and 17.32(d)(2)(vi) which requires that the applicant (i.e., property owner) has shown capability for and commitment to implementing all of the terms of the Agreement. While this is new language being added to the policy, it is not a new requirement for a CCAA but serves to make the policy and regulations consistent.

(7) Revise additional language in the policy to improve clarity.

Draft Revised Candidate Conservation Agreements With Assurances Policy

Part 1. What is the purpose of the policy?

This policy is intended to facilitate the conservation of species proposed for listing under the Endangered Species Act (ESA) and candidate species, and species likely to become candidates or proposed for listing in the near future, by giving non-Federal citizens, States, local governments, Tribes, businesses, organizations, and other non-Federal property owners incentives to implement conservation measures for declining species by providing regulatory assurances with regard to land, water, or resource use restrictions that might otherwise apply should the species later become listed as endangered or threatened under the ESA. Under the policy, property owners who commit in a Candidate Conservation Agreement with Assurances (CCAA or Agreement) to implement mutually agreed-upon conservation measures for a species proposed for listing or candidate species, or a species likely to become a candidate or proposed for listing in the near future, will receive assurances from the Service that additional conservation measures above and beyond those contained in the Agreement will not be required, and that additional land, water, or resource use restrictions will not be imposed upon them should the species become listed in the future. In determining whether to enter into a CCAA, the Service will consider the

extent to which the Agreement reduces threats to the covered species so as to contribute to the conservation and stabilization of populations and habitat of the species.

While the Services recognize that the actions of a single property owner usually will not sufficiently contribute to the conservation of the species to remove the need to list it, we also recognize that the collective result of the conservation measures of many property owners may remove the need to list the species. Accordingly, the Service will enter into an Agreement when we determine that the conservation measures to be implemented address the current and anticipated future threats that are under the property owner's control and will result in a net conservation benefit to the covered species. While some property owners are willing to manage their lands to benefit species proposed for listing, candidate species, or species likely to become candidates or proposed for listing in the near future, most desire some degree of regulatory certainty and assurances with regard to possible future land, water, or resource use restrictions that may be imposed if the species is listed in the future.

The Service will provide regulatory assurances to a non-Federal property owner who enters into a CCAA by authorizing, through issuance of an enhancement of survival permit under section 10(a)(1)(A) of the ESA, a specified level of incidental take of the covered species. Incidental take authorization and the associated agreement benefit property owners in two ways. First, in the event the species is listed, incidental take authorization enables property owners to continue current and agreed-upon land uses that have the potential to cause take, provided the take is at or reduced to a level consistent with the overall goal of providing a net conservation benefit to the species. Second, the property owner is provided the assurance that, if the species is listed, no additional conservation measures will be required and no additional land use restrictions will be imposed.

These Agreements will be developed in coordination and cooperation with appropriate State fish and wildlife agencies and other affected State agencies and Tribes. Coordination with State fish and wildlife agencies is particularly important given their primary responsibilities and authorities for the management of unlisted resident species. These Agreements must be consistent with applicable State laws and regulations governing the management of these species.

The Service must determine that the benefits of the conservation measures to be implemented by a property owner under a CCAA are reasonably expected to result in a net conservation benefit to the covered species. Pursuant to section 7 of the ESA, the Service must also ensure that the conservation measures and ongoing property management activities included in a CCAA, and the incidental take allowed under the enhancement of survival section 10(a)(1)(A) permit for these measures and activities, are not likely to jeopardize listed species or species proposed for listing and are not likely to destroy or adversely modify proposed or designated critical habitat.

Because some property owners may not have the necessary resources or expertise to develop a CCAA, the Services are committed to providing, to the maximum extent practicable given available resources, the necessary technical assistance to develop Agreements and prepare enhancement of survival permit applications. Also, based on available resources, the Service may assist or train property owners to implement conservation measures. Development of a biologically sound Agreement and enhancement of survival permit application is intricately linked. The Service will process the permit application following the procedures described in 50 CFR 17.22(d)(1) and 17.32(d)(1), and part 222, as appropriate. All terms and conditions of the permit must be consistent with the specific conservation measures included in the associated CCAA.

Part 2. What definitions apply to this policy?

The following definitions apply for the purposes of this policy.

Candidate Conservation Agreement (CCA) means an agreement signed by either Service, or both Services jointly, and other Federal or State agencies, local governments, Tribes, businesses, organizations, or a citizen that identifies specific conservation measures that the participants will voluntarily undertake to conserve the covered species. There are no specific requirements for entering into a CCA and no standard has to be met; no incidental take permit or assurances are provided under these Agreements.

Candidate Conservation Agreements with Assurances means a Candidate Conservation Agreement with a non-Federal property owner that meets the standards described in this policy and provides the property owner with the assurances described in this policy.

Candidate Conservation Assurances means the associated assurances that are authorized by an enhancement of survival permit. Such assurances may apply to a whole parcel of land, or a portion, as identified in the Agreement. The assurances provided to a non-Federal property owner in a CCAA are that no additional conservation measures and no land, water, or resource use restrictions, in addition to the measures and restrictions described in the Agreement will be imposed should the covered species become listed in the future. Also the enhancement of survival permit provides a prescribed level of incidental take that may occur from agreed-upon, ongoing property management actions and the conservation measures.

Candidate species are defined differently by the Services. The Fish and Wildlife Service (FWS) defines candidate species as species for which FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. The National Marine Fisheries Service (NMFS) defines candidate species as (1) species that are the subject of a petition to list and for which NMFS has determined that listing may be warranted, pursuant to section 4(b)(3)(A) of the ESA, and (2) species that are not the subject of a petition but for which NMFS has announced the initiation of a status review in the **Federal Register**. The term "candidate species" used in this policy refers to those species designated as candidates by either of the Services.

Conservation measures as it applies to CCAAs are actions that a property owner voluntarily agrees to undertake when entering into a CCAA that, by addressing the threats that are occurring or have the potential to occur on their property, will result in an improvement or expansion of the species' habitat with the potential for an increase in the species' population numbers. The appropriate conservation measures designed to address the threats that are causing the species to decline will be based on the best available scientific information relative to the conservation needs of the species such as those contained in an up-to-date conservation strategy.

Covered species means those species that are the subject of a CCAA and associated enhancement of survival permit. Covered species are limited to species that are candidates or proposed for listing and species that are likely to become candidates or proposed for listing in the near future.

Enhancement of survival permit means a permit issued under section

10(a)(1)(A) of the ESA that, as related to this policy, authorizes the permittee to incidentally take species covered in a CCAA.

Net conservation benefit (for CCAA) is defined as the cumulative benefits of specific conservation measures designed to improve the status of a covered species by removing or minimizing threats, stabilizing populations, and increasing its numbers and improving its habitat. The benefit is measured by the projected increase in the species' population or improvement of the species' habitat, taking into account the duration of the Agreement and any off-setting adverse effects attributable to the incidental taking allowed by the enhancement of survival permit. The conservation measures and property management activities covered by the agreement must be designed to reduce or eliminate those current and future threats on the property that are under the property owner's control, in order to increase the species' populations or improve its habitat. In the case where the species and habitat is already adequately managed to the benefit of the species, a net conservation benefit will be achieved when the property owner commits to manage the species for a specified period of time with the anticipation that the population will increase or habitat quality will improve.

Property owner means a person with a fee simple, leasehold, or other property interest (including owners of water rights or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable State law, on non-Federal land.

Part 3. What are Candidate Conservation Agreements With Assurances?

A CCAA will identify or include:

A. The population levels (if available or determinable) of the covered species existing at the time the parties negotiate the Agreement; the existing habitat characteristics that sustain any current, permanent, or seasonal use, or potential use by the covered species on lands or waters in which the participating property owner has an interest; and consideration of the existing and anticipated condition of the landscape of the contiguous lands or waters not on the participating owner's property so that the property enrolled in a CCAA may serve as a habitat corridor or connector or as a potential source for the covered species to populate the property to be enrolled if they do not already exist on that property.

B. The conservation measures the participating property owner agrees to undertake to conserve the species included in the Agreement.

C. The benefits expected to result from the conservation measures described in B above (e.g., increase in population numbers; enhancement, restoration, or preservation of habitat; removal of threats) and from the conditions that the participating property owner agrees to maintain. The Service must determine that the benefits of the conservation measures implemented by a property owner under a CCAA will reasonably be expected to provide a net conservation benefit.

D. Assurances related to take of the covered species will be authorized by the Service through a section 10(a)(1)(A) enhancement of survival permit (see Part 5). Assurances include that no additional conservation measures will be required and no additional land, water, or resource use restrictions will be imposed beyond those described in B above should the covered species be listed in the future. If conservation measures not provided for in the CCAA are necessary to respond to changed circumstances, the Service will not require any conservation measures in addition to those provided for in the CCAA without the consent of the property owner, provided the CCAA is being properly implemented. If additional conservation measures are necessary to respond to unforeseen circumstances, the Service may require additional measures of the property owner where the CCAA is being properly implemented, only if those measures maintain the original terms of the CCAA to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources available for development or use under the original terms of the CCAA without the consent of the property owner. The permit also allows a prescribed amount of incidental take that may result from the conservation measures or from the agreed-to ongoing property management actions.

E. A monitoring provision that requires measuring and reporting on: (1) Progress in implementing the conservation measures described in B above, and (2) changes in habitat conditions and the species' status resulting from these measures.

F. As appropriate, a notification requirement to provide the Service or appropriate State agencies with a reasonable opportunity to rescue

individuals of the covered species before any authorized incidental take occurs.

Part 4. What are the benefits to the species?

Before entering into a CCAA, the Service must make a written finding that the benefits of the conservation measures to be implemented by a property owner under an Agreement would reasonably be expected to result in a net conservation benefit to the covered species. If the Service and the participating property owner cannot agree on conservation measures that satisfy this requirement, the Service will not enter into the Agreement. Expected benefits of the specific conservation measures could include, but are not limited to: removal or reduction of current and anticipated future threats for a specified period of time; restoration, enhancement, or preservation of habitat; maintenance or increase of population numbers; and reduction or elimination of impacts to the species from agreed-upon, ongoing property management actions.

Part 5. What are assurances to property owners?

Through a CCAA, the Service will provide the assurance that, if any species covered by the Agreement is listed, and the Agreement has been implemented in good faith by the participating property owner, the Service will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those the property owner voluntarily committed to under the terms of the original Agreement. Assurances involving incidental take will be authorized through issuance of a section 10(a)(1)(A) enhancement of survival permit, which will allow the property owner to take a specific number of individuals of the covered species or quantity of habitat, should the species be listed, as long as the level of take is consistent with those levels agreed upon and identified in the Agreement. The Service will issue an enhancement of survival permit at the time of entering into the CCAA. This permit will have a delayed effective date tied to the date of any future listing of the covered species. The Service is prepared as a last resort to revoke a permit implementing a CCAA where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit. Prior to taking such a step, however, the Service will first have to exercise all possible means to remedy such a situation.

Part 6. How does the service comply with the National Environmental Policy Act?

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and the regulations of the Council on Environmental Quality (CEQ) require all Federal agencies to examine the environmental impacts of their actions, to analyze a full range of alternatives, and to use public participation in the planning and implementation of their actions. The purpose of the NEPA process is to help Federal agencies make better decisions and to ensure that those decisions are based on an understanding of environmental consequences. Federal agencies can satisfy NEPA requirements either by preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) or by showing that the proposed action is categorically excluded from individual NEPA analysis. The Service will review each proposed CCAA and associated enhancement of survival permit application for other significant environmental, economic, social, historical or cultural impact, or for significant controversy (516 DM 2, Appendix 2 for FWS and the National Oceanic and Atmospheric Administration's (NOAA's) Environmental Review Procedures and NOAA Administrative Order Series 216-6). If the Service determines that the Agreement and permit will likely result in any of the above effects, preparation of an EA or EIS will be required. General guidance on when the Service excludes an action categorically and when and how to prepare an EA or EIS is found in the FWS's Administrative Manual (30 AM 3) and NOAA Administrative Order Series 216-6. The Services expect that most CCAAs and associated enhancement of survival permits will result in minor or negligible effects on the environment and will be categorically excluded from individual NEPA analysis.

Part 7. Will there be public review?

Public participation in the development of a proposed CCAA will be provided only when agreed to by the participating property owner. However, the Service will make every proposed Agreement available for public review and comment as part of the public evaluation process that is statutorily required for issuance of the associated enhancement of survival permit. This comment period will generally be 30 days. The public will also be given other opportunities to review CCAAs in certain cases. For example, when the

Service receives an Agreement covering a species proposed for listing, and when the Service determines, based upon a preliminary evaluation, that the Agreement could potentially justify withdrawal of the proposed rule to list the species under the ESA, the comment period for the proposed rule will be extended or reopened to allow for public comments on the CCAA's adequacy in removing or reducing threats to the species. However, the statutory deadlines in the ESA may prevent the Service from considering in their final listing determination those CCAAs that are not received within a reasonable period of time after issuance of the proposed rule.

Part 8. Do property owners retain their discretion?

Nothing in this policy prevents a participating property owner from implementing conservation measures not described in the Agreement, provided such measures are consistent with the conservation measures and conservation goal described in the CCAA. The Service will provide technical advice, to the maximum extent practicable, to the property owner when requested. Additionally, a participating property owner can terminate the Agreement prior to its expiration date, even if the terms and conditions of the Agreement have not been realized. However, the property owner is required to notify the Service prior to termination. The enhancement of survival permit is terminated at the same time, and the property owner would no longer have the assurances.

Part 9. What is the discretion of all parties?

Nothing in this policy compels any party to enter into a CCAA at any time. Entering into an Agreement is voluntary for property owners and the Service. Unless specifically noted, a CCAA does not otherwise create or waive any legal rights of any party to the Agreement.

Part 10. Can agreements be transferred?

If a property owner who is a party to a CCAA transfers ownership of the enrolled property, the Service will regard the new property owner as having the same rights and obligations as the original property owner if the new property owner agrees to become a party to the original Agreement and meets the applicable permit issuance criteria. Actions taken by the new participating property owner that result in the incidental take of species covered by the Agreement would be authorized if the new property owner maintains the terms and conditions of the original

Agreement. If the new property owner does not become a party to the Agreement, the new owner would neither incur responsibilities nor receive any assurances relative to the ESA take prohibitions resulting from listing of the covered species. An Agreement must commit the participating property owner to notify the Service of any transfer of ownership at the time of the transfer of any property subject to the CCAA. This provision allows the Service the opportunity to contact the new property owner to explain the prior CCAA and to determine whether the new property owner would like to continue the Agreement or enter a new Agreement. When a new property owner continues an existing Agreement, the Service will honor the terms and conditions of that Agreement and associated permit.

Part 11. Is monitoring required?

The Service will ensure that necessary monitoring provisions are included in the CCAA and associated enhancement of survival permit. Monitoring is necessary to ensure that the conservation measures specified in an Agreement and permit are being implemented and to learn about the effectiveness of the agreed-upon conservation measures. In particular, when adaptive management principles are included in an Agreement, monitoring is especially helpful for obtaining the information needed to measure the effectiveness of the conservation program and detect changes in conditions. However, the level of effort and expense required for monitoring can vary substantially among CCAAs depending on the circumstances. For many, monitoring can be conducted by the Service or a State agency and may involve only a brief site inspection and appropriate documentation. Monitoring programs must be agreed upon prior to public review and comment. The Services are committed to providing as much technical assistance as possible in the development of acceptable monitoring programs. These monitoring programs will provide valuable information that the Services can use to evaluate program implementation and success.

Part 12. How are cooperation and coordination with the States and Tribes described in the policy?

Coordination between the Service, the appropriate State fish and wildlife agencies, affected Tribal governments, and property owners is important to the successful development and implementation of CCAAs. When appropriate, the Service will coordinate

and consult with the affected State fish and wildlife agency and any affected Tribal government that has a treaty right to any fish or wildlife resources covered by a CCAA.

Request for Information

We solicit comments, information, and recommendations from governmental agencies, Native American tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties on this draft policy. All comments, recommendations, and materials received by the date listed in **DATES**, above, will be considered prior to the approval of a final policy.

In addition to more general comments and information, we specifically request comment on the following aspects of the policy:

(1) Is the definition of “Net conservation benefit (for CCAA)” clear as a requirement (or standard)?

(2) Will the revisions be an improvement over the current policy?

You may submit your information concerning this draft revised policy by one of the methods listed in **ADDRESSES**. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and supporting documentation that we receive in response to this draft policy will be available for you to review at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service Headquarters (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

As discussed above, we intend to apply this policy, when finalized, in considering whether to approve a CCAA. Below we discuss compliance with several Executive Orders and statutes as they pertain to this draft policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of

Management and Budget will review all significant rules. OIRA has determined that this policy is not a significant rule.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that our regulatory system must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this policy in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under 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.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. We are certifying that the proposed revisions to the CCAA policy would not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale. This draft policy sets forth the Service’s revisions to existing CCAA policy. A full description of the action, why it is being considered, and the legal basis for this action are set forth earlier in this document. The policy will provide clarity to State or local government agencies, Tribes, nongovernmental organizations, or private individuals who are considering entering into voluntary CCAs.

The Services, States, local government agencies, Tribes, nongovernmental organizations, and private landowners are the entities that are affected by the draft revision to the existing policy. While the policy revision introduces and defines the term “net conservation benefit” for CCAs and clarifies what must be achieved in order for a CCAA to be approved, the Services believe that this addition does not necessarily change the level of conservation currently required under a CCAA.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the “Regulatory Flexibility Act” section above, this draft policy would not “significantly or uniquely” affect small governments. As explained above, small governments could potentially be affected if they chose to enter into a CCAA. However, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this policy would not impose a cost of \$100 million or more in any given year on local or State governments or private entities.

(b) This draft policy would not produce a Federal mandate on State, local, or Tribal governments or the private sector of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. This policy, if finalized, does not impose any additional obligations on State, local, or tribal governments who participate in a CCAA by requiring them to take additional or different conservation measures above what they would be required to take under the current CCAA policy. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630, this draft policy would not have significant takings implications. This draft policy would not pertain to “taking” of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this draft policy (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This draft policy would substantially advance a legitimate government interest (clarify existing policy through which non-

Federal entities may voluntarily help to conserve unlisted and listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this draft policy does not have significant Federalism effects and a federalism summary impact statement is not required. This draft policy revision pertains only to the Service's requirement of a net conservation benefit to the covered species for approval of a CCAA and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), this draft policy would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are revising the existing policy for CCAs specifically for the purpose of eliminating ambiguity and presenting the policy provisions in clear language.

Paperwork Reduction Act of 1995 (PRA)

This policy revision does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 *et seq.*). This policy will not impose new recordkeeping or reporting requirements on State or local governments; individuals; businesses; or organizations. OMB has reviewed and approved the application form that property owners use to apply for approval of a CCAA and associated enhancement of survival permit (Form 3–200–54) and assigned OMB control number 1018–0094, which expires January 31, 2017. 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.

National Environmental Policy Act (NEPA)

We have analyzed the draft policy in accordance with the criteria of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–

1508), and the Department of the Interior's NEPA procedures (516 DM 2 and 8; 43 CFR part 46) and NOAA's Administrative Order regarding NEPA compliance (NAO 216–6 (May 20, 1999)).

We have determined that the draft policy is categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4 and 43 CFR 46.210(i). This categorical exclusion applies to policies, directives, regulations, and guidelines that are “of an administrative, financial, legal, technical, or procedural nature.” This action does not trigger an extraordinary circumstance, as outlined in 43 CFR 46.215, applicable to the categorical exclusion. Therefore, the draft policy does not constitute a major Federal action significantly affecting the quality of the human environment.

We have also determined that this action satisfies the standards for reliance upon a categorical exclusion under NOAA Administrative Order (NAO) 216–6. Specifically, the policy fits within two categorical exclusion provisions in § 6.03c.3(i)—for “preparation of regulations, Orders, manuals, or other guidance that implement, but do not substantially change these documents, or other guidance” and for “policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature.” NAO 216–6, § 6.03c.3(i). The policy would not trigger an exception precluding reliance on the categorical exclusions because it does not involve a geographic area with unique characteristics, is not the subject of public controversy based on potential environmental consequences, will not result in uncertain environmental impacts or unique or unknown risks, does not establish a precedent or decision in principle about future proposals, will not have significant cumulative impacts, and will not have any adverse effects upon endangered or threatened species or their habitats. *Id.* at § 5.05c. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments,” and the Department of the Interior Manual at 512 DM 2, we have considered possible effects on

federally recognized Indian tribes and have preliminarily determined that there are no potential adverse effects of issuing this draft policy. Our intent with the draft policy revision is to provide clarity in regard to the net conservation benefit requirements for a CCAA to be approved, including any agreements in which Tribes may choose to participate. We will continue to work with Tribes as we finalize this draft policy.

Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The draft policy, if made final, is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of the Draft Policy

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 or policy 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 **ADDRESSES**. To better help us revise this draft policy, 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.

Authors

The primary authors of the policy are staff members of the Ecological Services Program, Branch of Communications and Candidate Conservation, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041–3803.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 13, 2016.

Noah Matson,

Acting Director, U.S. Fish and Wildlife Service.

Dated: April 13, 2016.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016-10479 Filed 5-3-16; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-R-2015-N020; FF01R05000-FVRS8451-0100000]

Marianas Trench Marine National Monument, Commonwealth of the Northern Mariana Islands; Northern Islands Submerged Lands Transfer to the Commonwealth of the Northern Mariana Islands Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft environmental assessment (Draft EA) for the Marianas Trench Marine National Monument (Monument) Northern Islands Submerged Lands (submerged lands) Transfer to the Commonwealth of the Northern Mariana Islands (CNMI), for public review and comment. The Draft EA describes our proposal for the Secretary of the Interior to convey specific submerged lands within the Monument from the United States to the CNMI Government under the authority of the Territorial Submerged Lands Act (TSLA), 48 U.S.C. 1705, *et seq.*

DATES: To ensure consideration of your comments, please send your written comments by June 6, 2016.

ADDRESSES: You can download the Draft EA from our Web site: www.fws.gov/marianastrenchmarinemonument/, and review printed copies of it at the locations listed under **SUPPLEMENTARY INFORMATION**. Submit comments on the Draft EA and requests for more information by any of the following methods.

Email: fw1_sltransfer_cnmi@fws.gov. Include "Submerged Lands Transfer" in the subject line of the message.

Fax: Attn: Charles Houghten, (503) 231-6161.

U.S. Mail: U.S. Fish and Wildlife Service, Pacific Region, Attn: Charles

Houghten, Chief, Lands Division, 911 NE 11th Ave., Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Charles Houghten, (503) 231-6207 (phone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we are announcing the availability of our Draft EA developed in cooperation with the National Oceanic and Atmospheric Administration (NOAA) and the CNMI Government, and in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500-1508); other Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations. We are also requesting public comments on the Draft EA, and will review and consider all comments as part of our NEPA process.

Background

The subject of our EA is the Northern Islands submerged lands surrounding the islands of Farallon de Pajaros (Uracas), Maug, and Asuncion in the CNMI, which include lands permanently or periodically covered by tidal waters up to the mean low water line, and extending three miles seaward from the mean high tide line of each of these islands.

The submerged lands are among some of the most biologically diverse in the Western Pacific Ocean, with relatively pristine coral reef ecosystems that have been proclaimed objects of scientific interest and reserved for protection as part of the Monument's Islands Unit, by Presidential Proclamation 8335 of January 6, 2009.

The submerged lands and associated waters were excepted from transfer to the CNMI Government by operation of the TSLA in Presidential Proclamation 9077 of January 15, 2014. Proclamation 9077 also provided that it did not affect the authority of the Secretary of the Interior granted under the TSLA, to convey the submerged lands after an agreement has been entered for coordination of management that ensures the protection of the Monument.

The Draft EA

The purpose of the Draft EA is to analyze alternatives for the proposed conveyance of the Northern Islands submerged lands and associated waters to the CNMI Government. We identify two alternatives in the Draft EA.

Alternative 1 is our Current Land Status Alternative (No Action); under it,

the Department of the Interior (DOI) would not convey the submerged lands, including mineral rights, to CNMI. The Service and NOAA would continue to coordinate management of the submerged lands and associated waters, including fishery-related activities of the Islands Unit, in consultation with the CNMI Government. We would manage the Monument in accordance with the directives of Presidential Proclamation 8335, and implement activities to address priority management needs based on agency-specific authorities and an integrated management plan.

Under our preferred alternative, Alternative 2 (or Northern Islands Submerged Lands Conveyance alternative), DOI would convey the submerged lands, including mineral rights, to the CNMI Government through a patent with a reserved easement. Consistent with the requirements of Proclamation 9077, a Memorandum of Agreement (MOA) would also be implemented to outline the roles and responsibilities of the CNMI Government, the Service, and NOAA, for ensuring protection of the Monument, and managing and conducting activities within the submerged lands and associated waters.

Upon the conveyance of the NISL to CNMI and pursuant to the MOA, the Service and NOAA would, at no additional cost to the CNMI, continue managing the conveyed submerged lands, for the benefit of and in consultation with the CNMI Government, until such time that the CNMI Government notifies the Secretaries of Interior and Commerce of its intent to assume either all or a portion of the management responsibilities of the conveyed submerged lands.

Alternative 2 would allow the CNMI Government to assume primary responsibility for managing and protecting the Northern Islands submerged lands and associated waters consistent with the purposes and requirements of Proclamations 8335 and 9077, and in coordination with the Service and NOAA, at such time as the CNMI Government notifies the Secretaries of Interior and Commerce of its desire to do so. Consistent with the Proclamations 8335 and 9077, this management would include the benthic and living marine resources of the associated water column, and subterranean of the submerged lands, and the associated mineral rights within.

Public Availability of the Draft EA

Printed copies of the Draft EA are available for review at the Commonwealth of the Northern Mariana Islands Bureau of Environmental and Coastal Quality, Gualo Rai Center, Chalan Pale Arnold–Middle Road, Saipan, MP 96950, and the following libraries.

- Joeten-Kiyu Public Library, Beach Road and Insatto St., Saipan, MP 96950.
- Tinian Public Library, San Jose Village, Tinian, MP 96952.
- Antonio Camacho Atalig Memorial Library, Tatchog Village, Rota, MP 96951.

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.

Robyn Thorson,

Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2016–09955 Filed 5–3–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX16LR000F60100]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a renewal of a currently approved information collection (1028–0059).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. This collection consists of 1 form. As required by the Paperwork Reduction Act (PRA) of 1995, 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 IC. This collection is scheduled to expire on October 31, 2016.

DATES: To ensure that your comments are considered, we must receive them on or before July 5, 2016.

ADDRESSES: You may submit comments 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) 648–7197 (fax); or gs-info_collections@usgs.gov (email). Please reference ‘Information Collection 1028–0059, Comprehensive Test Ban Treaty in all correspondence.

FOR FURTHER INFORMATION CONTACT: Lori E. Apodaca, National Minerals Information Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 989, Reston, VA 20192 (mail); 703–648–7724 (phone); or lapodaca@usgs.gov (email). You may also find information about this ICR at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The collection of this information is required by the Comprehensive Test Ban Treaty (CTBT), and will, upon request, provide the CTBT Technical Secretariat with geographic locations of sites where chemical explosions greater than 300 tons TNT-equivalent have occurred.

II. Data

OMB Control Number: 1028–0059.

Form Number: USGS Form 9–4040–A.

Title: Comprehensive Test Ban Treaty.

Type of Request: Renewal of existing information collection.

Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers.

Respondent's Obligation: None. Participation is voluntary.

Frequency of Collection: Annually.

Estimated Total Number of Annual Responses: 2,500.

Estimated Time per Response: 15 minutes.

Estimated Annual Burden Hours: 625 hours.

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 and current expiration date.

III. Request for Comments

We are soliciting comments 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) ways 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 the 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 in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Michael J. Magyar,

Associate Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2016–10379 Filed 5–3–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 567 Tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes. The list is updated from the notice published on January 29, 2016 (81 FR 5019).

FOR FURTHER INFORMATION CONTACT: Ms. Laurel Iron Cloud, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513–MIB, 1849 C Street NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is an updated list of federally acknowledged Indian Tribes in the contiguous 48 states and Alaska, to reflect the addition of an Indian Tribe and various name changes and corrections.

The addition to the list of Indian entities results from the January 28, 2016, Interior Board of Indian Appeals dismissal of a request for reconsideration in docket number 16–003, *In Re Federal Acknowledgment of the Pamunkey Indian Tribe*.

To aid in identifying Tribal name changes and corrections, the Tribe's previously listed or former name is included in parentheses after the correct current Tribal name. We will continue to list the Tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed Indian entities are acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: April 25, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

INDIAN TRIBAL ENTITIES WITHIN THE CONTIGUOUS 48 STATES RECOGNIZED AND ELIGIBLE TO RECEIVE SERVICES FROM THE UNITED STATES BUREAU OF INDIAN AFFAIRS

Absentee-Shawnee Tribe of Indians of Oklahoma
 Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
 Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona)
 Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas)
 Alabama-Quassarte Tribal Town
 Alturas Indian Rancheria, California
 Apache Tribe of Oklahoma
 Arapaho Tribe of the Wind River Reservation, Wyoming
 Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians)
 Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana

Augustine Band of Cahuilla Indians, California (previously listed as the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
 Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
 Bay Mills Indian Community, Michigan
 Bear River Band of the Rohnerville Rancheria, California
 Berry Creek Rancheria of Maidu Indians of California
 Big Lagoon Rancheria, California
 Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California)
 Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California)
 Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
 Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California)
 Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
 Blue Lake Rancheria, California
 Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California)
 Buena Vista Rancheria of Me-Wuk Indians of California
 Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon)
 Cabazon Band of Mission Indians, California
 Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
 Caddo Nation of Oklahoma
 Cahto Tribe of the Laytonville Rancheria
 Cahuilla Band of Indians (previously listed as the Cahuilla Band of Mission Indians of the Cahuilla Reservation, California)
 California Valley Miwok Tribe, California
 Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
 Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)
 Catawba Indian Nation (aka Catawba Tribe of South Carolina)
 Cayuga Nation
 Cedarville Rancheria, California
 Chemehuevi Indian Tribe of the Chemehuevi Reservation, California

Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
 Cherokee Nation
 Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma)
 Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
 Chicken Ranch Rancheria of Me-Wuk Indians of California
 Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana)
 Chitimacha Tribe of Louisiana
 Citizen Potawatomi Nation, Oklahoma
 Cloverdale Rancheria of Pomo Indians of California
 Cocopah Tribe of Arizona
 Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho)
 Cold Springs Rancheria of Mono Indians of California
 Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
 Comanche Nation, Oklahoma
 Confederated Salish and Kootenai Tribes of the Flathead Reservation
 Confederated Tribes and Bands of the Yakama Nation
 Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)
 Confederated Tribes of the Chehalis Reservation
 Confederated Tribes of the Colville Reservation
 Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians
 Confederated Tribes of the Goshute Reservation, Nevada and Utah
 Confederated Tribes of the Grand Ronde Community of Oregon
 Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon)
 Confederated Tribes of the Warm Springs Reservation of Oregon
 Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon)
 Cortina Indian Rancheria (previously listed as the Cortina Indian Rancheria of Wintun Indians of California)
 Coushatta Tribe of Louisiana
 Cow Creek Band of Umpqua Tribe of Indians (previously listed as the Cow Creek Band of Umpqua Indians of Oregon)
 Cowlitz Indian Tribe
 Coyote Valley Band of Pomo Indians of California
 Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota

- Crow Tribe of Montana
- Death Valley Timbi-sha Shoshone Tribe (previously listed as the Death Valley Timbi-Sha Shoshone Band of California)
- Delaware Nation, Oklahoma
- Delaware Tribe of Indians
- Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California)
- Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
- Eastern Band of Cherokee Indians
- Eastern Shawnee Tribe of Oklahoma
- Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (previously listed as the Shoshone Tribe of the Wind River Reservation, Wyoming)
- Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
- Elk Valley Rancheria, California
- Ely Shoshone Tribe of Nevada
- Enterprise Rancheria of Maidu Indians of California
- Ewiiapaayp Band of Kumeyaay Indians, California
- Federated Indians of Graton Rancheria, California
- Flandreau Santee Sioux Tribe of South Dakota
- Forest County Potawatomi Community, Wisconsin
- Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
- Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
- Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
- Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
- Fort McDowell Yavapai Nation, Arizona
- Fort Mojave Indian Tribe of Arizona, California & Nevada
- Fort Sill Apache Tribe of Oklahoma
- Gila River Indian Community of the Gila River Indian Reservation, Arizona
- Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
- Greenville Rancheria (previously listed as the Greenville Rancheria of Maidu Indians of California)
- Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
- Guidiville Rancheria of California
- Habematolel Pomo of Upper Lake, California
- Hannahville Indian Community, Michigan
- Havasupai Tribe of the Havasupai Reservation, Arizona
- Ho-Chunk Nation of Wisconsin
- Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington)
- Hoopa Valley Tribe, California
- Hopi Tribe of Arizona
- Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California)
- Houlton Band of Maliseet Indians
- Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
- Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)
- Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
- Ione Band of Miwok Indians of California
- Iowa Tribe of Kansas and Nebraska
- Iowa Tribe of Oklahoma
- Jackson Band of Miwuk Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California)
- Jamestown S'Klallam Tribe
- Jamul Indian Village of California
- Jena Band of Choctaw Indians
- Jicarilla Apache Nation, New Mexico
- Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
- Kalispel Indian Community of the Kalispel Reservation
- Karuk Tribe (previously listed as the Karuk Tribe of California)
- Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
- Kaw Nation, Oklahoma
- Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo)
- Keweenaw Bay Indian Community, Michigan
- Kialegee Tribal Town
- Kickapoo Traditional Tribe of Texas
- Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
- Kickapoo Tribe of Oklahoma
- Kiowa Indian Tribe of Oklahoma
- Klamath Tribes
- Koi Nation of Northern California (previously listed as the Lower Lake Rancheria, California)
- Kootenai Tribe of Idaho
- La Jolla Band of Luiseno Indians, California (previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)
- La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
- Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
- Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
- Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
- Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
- Little River Band of Ottawa Indians, Michigan
- Little Traverse Bay Bands of Odawa Indians, Michigan
- Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California)
- Los Coyotes Band of Cahuilla and Cupeno Indians, California (previously listed as the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)
- Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
- Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
- Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington)
- Lower Sioux Indian Community in the State of Minnesota
- Lummi Tribe of the Lummi Reservation
- Lytton Rancheria of California
- Makah Indian Tribe of the Makah Indian Reservation
- Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California)
- Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
- Mashantucket Pequot Indian Tribe (previously listed as the Mashantucket Pequot Tribe of Connecticut)
- Mashpee Wampanoag Tribe (previously listed as the Mashpee Wampanoag Indian Tribal Council, Inc.)
- Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
- Mechoopda Indian Tribe of Chico Rancheria, California
- Menominee Indian Tribe of Wisconsin
- Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
- Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
- Miami Tribe of Oklahoma
- Miccosukee Tribe of Indians
- Middletown Rancheria of Pomo Indians of California
- Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
- Mississippi Band of Choctaw Indians
- Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada

- Mohegan Tribe of Indians of Connecticut (previously listed as Mohegan Indian Tribe of Connecticut)
- Mooretown Rancheria of Maidu Indians of California
- Morongo Band of Mission Indians, California (previously listed as the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)
- Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington)
- Narragansett Indian Tribe
- Navajo Nation, Arizona, New Mexico & Utah
- Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho)
- Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington)
- Nooksack Indian Tribe
- Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
- Northfork Rancheria of Mono Indians of California
- Northwestern Band of the Shoshone Nation (previously listed as Northwestern Band of Shoshoni Nation and the Northwestern Band of Shoshoni Nation of Utah (Washakie))
- Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.)
- Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota)
- Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan)
- Omaha Tribe of Nebraska
- Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin)
- Oneida Nation of New York
- Onondaga Nation
- Otoe-Missouria Tribe of Indians, Oklahoma
- Ottawa Tribe of Oklahoma
- Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))
- Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
- Pala Band of Mission Indians (previously listed as the Pala Band of Luiseno Mission Indians of the Pala Reservation, California)
- Pamunkey Indian Tribe
- Pascua Yaqui Tribe of Arizona
- Paskenta Band of Nomlaki Indians of California
- Passamaquoddy Tribe
- Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
- Pawnee Nation of Oklahoma
- Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
- Penobscot Nation (previously listed as the Penobscot Tribe of Maine)
- Peoria Tribe of Indians of Oklahoma
- Picayune Rancheria of Chukchansi Indians of California
- Pinoleville Pomo Nation, California (previously listed as the Pinoleville Rancheria of Pomo Indians of California)
- Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancheries)
- Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama)
- Pokagon Band of Potawatomi Indians, Michigan and Indiana
- Ponca Tribe of Indians of Oklahoma
- Ponca Tribe of Nebraska
- Port Gamble S'Klallam Tribe (previously listed as the Port Gamble Band of S'Klallam Indians)
- Potter Valley Tribe, California
- Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas)
- Prairie Island Indian Community in the State of Minnesota
- Pueblo of Acoma, New Mexico
- Pueblo of Cochiti, New Mexico
- Pueblo of Isleta, New Mexico
- Pueblo of Jemez, New Mexico
- Pueblo of Laguna, New Mexico
- Pueblo of Nambe, New Mexico
- Pueblo of Picuris, New Mexico
- Pueblo of Pojoaque, New Mexico
- Pueblo of San Felipe, New Mexico
- Pueblo of San Ildefonso, New Mexico
- Pueblo of Sandia, New Mexico
- Pueblo of Santa Ana, New Mexico
- Pueblo of Santa Clara, New Mexico
- Pueblo of Taos, New Mexico
- Pueblo of Tesuque, New Mexico
- Pueblo of Zia, New Mexico
- Puyallup Tribe of the Puyallup Reservation
- Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
- Quartz Valley Indian Community of the Quartz Valley Reservation of California
- Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
- Quileute Tribe of the Quileute Reservation
- Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington)
- Ramona Band of Cahuilla, California (previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)
- Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
- Red Lake Band of Chippewa Indians, Minnesota
- Redding Rancheria, California
- Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California)
- Reno-Sparks Indian Colony, Nevada
- Resighini Rancheria, California
- Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
- Robinson Rancheria (previously listed as the Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California)
- Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
- Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation, California)
- Sac & Fox Nation of Missouri in Kansas and Nebraska
- Sac & Fox Nation, Oklahoma
- Sac & Fox Tribe of the Mississippi in Iowa
- Saginaw Chippewa Indian Tribe of Michigan
- Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York)
- Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
- Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington)
- San Carlos Apache Tribe of the San Carlos Reservation, Arizona
- San Juan Southern Paiute Tribe of Arizona
- San Manuel Band of Mission Indians, California (previously listed as the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation)
- San Pasqual Band of Diegueno Mission Indians of California
- Santa Rosa Band of Cahuilla Indians, California (previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
- Santa Rosa Indian Community of the Santa Rosa Rancheria, California
- Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
- Santee Sioux Nation, Nebraska
- Sauk-Suiattle Indian Tribe
- Sault Ste. Marie Tribe of Chippewa Indians, Michigan

Scotts Valley Band of Pomo Indians of California
 Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations))
 Seneca Nation of Indians (previously listed as the Seneca Nation of New York)
 Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma)
 Shakopee Mdewakanton Sioux Community of Minnesota
 Shawnee Tribe
 Sherwood Valley Rancheria of Pomo Indians of California
 Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
 Shinnecock Indian Nation
 Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington)
 Shoshone-Bannock Tribes of the Fort Hall Reservation
 Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
 Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
 Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington)
 Skull Valley Band of Goshute Indians of Utah
 Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington)
 Soboba Band of Luiseno Indians, California
 Sokaogon Chippewa Community, Wisconsin
 Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
 Spirit Lake Tribe, North Dakota
 Spokane Tribe of the Spokane Reservation
 Squaxin Island Tribe of the Squaxin Island Reservation
 St. Croix Chippewa Indians of Wisconsin
 Standing Rock Sioux Tribe of North & South Dakota
 Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington)
 Stockbridge Munsee Community, Wisconsin
 Summit Lake Paiute Tribe of Nevada
 Suquamish Indian Tribe of the Port Madison Reservation
 Susanville Indian Rancheria, California
 Swinomish Indian Tribal Community (previously listed as the Swinomish Indians of the Swinomish Reservation of Washington)
 Sycuan Band of the Kumeyaay Nation
 Table Mountain Rancheria of California
 Tejon Indian Tribe
 Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
 The Chickasaw Nation
 The Choctaw Nation of Oklahoma
 The Modoc Tribe of Oklahoma
 The Muscogee (Creek) Nation
 The Osage Nation (previously listed as the Osage Tribe)
 The Quapaw Tribe of Indians
 The Seminole Nation of Oklahoma
 Thlopthlocco Tribal Town
 Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
 Tohono O'odham Nation of Arizona
 Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California)
 Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York)
 Tonkawa Tribe of Indians of Oklahoma
 Tonto Apache Tribe of Arizona
 Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)
 Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington)
 Tule River Indian Tribe of the Tule River Reservation, California
 Tunica-Biloxi Indian Tribe
 Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
 Turtle Mountain Band of Chippewa Indians of North Dakota
 Tuscarora Nation
 Twenty-Nine Palms Band of Mission Indians of California
 United Auburn Indian Community of the Auburn Rancheria of California
 United Keetoowah Band of Cherokee Indians in Oklahoma
 Upper Sioux Community, Minnesota
 Upper Skagit Indian Tribe
 Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
 Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah)
 Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
 Walker River Paiute Tribe of the Walker River Reservation, Nevada
 Wampanoag Tribe of Gay Head (Aquinnah)
 Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
 White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
 Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
 Wilton Rancheria, California
 Winnebago Tribe of Nebraska
 Winnemucca Indian Colony of Nevada
 Wiyot Tribe, California (previously listed as the Table Bluff Reservation—Wiyot Tribe)
 Wyandotte Nation
 Yankton Sioux Tribe of South Dakota
 Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
 Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona)
 Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
 Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California)
 Yomba Shoshone Tribe of the Yomba Reservation, Nevada
 Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas)
 Yurok Tribe of the Yurok Reservation, California
 Zuni Tribe of the Zuni Reservation, New Mexico

**NATIVE ENTITIES WITHIN THE
 STATE OF ALASKA RECOGNIZED
 AND ELIGIBLE TO RECEIVE
 SERVICES FROM THE UNITED
 STATES BUREAU OF INDIAN
 AFFAIRS**

Agdaagux Tribe of King Cove
 Akiachak Native Community
 Akiak Native Community
 Alatna Village
 Algaaciq Native Village (St. Mary's)
 Allakaket Village
 Alutiiq Tribe of Old Harbor (previously listed as Native Village of Old Harbor and Village of Old Harbor)
 Angoon Community Association
 Anvik Village
 Arctic Village (See Native Village of Venetie Tribal Government)
 Asa'carsarmiut Tribe
 Atkasuk Village (Atkasook)
 Beaver Village
 Birch Creek Tribe
 Central Council of the Tlingit & Haida Indian Tribes
 Chalkyitsik Village
 Cheesh-Na Tribe (previously listed as the Native Village of Chistochina)
 Chevak Native Village
 Chickaloon Native Village
 Chignik Bay Tribal Council (previously listed as the Native Village of Chignik)
 Chignik Lake Village
 Chilkat Indian Village (Klukwan)
 Chilkoot Indian Association (Haines)
 Chinik Eskimo Community (Golovin)
 Chuloonawick Native Village

Circle Native Community	Native Village of Elim	Native Village of Tuntutuliak
Craig Tribal Association (previously listed as the Craig Community Association)	Native Village of Eyak (Cordova)	Native Village of Tununak
Curyung Tribal Council	Native Village of False Pass	Native Village of Tyonek
Douglas Indian Association	Native Village of Fort Yukon	Native Village of Unalakleet
Egegik Village	Native Village of Gakona	Native Village of Unga
Eklutna Native Village	Native Village of Gambell	Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Emmonak Village	Native Village of Georgetown	Native Village of Wales
Evansville Village (aka Bettles Field)	Native Village of Goodnews Bay	Native Village of White Mountain
Galena Village (aka Loudon Village)	Native Village of Hampton	Nenana Native Association
Gulkana Village	Native Village of Hooper Bay	New Koliganek Village Council
Healy Lake Village	Native Village of Kanatak	New Stuyahok Village
Holy Cross Village	Native Village of Karluk	Newhalen Village
Hoonah Indian Association	Native Village of Kiana	Newtok Village
Hughes Village	Native Village of Kipnuk	Nikolai Village
Huslia Village	Native Village of Kivalina	Ninilchik Village
Hydaburg Cooperative Association	Native Village of Kluti Kaah (aka Copper Center)	Nome Eskimo Community
Igiugig Village	Native Village of Kobuk	Nondalton Village
Inupiat Community of the Arctic Slope	Native Village of Kongiganak	Noorvik Native Community
Iqurmuut Traditional Council	Native Village of Kotzebue	Northway Village
Ivanof Bay Tribe (previously listed as the Ivanoff Bay Tribe and the Ivanoff Bay Village)	Native Village of Koyuk	Nulato Village
Kaguyak Village	Native Village of Kwigillingok	Nunakauyarmiut Tribe
Kaktovik Village (aka Barter Island)	Native Village of Kwinhagak (aka Quinhagak)	Organized Village of Grayling (aka Holikachuk)
Kasigluk Traditional Elders Council	Native Village of Larsen Bay	Organized Village of Kake
Kenaitze Indian Tribe	Native Village of Marshall (aka Fortuna Ledge)	Organized Village of Kasaan
Ketchikan Indian Corporation	Native Village of Mary's Igloo	Organized Village of Kwethluk
King Island Native Community	Native Village of Mekoryuk	Organized Village of Saxman
King Salmon Tribe	Native Village of Minto	Orutsarmiut Traditional Native Council (previously listed as Orutsarmiut Native Village (aka Bethel))
Klawock Cooperative Association	Native Village of Nanwalek (aka English Bay)	Oscarville Traditional Village
Knik Tribe	Native Village of Napaimute	Pauloff Harbor Village
Kokhanok Village	Native Village of Napakiak	Pedro Bay Village
Koyukuk Native Village	Native Village of Napaskiak	Petersburg Indian Association
Levelock Village	Native Village of Nelson Lagoon	Pilot Station Traditional Village
Lime Village	Native Village of Nightmute	Platinum Traditional Village
Manley Hot Springs Village	Native Village of Nikolski	Portage Creek Village (aka Ohgsenakale)
Manokotak Village	Native Village of Noatak	Pribilof Islands Aleut Communities of St. Paul & St. George Islands
McGrath Native Village	Native Village of Nuiqsut (aka Nooiksut)	Qagan Tayagungin Tribe of Sand Point Village
Mentasta Traditional Council	Native Village of Nunam Iqua (previously listed as the Native Village of Sheldon's Point)	Qawalangin Tribe of Unalaska
Metlakatla Indian Community, Annette Island Reserve	Native Village of Nunapitchuk	Rampart Village
Naknek Native Village	Native Village of Ouzinkie	Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Afognak	Native Village of Paimiut	Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Akhiok	Native Village of Perryville	Seldovia Village Tribe
Native Village of Akutan	Native Village of Pilot Point	Shageluk Native Village
Native Village of Aleknagik	Native Village of Pitka's Point	Sitka Tribe of Alaska
Native Village of Ambler	Native Village of Point Hope	Skagway Village
Native Village of Atka	Native Village of Point Lay	South Naknek Village
Native Village of Barrow Inupiat Traditional Government	Native Village of Port Graham	Stebbins Community Association
Native Village of Belkofski	Native Village of Port Heiden	Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak)
Native Village of Brevig Mission	Native Village of Port Lions	Takotna Village
Native Village of Buckland	Native Village of Ruby	Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island))
Native Village of Cantwell	Native Village of Saint Michael	Telida Village
Native Village of Chenega (aka Chanega)	Native Village of Savoonga	Traditional Village of Togiak
Native Village of Chignik Lagoon	Native Village of Scammon Bay	Tuluksak Native Community
Native Village of Chitina	Native Village of Selawik	Twin Hills Village
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)	Native Village of Shaktoolik	Ugashik Village
Native Village of Council	Native Village of Shishmaref	
Native Village of Deering	Native Village of Shungnak	
Native Village of Diomede (aka Inalik)	Native Village of Stevens	
Native Village of Eagle	Native Village of Tanacross	
Native Village of Eek	Native Village of Tanana	
Native Village of Ekuk	Native Village of Tatitlek	
Native Village of Ekwok (previously listed as Ekwok Village)	Native Village of Tazlina	
	Native Village of Teller	
	Native Village of Tetlin	

Umkumiut Native Village (previously listed as Umkumiute Native Village)
 Village of Alakanuk
 Village of Anaktuvuk Pass
 Village of Aniak
 Village of Atmautluak
 Village of Bill Moore's Slough
 Village of Chefornak
 Village of Clarks Point
 Village of Crooked Creek
 Village of Dot Lake
 Village of Iliamna
 Village of Kalskag
 Village of Kaltag
 Village of Kotlik
 Village of Lower Kalskag
 Village of Ohogamiut
 Village of Red Devil
 Village of Salamatoff
 Village of Sleetmute
 Village of Solomon
 Village of Stony River
 Village of Venetie (See Native Village of Venetie Tribal Government)
 Village of Wainwright
 Wrangell Cooperative Association
 Yakutat Tlingit Tribe
 Yupiit of Andreafski

[FR Doc. 2016-10408 Filed 5-3-16; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

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Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Idaho Falls District RAC will meet in Idaho Falls, Idaho, June 6-7, 2016 for a two-day meeting. The first day will begin at 9:00 a.m. at the BLM Idaho Falls Office, 1405 Hollipark Drive, Idaho Falls, Idaho, with new member orientation. The entire RAC will convene at 1:00 p.m. A comment period will be held June 6, following introductions from 1:00-1:30. The second day will begin at same location starting at 8:30 a.m. adjourning at 1:00 p.m. Members of the public are invited to attend.

SUPPLEMENTARY INFORMATION: The first day will be new member orientation in

the morning to explain the development of the BLM and purpose of the RAC. At 1:00 p.m. the rest of the RAC will convene to elect a secretary and continue with the full agenda. Topics include the sage-grouse implementation and discussion on bighorn/domestic sheep. On June 7, the RAC will meet at the Upper Snake Field Office at 8:30 a.m. to continue discussion on sage-grouse. The group will depart for the field at 9:30 a.m. to travel to the Medicine Lodge area to view allotments where potential conflicts exists between bighorn sheep and domestic sheep and discuss Lands with Wilderness Characteristics (LWC). The meeting will adjourn around 1:30 p.m.

The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT:

Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524-7550. Email: sawheeler@blm.gov.

Dated: April 25, 2016.

Sarah Wheeler,

Resource Advisory Council Coordinator, BLM Idaho Falls District.

[FR Doc. 2016-10400 Filed 5-3-16; 8:45 am]

BILLING CODE 4310-GG-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-16-015]

Government in the Sunshine Act Meeting Notice

TIME AND DATE: May 11, 2016 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, *Telephone:* (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.

2. Minutes.

3. Ratification List.

4. Vote in Inv. No. 731-TA-1315 (Preliminary)(Ferrovanadium from Korea). The Commission is currently scheduled to complete and file its determination on May 12, 2016; views of the Commission are currently scheduled to be completed and filed on May 19, 2016.

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Dated: May 2, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016-10540 Filed 5-2-16; 4:15 pm]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-531-532 and 731-TA-1270-1273 (Final)]

Polyethylene Terephthalate Resin From Canada, China, India, and Oman

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that an industry in the United States is materially injured by reason of imports of polyethylene terephthalate ("PET") resin, provided for in subheading 3907.60.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV") with respect to Canada, China, India, and Oman and have been found by Commerce to be subsidized by the governments of China and India.²

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective March 10, 2015,

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 All six Commissioners voted in the affirmative. The Commission also finds that imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the countervailing and antidumping duty orders on PET resin from India.

following receipt of a petition filed with the Commission and Commerce by DAK Americas, LLC, Charlotte, North Carolina; M&G Chemicals, Houston, Texas; and Nan Ya Plastics Corporation, America, Lake City, South Carolina. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of PET resin from China, India, and Oman³ were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of PET resin from Canada, China, India, and Oman were dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 5, 2016 (80 FR 68563). The hearing was held in Washington, DC, on March 1, 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 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations by April 28, 2016. The views of the Commission are contained in USITC Publication 4604 (April 2016), entitled *Polyethylene Terephthalate (PET) Resin from Canada, China, India, and Oman: Investigation Nos. 701-TA-531-532 and 731-TA-1270-1273 (Final)*.

By order of the Commission.

Issued: April 29, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-10417 Filed 5-3-16; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers, United States City Average

Pursuant to Section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94-283), 2 U.S.C. 441a (c)(1)-(2), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967 = 100) increased 380.7 percent from its 1974 annual average of 147.7 to its 2015 annual average of 709.998 and that it increased 33.9 percent from its 2001 annual average of 530.4 to its 2015 annual average of 709.998. Using 1974 as a base (1974 = 100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 380.7 percent from its 1974 annual average of 100 to its 2015 annual average of 480.703. Using 2001 as a base (2001 = 100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers increased 33.9 percent from its 2001 annual average of 100 to its 2015 annual average of 133.861. Using 2006 as a base (2006 = 100), I certify that the CPI increased 17.6 percent from its 2006 annual average of 100 to its 2015 annual average of 117.569.

Signed at Washington, DC, on the 19th day of April 2016.

Thomas E. Perez,
Secretary of Labor.

[FR Doc. 2016-10360 Filed 5-3-16; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers, United States City Average

Pursuant to Section 33105(c) of Title 49, United States Code, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the Federal Highway Administration (49 CFR 501.2(a)(9)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967 = 100) increased 128.2 percent from its 1984

annual average of 311.1 to its 2015 annual average of 709.998.

Signed at Washington, DC, on the 19th day of April 2016.

Thomas E. Perez,
Secretary of Labor.

[FR Doc. 2016-10362 Filed 5-3-16; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at 202-693-4734.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, May 27, 2016 by contacting Mr. Gregory Green at 202-693-4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This Notice also describes the functions of the ACVETEO. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Thursday June 2, 2016 beginning at 9:00 a.m. and ending at approximately 4:00 p.m. (EST).

ADDRESSES: The meeting will take place at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, C-5320 Conference Room Six. Members of the public are encouraged to arrive early to allow for security clearance into the Frances Perkins Building.

Security Instructions: Meeting participants should use the visitors' entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C

³ Commerce determined that countervailable subsidies are not being provided to producers and exporters of PET resin from Oman. *Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 81 FR 13321, March 14, 2016. The Commission subsequently terminated its countervailing duty investigation with respect to Oman. *Polyethylene Terephthalate Resin from Oman; Termination of Investigation*, 81 FR 19638, April 5, 2016.

Streets NW. For security purposes meeting participants must:

1. Present a valid photo ID to receive a visitor badge.
2. Know the name of the event being attended: The meeting event is the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO).
3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk.
4. Laptops and other electronic devices may be inspected and logged for identification purposes.
5. Due to limited parking options, Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building.

Notice of Intent To Attend the Meeting: All meeting participants are being asked to submit a notice of intent to attend by Friday, May 13, 2016, via email to Mr. Gregory Green at green.gregory.b@dol.gov, subject line "June 2016 ACVETEO Meeting."

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Assistant Designated Federal Official for the ACVETEO, (202) 693-4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: Assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for VETS, with respect to outreach activities and employment and training needs of Veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

- 9:00 a.m. Welcome and remarks, Michael Michaud, Assistant Secretary for Veterans Employment and Training Service
- 9:15 a.m. Administrative Business, Mika Cross, Designated Federal Official
- 9:30 a.m. Briefing on Ethics while serving as a Special Government

Employee on a Federal Advisory Committee, Robert Sadler, Counsel for Ethics

- 10:30 a.m. Briefing of Fiscal Year 2015 Annual Report, Mika Cross, Designated Federal Official
- 11:00 p.m. Briefing on DOL/VETS Priorities, Teresa Gerton, Deputy Assistant Secretary, Veterans; Employment and Training Service
- 12:00 p.m. Lunch
- 1:00 p.m. Briefing on Veterans Employment and Training Service FY 2016 Strategic Outreach Plan, Mika Cross, Designated Federal Official
- 2:00 p.m. Break
- 2:15 p.m. Discussion on DOL/VETS Priorities, ACVETEO Chairman
- 2:45 p.m. Subcommittee Discussion/Assignments, Mika Cross, Designated Federal Official
- 3:30 p.m. Public Forum, Mika Cross, Designated Federal Official
- 4:00 p.m. Adjourn

Signed in Washington, DC, this 26th day of April 2016.

Teresa W. Gerton,

Deputy Assistant Secretary for Policy, Veterans' Employment and Training Service.

[FR Doc. 2016-10363 Filed 5-3-16; 8:45 am]

BILLING CODE 4510-79-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-2016-030]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA gives public notice that it has submitted to OMB for approval the information collection described in this notice. We invite you to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: OMB must receive written comments at the address below on or before June 3, 2016.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA by mail to Office of Management and Budget; New Executive Office Building; Washington, DC 20503; by fax to 202-395-5167; or by email to Nicholas_A_Fraser@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the proposed information collection and supporting

statement to Tamee Fechhelm by phone at 301-837-1694 or by fax at 301-713-7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on June 9, 2015 (80 FR 32615 and 32616); we received no comments. NARA has therefore submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) NARA's estimate of the burden of the proposed information collection and its accuracy; (c) ways NARA could enhance the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including the through information technology; and (e) whether the collection affects small businesses. In this notice, NARA solicits comments concerning the following information collection:

Title: Identification Card Request.

OMB number: 3095-0057.

Agency form number: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households, Business or other for-profit, Federal government.

Estimated number of respondents: 1,500.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 75 hours.

Abstract: The collection of information is necessary comply with HSPD-12 requirements. Use of the form is authorized by 44 U.S.C 2104. At the NARA College Park facility, individuals receive a proximity card with the identification badge that is electronically coded to permit access to secure zones, ranging from a general nominal level to stricter access levels for classified records zones. The proximity card system is part of the security management system that meets the accreditation standards of the Government intelligence agencies for storage of classified information and serves to comply with E.O. 12958.

Dated: April 14, 2016.

Swarnali Halдар,

Executive for Information Services/CIO.

[FR Doc. 2016-10470 Filed 5-3-16; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL SCIENCE FOUNDATION

National Science Board Sunshine Act Meetings

The National Science Board's Elections Committee, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

TIME AND DATE: Friday, April 29, at 2 p.m. EDT.

PLACE: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Election Committee Chair's opening remarks; approval of minutes of the closed February 2016 meeting; confirmation of slate of nominations; and discussion of next steps and Chair's closing remarks.

CONTACT PERSON FOR MORE INFORMATION: Please refer to the National Science Board Web site (www.nsf.gov/nsb) for information or schedule updates, or contact: Ron Campbell (jrcampbe@nsf.gov), National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2016-10478 Filed 5-2-16; 11:15 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) is requesting renewal of the Generic Clearance of the National Center for Science & Engineering Statistics' Survey Improvement Projects (3145-0174), and has submitted an information collection requirement to OMB for review and clearance. In accordance with the requirement of

section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), this is the second notice for public comment; the first was published in the **Federal Register** at 81 FR 7833; no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at <http://www.reginfo.gov/public/do/PRAMain>.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292-7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Clearance of the National Center for Science & Engineering Statistics Improvement Projects.

OMB Control Number: 3145-0174.

Type of Request: Intent to seek approval to extend an information collection for three years.

Abstract. Established within the National Science Foundation by the

America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950, as amended, the National Center for Science & Engineering Statistics (NCSES) serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, research and development for use by practitioners, researchers, policymakers, and the public. NCSES conducts about a dozen nationally representative surveys to obtain the data for these purposes. The Generic Clearance will be used to ensure that the highest quality data are obtained from these surveys. State of the art methodology will be used to develop, evaluate, and test questionnaires and survey concepts as well as to improve survey methodology. This may include field or pilot tests of questions for future large scale surveys, as needed. The Generic Clearance will also be used to test and evaluate data dissemination tools and methods, in an effort to improve access for data users.

Use of the Information. The purpose of these studies is to use the latest and most appropriate methodology to improve NCSES surveys, evaluate new data collection efforts, and evaluate data dissemination tools and mechanisms. Methodological findings may be presented externally in technical papers at conferences, published in the proceedings of conferences, or in journals. Improved NCSES surveys, data collections, and data dissemination will help policymakers in decisions on research and development funding, graduate education, and the scientific and technical workforce, as well as contributing to reduced survey costs.

Expected Respondents. The respondents will be from industry, academia, nonprofit organizations, members of the public, and State, local, and Federal governments. Respondents will be either individuals or institutions, depending on the topic under investigation. Qualitative procedures will generally be conducted in person, online (using Skype, Webex, or other conferencing tools), or over the phone. Quantitative procedures may be conducted using mail, web, email, or phone modes, depending on the topic under investigation. Up to 8,680 respondents will be contacted across all projects. No respondent will be contacted more than twice in one year under this generic clearance. Every effort will be made to use technology to limit the burden on respondents from small entities.

Both qualitative and quantitative methods will be used to improve

NCSES's current data collection instruments and processes and to reduce respondent burden, as well as to develop new surveys and new or improved data dissemination tools. Qualitative methods include, but are not limited to expert review; exploratory, cognitive, and usability interviews;

focus groups; and respondent debriefings. Cognitive and usability interviews may include the use of scenarios, paraphrasing, card sorts, vignette classifications, and rating tasks. Quantitative methods include, but are not limited to, telephone surveys;

behavior coding, split panel tests, and field tests.

Estimate of Burden. NCSES estimates that a total reporting and recordkeeping burden of 11,180 hours will result from activities to improve its surveys. The calculation is shown in Table 1.

TABLE 1—POTENTIAL SURVEYS FOR IMPROVEMENT PROJECTS, WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS

	Number of respondents	Number of hours
Graduate Student Survey	2,000	2,500
SESTAT Surveys (National Survey of College Graduates; Survey of Doctorate Recipients)	1,000	500
Early Career Doctorate Survey	500	1,000
Survey of Earned Doctorates	600	600
Higher Education Research & Development Survey	300	540
State Government Research & Development Survey	150	300
Survey of Nonprofit Research Activities	230	415
Business Research & Development and Innovation Survey	50	150
Microbusiness Survey	250	500
Survey of Scientific & Engineering Facilities	400	400
Innovation Survey	1,500	3,000
Public Understanding of Science & Engineering Survey	550	125
Data dissemination tools and mechanisms	150	150
Other surveys and projects not specified	1,000	1,000
Total	8,680	11,180

Dated: April 29, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016-10403 Filed 5-3-16; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2015-0280]

Information Collection: Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comments on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled: "Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material."

DATES: Submit comments by July 5, 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 on or before this date.

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

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0280. 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:* David Cullison, Office of the Chief Information Officer, Mail Stop: T-5 F53, 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: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: INFOCOLLECTS.Resource@NRC.GOV.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2015-0280 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-2015-0280. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2015-0280 on this Web site.

- *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 supporting statement is available in ADAMS under Accession No. ML16048A183.

- *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.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance

Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: INFOCOLLECTS.Resource@NRC.GOV.

B. Submitting Comments

Please include Docket ID NRC-2015-0280 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 11, Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material.

2. *OMB approval number:* 3150-0062.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* N/A.

5. *How often the collection is required or requested:* On Occasion.

6. *Who will be required or asked to respond:* Employees (including applicants for employment), contractors, and consultants of NRC licensees and contractors whose activities involve access to, or control over, special nuclear material at either fixed sites or for transportation activities.

7. *The estimated number of annual responses:* 294.

8. *The estimated number of annual respondents:* 2.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 73.4.

10. *Abstract:* The NRC's regulations in part 11 of title 10 of the *Code of Federal Regulations* (10 CFR), establish requirements for access to special nuclear material, and the criteria and procedures for resolving questions concerning the eligibility of individuals to receive special nuclear material access authorization. The specific part 11 requirements covered under this OMB clearance include requests for exemptions to part 11 requirements, amendments to security plans that require incumbents to have material access authorizations, access authorization cancellations. In addition, licensees must keep records of the names and access authorization numbers of certain individuals assigned to shipments of special nuclear material. The information required by 10 CFR part 11 is needed to establish control over and maintain records of who is properly authorized to safeguard and have access to special nuclear material. Not knowing this information could cause harm to the public and national security.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 28th day of April 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016-10342 Filed 5-3-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-017; NRC-2008-0066]

Dominion Virginia Power; North Anna, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice once each week for four consecutive weeks of the North Anna Unit 3 combined license (COL) application from Dominion Virginia Power (Dominion).

DATES: May 4, 2016.

ADDRESSES: Please refer to Docket ID NRC-2008-0066 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2008-0066. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: James Shea, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1388, email: James.Shea@nrc.gov.

SUPPLEMENTARY INFORMATION: The Virginia Electric and Power Company, doing business as Dominion Virginia

Power (Applicant) has filed an application for a COL with the NRC under Section 103 of the Atomic Energy Act of 1954, as amended, and part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), “Licenses, Certifications, and Approvals for Nuclear Power Plants.” Through the Application, which is currently under review by the NRC staff, the Applicant seeks to construct and operate an Economic Simplified Boiling-Water Reactor at the North Anna Power Station, which is located in Louisa County, Virginia. An applicant may seek a COL in accordance with subpart C of 10 CFR part 52. The information submitted by the applicant includes certain administrative information, such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. These notices are being provided in accordance with the requirements in 10 CFR 50.43(a)(3).

Dated at Rockville, Maryland, this 27th day of April, 2016.

For the Nuclear Regulatory Commission.

Ronaldo V. Jenkins,

Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016-10428 Filed 5-3-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499; NRC-2016-0092]

STP Nuclear Operating Company, South Texas Project, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft environmental assessment (EA) prepared under the National Environmental Policy Act of 1969 (NEPA) and NRC regulations. This EA summarizes the results of the NRC staff's environmental review, which evaluates the potential environmental impacts of issuing license amendments and granting regulatory exemptions in response to a request from STP Nuclear Operating Company (STPNOC, the licensee) for Facility Operating License Nos. NPF-76 and NPF-80, for South Texas Project (STP), Units 1 and 2, respectively. The license amendments and regulatory exemptions would allow STPNOC to make changes to the STP

licensing basis to incorporate the use of both a deterministic and a risk-informed approach to address safety issues discussed in Generic Safety Issue (GSI)-191 and to close Generic Letter (GL) 2004-02.

DATES: Submit comments by June 20, 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-2016-0092. 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 Bladley, 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: Lisa Regner, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-1906, email: Lisa.Regner@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2016-0092 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-2016-0092.

- *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. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in a table in the section of this notice entitled, Availability of Documents.

- *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-2016-0092 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. Introduction and Background

The NRC is considering a request to amend Facility Operating Licenses NPF-76 and NPF-80, issued to STPNOC for operation of STP, Units 1 and 2, located in Matagorda County, Texas, and to grant certain regulatory exemptions for STP, Units 1 and 2, in accordance with section 50.90, “Application for amendment of license, construction permit, or early site permit” and section 50.12, “Specific exemptions,” of title 10 of the *Code of Federal Regulations* (10 CFR), respectively. The license amendments and regulatory exemptions would allow STPNOC to resolve concerns associated with GSI-191, “Assessment of Debris Accumulation on PWR [Pressurized-Water Reactor] Sump Performance,” and the associated GL 2004-02, “Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized-Water

Reactors,” issued on September 13, 2004.

Pursuant to 10 CFR 51.21, “Criteria for and identification of licensing and regulatory actions requiring environmental assessments,” the NRC has prepared a draft EA summarizing the findings of its environmental NEPA review of this proposed action. The NRC concluded that the proposed action will have no significant environmental impact.

Background

The NRC established a general safety issue (GSI–191) to determine whether the transport and accumulation of debris from a loss-of-coolant accident in the PWR containment structure would impede the operation of the emergency core cooling system or containment spray system. A loss-of-coolant accident within the containment structure is assumed to be caused by a break in the primary coolant loop piping. Water discharged from the pipe break would collect on the containment structure floor and within the containment emergency sump. During this type of accident, the emergency core cooling systems and containment spray systems would initially draw cooling water from the refueling water storage tank. However, realigning the emergency core cooling system pumps to the containment structure emergency sump would provide long-term cooling of the reactor core. Therefore, successful long-term cooling depends on the ability of the containment structure emergency sump to provide adequate flow to the residual heat removal recirculation pumps for extended periods of time.

One of the concerns addressed by the implementation of GSI–191 is that debris, such as insulation installed on piping and components, within the containment structure could be dislodged by a jet of water and steam from a loss-of-coolant accident. Water, along with debris, would accumulate at the bottom of the containment structure and would flow towards the emergency sump pumps. Insulation and other fibrous material could block the emergency sump screens and suction strainers, which in turn could prevent the ability of the containment emergency sump to provide adequate flow to the residual heat removal recirculation pumps (for more information, see NUREG–0897, “Containment Emergency Sump Performance,” Revision 1).

The NRC issued GL 2004–02 to address this safety concern by requiring licensees of PWRs to: (1) Increase the size of their containment sump strainers, (2) replace fibrous insulation

inside containment, and (3) implement other compensatory measures in order to significantly reduce the risk of emergency sump strainer clogging.

Subsequent to the issuance of GL 2004–02, the NRC staff identified another related concern with the potential for debris to bypass the sump strainers (even the new strainers) and enter the reactor core. This safety issue could result in the build-up of material on fuel assemblies, inhibit heat transfer, and prevent adequate cooling of the reactor core. Since 2004, the NRC and industry have conducted tests to gain more information on this concern. In 2012, the NRC staff developed three options for resolution of all of its debris concerns, which are discussed in SECY–12–0093, “Closure Options for Generic Safety Issue 191, Assessment of Debris Accumulation on Pressurized-Water Reactor Sump Performance,” dated July 9, 2012.¹

The three options for demonstrating compliance with 10 CFR 50.46, “Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,” are summarized as follows.

1. Option 1 allows the use of approved models and test methods.

2. Option 2 allows the industry to implement additional mitigating measures until resolution is completed and take additional time to resolve issues through further industry testing or use of a risk-informed approach. Use of this option has two alternative methods.

- Option 2A: Industry can perform more testing and analysis and submit a topical report for NRC review and approval.

- Option 2B: Industry can develop a risk-informed approach to quantify the risk associated with this generic issue and submit a license amendment request for NRC review and approval.

3. Option 3 allows industry to separate the regulatory treatment of the sump strainer and in-vessel effects. The emergency core cooling system strainers will be evaluated using currently approved models, while in-vessel effects will be addressed using a risk-informed approach.

STPNOC proposes to use Option 2B to demonstrate compliance with 10 CFR 50.46 through both plant-specific testing and a risk-informed approach (described in more detail in the following paragraphs). Since the use of a risk-informed approach is not recognized in the regulations, STPNOC requested an

exemption to 10 CFR 50.46(a)(1) for certain conditions associated with the treatment of debris. Additionally, STPNOC requested exemptions to appendix A to 10 CFR part 50, General Design Criteria (GDC) 35, “Emergency Core Cooling,” GDC 38, “Containment Heat Removal,” and GDC 41, “Containment Atmosphere Cleanup,” to allow its use of a risk-informed approach for certain conditions in the containment debris analysis. If approved, the proposed action would not result in modifications within the containment structure or changes to the emergency core cooling system.

III. Draft Environmental Assessment

Description of the Proposed Action

The proposed action is to issue certain license amendments and to grant certain regulatory exemptions requested by STPNOC. The license amendments and regulatory exemptions would allow STPNOC to make changes to the STP licensing basis to incorporate the use of both a deterministic and a risk-informed approach to address safety issues discussed in GSI–191 and close GL 2004–02. If approved, no physical modifications to the nuclear plant or changes to reactor operations involving the emergency core cooling system would be required. The proposed action is in response to the licensee’s application dated June 19, 2013, and supplemented by letters dated October 3, October 31, November 13, November 21, and December 23, 2013 (two letters); January 9, February 13, February 27, March 17, March 18, May 15 (two letters), May 22, June 25, and July 15, 2014; and March 10, March 25, and August 20, 2015.

The Need for the Proposed Action

As the holder of Facility Operating License Nos. NPF–76 and NPF–80, STPNOC is expected to address the safety issues discussed in GSI–191 and to close GL 2004–02 with respect to STP, Units 1 and 2. Consistent with SECY–12–0093, STPNOC chose an approach which requires, in part, that STPNOC request that the NRC amend the operating licenses and grant certain regulatory exemptions for each unit.

Plant Site and Environs

The STP is located on approximately 12,220 acres (4,945 hectares) in rural and sparsely populated Matagorda County, Texas, approximately 70 miles (mi) [110 kilometers (km)] south-southwest of Houston. Nearby communities include Matagorda, approximately 8 mi (13 km) south of the site; the City of Palacios, 11 mi (18 km)

¹ On December 14, 2012, the Commission approved all three options for closure of this safety issue.

west of the site; and Bay City, 13 mi (21 km) north of the site.

The STP power plant consists of two four-loop Westinghouse PWR units. The reactor core of each unit heats water, which is pumped to four steam generators, where the heated water is converted to steam. The steam is then used to turn turbines, which are connected to electrical generators that produce electricity. A simplified drawing of a PWR can be viewed at <http://www.nrc.gov/reactors/pwrs.html>.

The reactor, steam generators, and other components are housed in a concrete and steel containment structure (building). The containment structure is a reinforced concrete cylinder with a concrete slab base and hemispherical dome. A welded steel liner is attached to the inside face of the concrete shell to ensure a high degree of leak tightness. In addition, the 4-foot (1.2-meter)-thick concrete walls of the containment structure serve as a radiation shield. Additional information on the plant structures and systems, as well as the environmental impact statement for license renewal, can be found in NUREG-1437, Supplement 48, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 48 Regarding South Texas Project, Units 1 and 2."

Environmental Impacts of the Proposed Action

Radiological and non-radiological impacts on the environment that may result from issuing the license amendments and granting the regulatory exemptions are summarized in the following sections.

Non-Radiological Impacts

No physical modifications to the nuclear plant or changes to reactor operations involving the emergency core cooling system would be required if the NRC were to issue the requested license amendments and grant the regulatory exemptions. Also, no physical changes would be made to other structures or land use within the STP site. Non-radiological liquid effluents or gaseous emissions would not change and therefore environmental conditions at the STP site also would not change. In addition, issuing the license amendments and granting the regulatory exemptions would not result in changes to the use of resources or cause any new environmental impacts.

Therefore, there would be no non-radiological environmental impacts to any resource or any irreversible and irretrievable commitments of resources.

Non-Radiological Cumulative Impacts

Since issuing the license amendments and granting the regulatory exemptions would not result in environmental effects, there would be no cumulative impact.

Radiological Impacts

Radioactive Gaseous and Liquid Effluents and Solid Waste

The STP uses waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and Environmental Protection Agency radiation safety standards. Issuing the license amendments and granting the regulatory exemptions will not result in any physical changes to the nuclear plant or reactor operations that would affect the types and quantities of radioactive material generated during plant operations; therefore, there will be no changes to the plant radioactive waste treatment systems. A detailed description of the STP radioactive waste handling and disposal activities is contained in Chapter 2.1.2 of Supplement 48 to NUREG-1437.

Radioactive Gaseous Effluents

The objectives of the STP gaseous waste management system (GWMS) are to process and control the release of radioactive gaseous effluents into the environment to be within the requirements of 10 CFR 20.1301, "Dose limits for individual members of the public," and to be consistent with the as low as is reasonably achievable (ALARA) dose objectives set forth in appendix I to 10 CFR part 50. The GWMS is designed so that radiation exposure to plant workers is within the dose limits in 10 CFR 20.1201, "Occupational dose limits for adults."

Issuing the license amendments and granting the regulatory exemptions will not result in any physical changes to the nuclear plant or reactor operations; therefore, there will be no changes to the GWMS. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive gaseous releases within the dose limits of 10 CFR 20.1301 and the ALARA dose objectives in appendix I to 10 CFR part 50.

Radioactive Liquid Effluents

The function of the STP liquid waste processing system (LWPS) is to collect and process radioactive liquid wastes to reduce radioactivity and chemical concentrations to levels acceptable for discharge to the environment or to

recycle the liquids for use in plant systems. The principal objectives of the LWPS are to collect liquid wastes that may contain radioactive material and to maintain sufficient processing capability so that liquid waste may be discharged to the environment below the regulatory limits of 10 CFR 20.1301 and consistent with the ALARA dose objectives in appendix I to 10 CFR part 50. The waste is routed through a monitor that measures the radioactivity and can automatically terminate the release in the event radioactivity exceeds predetermined levels. The liquid waste is discharged into the main cooling reservoir. The entire main cooling reservoir is within the STP site boundary and the public is prohibited from access to the area.

Issuing the license amendments and granting the regulatory exemptions will not result in any physical changes to the nuclear plant or reactor operations; therefore, there will be no changes to the LWPS. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive liquid releases within the dose limits of 10 CFR 20.1301 and the ALARA dose objectives in appendix I to 10 CFR part 50.

Radioactive Solid Wastes

The function of the STP solid waste processing system (SWPS) is to process, package, and store the solid radioactive wastes generated by nuclear plant operations until they are shipped off site to a vendor for further processing or for permanent disposal at a licensed burial facility, or both. The storage areas have restricted access and shielding to reduce radiation rates to plant workers. The principal objectives of the SWPS are to package and transport the waste in compliance with NRC regulations in 10 CFR part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," and 10 CFR part 71, "Packaging and Transportation of Radioactive Material," and the U.S. Department of Transportation regulations in 49 CFR parts 170 through 179; and to maintain the dose limits of 10 CFR 20.1201, 10 CFR 20.1301, and appendix I to 10 CFR part 50.

Issuing the license amendments and granting the regulatory exemptions will not result in any physical changes to the nuclear plant or reactor operations; therefore, the waste can be handled by the SWPS without modification. The existing equipment and plant procedures that control radioactive solid waste handling will continue to be used to maintain exposures within the dose limits of 10 CFR 20.1201, 10 CFR

20.1301, and 10 CFR part 50 appendix I.

Occupational Radiation Doses

The proposed action of issuing the license amendments and granting the regulatory exemptions will not result in any physical changes being made to the nuclear plant or reactor operations; therefore, there will be no change to any in-plant radiation sources. The licensee's radiation protection program monitors radiation levels throughout the nuclear plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses will remain within the dose limits of 10 CFR part 20, subpart C, "Occupational Dose Limits." Issuing the license amendments and granting the regulatory exemptions will not change radiation levels within the nuclear plant and, therefore, will have no increased radiological impact to the workers.

Offsite Radiation Dose

The primary sources of offsite dose to members of the public from the STP are radioactive gaseous and liquid effluents. As discussed previously, there will be no change to the operation of the STP radioactive gaseous and liquid waste management systems or the ability to perform their intended functions. Also, there will be no change to the STP radiation monitoring system and procedures used to control the release of radioactive effluents in accordance with radiation protection standards in 10 CFR 20.1301, 40 CFR 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," and the ALARA dose objectives in appendix I to 10 CFR part 50.

Based on the previous statements, the offsite radiation dose to members of the public would not change and would continue to be within regulatory limits, and, therefore, issuing the license amendments and granting the regulatory exemptions will not change offsite dose levels and, consequently, the health effects of the proposed action will not be significant.

Design-Basis Accidents

Design-basis accidents at STP, Units 1 and 2, are evaluated by both the licensee and the NRC to ensure that the units can withstand the spectrum of postulated accidents without undue hazard to the public health and safety and the protection of the environment.

Separate from its environmental review in this EA, the NRC staff is evaluating the licensee's technical and safety analyses provided in support of

the proposed action of issuing the license amendments and granting the exemption requests to ensure that, following the proposed action, the licensee will continue to meet the NRC regulatory requirements for safe operation. The results and conclusion of the NRC staff's safety review will be documented in a publicly available safety evaluation. If the NRC staff concludes in this safety evaluation that taking the proposed action will (1) provide reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) provide reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) not be inimical to the common defense and security or to the health and safety of the public, then the proposed action will also not have a significant environmental impact. The NRC will not take the proposed action absent such a safety conclusion.

Radiological Cumulative Impacts

The radiological dose limits for protection of the public and plant workers have been developed by the NRC and the Environmental Protection Agency to address the cumulative impact of acute and long-term exposure to radiation and radioactive material. These dose limits are codified in 10 CFR part 20, "Standards for Protection Against Radiation," and 40 CFR part 190.

Cumulative radiation doses are required to be within the limits set forth in the regulations cited in the previous paragraph. Issuing the license amendments and granting the exemptions will not require any physical changes to the plant or plant activities, there will not be changes to in-plant radiation sources, and offsite radiation dose to members of the public will not change. Therefore, the NRC staff concludes that there would not be a significant cumulative radiological impact from the proposed action.

Radiological Impacts Summary

Based on these radiological evaluations, the proposed action of issuing the license amendments and granting the exemptions would not result in any significant radiological impacts. Therefore, if the NRC staff concludes in its separate safety evaluation that taking the proposed action will (1) provide reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) provide reasonable assurance that such activities will be conducted in

compliance with the Commission's regulations, and (3) not be inimical to the common defense and security or to the health and safety of the public, then the proposed action will not have a significant radiological impact.

Environmental Impacts of the Alternatives to the Proposed Action

As discussed earlier, licensees have options in responding to GL 2004-02 and demonstrating compliance with 10 CFR 50.46 to consider the impacts of debris on emergency core cooling system. Consistent with these options, as an alternative to the proposed action, the licensee could choose to remove and replace insulation within the reactor containment building. This would require the physical removal and disposal of significant amounts of insulation from a radiation area within the reactor containment building and the installation of new insulation less likely to impact sump performance.

Removal of the existing insulation from the containment building would generate radiologically contaminated waste. STPNOC estimated that 4,620 cubic feet of insulation would be removed and stored onsite until disposal. The old insulation would require special handling and packaging so that it could be safely transported from the STP site. The licensee's existing low-level radioactive and hazardous waste handling and disposal activities would likely be used to process and store this waste material. The old insulation would then be transported to a low-level radioactive or hazardous waste disposal site. Energy (fuel) would be expended to transport the insulation and land would be expended at the disposal site.

The removal of the old insulation and installation of the new insulation would expose workers to radiation. In its application, STPNOC estimates that this would result in an additional collective radiation exposure of 158-176 person-roentgen equivalent man (rem) over its baseline collective radiation exposure. The NRC staff reviewed NUREG-0713, Volume 34, "Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities 2012: Forty-Fifth Annual Report," and determined that STPNOC's average baseline collective radiation exposure is approximately 90 person-rem. This additional 158-176 person-rem collective exposure would be shared across the entire work force involved with removing and reinstalling insulation.

In SECY-12-0093, the NRC staff attempted to develop a total occupational dose estimate for the work

involved in insulation removal and replacement associated with GSI-191. Due to uncertainties in the scope of work required to remove and replace insulation at a specific nuclear plant and other site-specific factors such as source term and hazardous materials, the NRC staff was unable to estimate the total occupational dose associated with this work. However, dose estimates were provided by the Nuclear Energy Institute (NEI) in a letter to the NRC dated March 30, 2012, based on information collected on occupational radiation exposures that have been, or could be, incurred during insulation removal and replacement. In the letter, NEI noted similar difficulties to those experienced by the NRC staff in estimating the potential amount of radiation exposure, but provided a “per unit” estimate of between 80 to 525 person-rem. The NRC staff ultimately concluded, given the uncertainties in the scope of work and other nuclear plant site-specific factors such as source term and hazardous materials, that there was no basis to conclude that the NEI estimates were unreasonable. Therefore, since STPNOC’s estimate of radiation exposure for insulation removal and replacement is within the NEI estimated range, the NRC staff considers STPNOC’s estimate of an increase of 158–176 person-rem over the baseline exposure to be reasonable.

As stated in the “Occupational Radiation Doses” section of this document, STPNOC’s radiation protection program monitors radiation levels throughout the nuclear plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses are expected to

remain within the dose limits of 10 CFR 20.1201.

In addition, as stated in the “Offsite Radiation Dose” section of this document, STPNOC also has a radiation monitoring system and procedures in place to control the release of radioactive effluents in accordance with radiation protection standards in 10 CFR 20.1301, 40 CFR part 190, and the ALARA dose objectives in appendix I to 10 CFR part 50. Therefore, radiation exposure to members of the public would be maintained within the NRC dose criteria in 10 CFR 20.1301, 40 CFR part 190, and the ALARA dose objectives of appendix I to 10 CFR part 50.

Conclusion

Based on this information, impacts to members of the public from removing and replacing insulation within the reactor containment building would not be significant. However, impacts to plant workers and the environment from implementing this alternative would be greater than implementing the proposed action.

Alternative Use of Resources

The proposed action would not involve the use of any different resources (e.g., water, air, land, nuclear fuel) not previously considered in NUREG-1437, Supplement 48.

Agencies and Persons Consulted

In accordance with its stated policy, on April 7, 2016, the NRC staff consulted with the Texas State official, Mr. Robert Free, regarding the environmental impact of the proposed action. The state official concurred with the EA and finding of no significant impact.

IV. Draft Finding of No Significant Impact

The NRC is considering STPNOC’s requests to amend Facility Operating License Nos. NPF-76 and NPF-80 for STP, Units 1 and 2, and to grant exemptions for STP, Units 1 and 2, from certain requirements of 10 CFR 50.46(a)(1), and 10 CFR part 50, appendix A, GDCs 35, 38, and 41. This proposed action would not result in changes to radioactive effluents or emissions to nuclear plant workers and members of the public or any changes to radiological and non-radiological impacts to the environment. Therefore, the NRC has concluded that implementing the proposed action would result in no significant environmental effects, and that a draft Finding of No Significant Impact is appropriate. The NRC’s draft EA, included in section III, “Draft Environmental Assessment,” of this document, is incorporated by reference into this finding.

On the basis of the EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

V. Availability of Documents

The documents identified in the following table are available for public inspection through the NRC’s Agencywide Documents Access and Management System (ADAMS) or by using one of the methods discussed in Section I.A, “Obtaining Information,” of this document.

Title	Date	ADAMS Accession No.
NUREG-0897, Containment Emergency Sump Performance: Technical Findings Related to Unresolved Safety Issue A-43, Revision 1.	10/1985	ML112440046.
NRC Generic Letter 2004-02, Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized-Water Reactors.	9/13/2004	ML042360586.
NEI letter to NRC, Nuclear Energy Institute, GSI-191 Dose Estimates	03/30/2012	ML12095A319.
Commission SECY-12-0093, Closure Options for Generic Safety Issue-191, Assessment of Debris Accumulation on Pressurized-Water Reactor Sump Performance.	07/09/2012	ML121320270 (package).
Commission SRM-SECY-12-0093, Staff Requirements-SECY-12-0093-Closure Options for Generic Safety Issue-191, Assessment of Debris Accumulation on Pressurized-Water Reactor Sump Performance.	12/14/2012	ML12349A378.
STPNOC letter to NRC, STP Pilot Submittal and Request for Exemption for a Risk-Informed Approach to Resolve Generic Safety Issue (GSI)-191.	01/31/2013	ML13043A013.
NRC letter to STPNOC, South Texas Project, Units 1 and 2—Supplemental Information Needed for Acceptance of Requested Licensing Action Re: Request for Exemption for a Risk-Informed Approach to Resolve Generic Safety Issue 191.	04/01/2013	ML13066A519.
STPNOC letter to NRC, Revised STP Pilot Submittal and Requests for Exemptions and License Amendment for a Risk-Informed Approach to Resolving Generic Safety Issue (GSI)-191.	06/19/2013	ML131750250 (package).
STPNOC letter to NRC, Corrections to Information Provided in Revised STP Pilot Submittal and Requests for Exemptions and License Amendment for a Risk-Informed Approach to Resolving Generic Safety Issue (GSI)-191.	10/03/2013	ML13295A222.

Title	Date	ADAMS Accession No.
STPNOC letter to NRC, Submittal of GSI-191 Chemical Effects Test Reports	10/31/2013	ML13323A673 (package).
STPNOC letter to NRC, Supplement 1 to Revised STP Pilot Submittal and Requests for Exemptions and License Amendment for a Risk-Informed Approach to Resolving Generic Safety Issue (GSI)-191.	11/13/2013	ML13323A128 (package).
STPNOC letter to NRC, Supplement 1 to Revised STP Pilot Submittal for a Risk-Informed Approach to Resolving Generic Safety Issue (GSI)-191 to Supersede and Replace the Revised Pilot Submittal.	11/21/2013	ML13338A165.
NUREG-1437, Supplement 48, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 48 Regarding South Texas Project, Units 1 and 2: Final Report.	11/2013	ML13322A890.
STPNOC letter to NRC, Response to STP-GSI-191 EMCB-RAI-1	12/23/2013	ML14015A312.
STPNOC letter to NRC, Response to NRC Request for Reference Document For STP Risk-Informed GSI-191 Application.	12/23/2013	ML14015A311.
STPNOC letter to NRC, Response to NRC Accident Dose Branch Request for Additional Information.	03/17/2014	ML14086A383 (package).
STPNOC letter to NRC, Response to Request for Additional Information re Use of RELAP5 in Analyses for Risk-Informed GSI-191 Licensing Application.	01/09/2014	ML14029A533.
STPNOC letter to NRC, Submittal of CASA Grande Code and Analyses for STP's Risk-Informed GSI-191 Licensing Application.	02/13/2014	ML14052A110 (package, portions redacted).
STPNOC letter to NRC, Submittal of GSI-191 Chemical Effects Test Reports	02/27/2014	ML14072A075 (package).
NRC Letter to STPNOC, Request for Additional Information, Round 1	04/15/2014	ML14087A075.
NUREG-0713, Volume 34, Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities 2012: Forty-Fifth Annual Report.	04/2014	ML14126A597.
NRC letter to STPNOC, Request for Additional Information, Round 2	03/03/2015	ML14357A171.
STPNOC letter to NRC, Second Submittal of CASA Grande Source Code for STP's Risk-Informed GSI-191 Licensing Application.	05/15/2014	ML14149A354.
STPNOC letter to NRC, First Set of Responses to April, 2014, Requests for Additional Information Regarding STP Risk-Informed GSI-191 Licensing Application—Revised.	05/22/2014	ML14149A439 (package).
STPNOC letter to NRC, Second Set of Responses to April, 2014, Requests for Additional Information Regarding STP Risk-Informed GSI-191 Licensing Application.	06/25/2014	ML14178A467 (package).
STPNOC letter to NRC, Third Set of Responses to April, 2014, Requests for Additional Information Regarding STP Risk-Informed GSI-191 Licensing Application.	07/15/2014	ML14202A045.
STPNOC letter to NRC, Submittal of Updated CASA Grande Input for STP's Risk-Informed GSI-191 Licensing Application.	03/10/2015	ML15072A092.
STPNOC letter to NRC, Description of Revised Risk-Informed Methodology and Responses to Round 2 Requests for Additional Information Regarding STP Risk-Informed GSI-191 Licensing Application.	03/25/2015	ML15091A440.
STPNOC letter to NRC, Supplement 2 to STP Pilot Submittal and Requests for Exemptions and License Amendment for a Risk-Informed Approach to Address Generic Safety Issue (GSI)-191 and Respond to Generic Letter (GL) 2004-02.	08/20/2015	ML15246A125 (package).
NRC letter to STPNOC, Request for Additional Information, Round 3	04/11/2016	ML16082A507.

Dated at Rockville, Maryland, this 26th day of April 2016.

For the Nuclear Regulatory Commission.

Robert J. Pascarelli,

Chief, Plant Licensing Branch IV-I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016-10429 Filed 5-3-16; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016-157; Order No. 3268]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning notice to enter into an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public

comment, and takes other administrative steps.

DATES: *Comments are due:* May 6, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

I. Introduction

On April 28, 2016, the Postal Service filed notice that it has entered into an additional Global Expedited Package

Services 3 (GEPS 3) negotiated service agreement (Agreement).¹

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016-157 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than May 6, 2016. The public

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, April 28, 2016 (Notice).

portions of the filing can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016-157 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than May 6, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016-10447 Filed 5-3-16; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-32099]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 29, 2016.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April 2016. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and

the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

FOR FURTHER INFORMATION CONTACT: Hae-Sung Lee, Attorney-Adviser, at (202) 551-7345 or Chief Counsel's Office at (202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549-8010.

Goldman Sachs Municipal Opportunity Fund [File No. 811-22248]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on March 21, 2016 and amended on March 28, 2016.

Applicant's Address: 71 South Wacker Drive, Chicago, Illinois 60606.

Gottex Trust [File No. 811-22889]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 4, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$93,525 incurred in connection with the liquidation were paid by applicant and applicant's investment adviser.

Filing Date: The application was filed on April 4, 2016.

Applicant's Address: One Boston Place, Suite 2600, 201 Washington St., Boston, Massachusetts 02109.

The Hartford Alternative Strategies Fund [File No. 811-22610]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 23, 2015, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately \$35,000 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on April 7, 2016.

Applicant's Address: 5 Radnor Corporate Center, Suite 300, 100 Matsonford Road, Radnor, Pennsylvania 19087.

Cheswold Lane Funds [File No. 811-21891]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 29, 2016, applicant made a liquidating distribution to its sole remaining shareholder, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on April 1, 2016 and amended on April 27, 2016.

Applicant's Address: 100 Front Street, Suite 960, West Conshohocken, Pennsylvania 19428.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-10438 Filed 5-3-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77737; File No. SR-NASDAQ-2016-060]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Public Disclosure of Exchange Usage of Market Data

April 28, 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 April 26, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update Exchange Rule 4759 and to amend the public disclosure of the sources of data that the Exchange utilizes when performing (1) order handling and execution; (2) order routing; and (3) related compliance processes.

The text of the proposed rule change is below. Proposed new language is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

italicized and deleted language is bracketed.

* * * * *

4759. Data Feeds Utilized

The NASDAQ System utilizes the below proprietary and network processor feeds for the handling, routing, and execution of orders, as well

as for the regulatory compliance processes related to those functions. The Secondary Source of data is, where applicable, utilized only in emergency market conditions and only until those emergency conditions are resolved.

Market center	Primary source	Secondary source
A—NYSE MKT (AMEX)	NYSE MKT OpenBook Ultra	CQS/UQDF
B—NASDAQ OMX BX	BX ITCH 5.0	CQS/UQDF
C—NSX	CQS/UQDF	n/a
D—FINRA ADF	CQS/UQDF	n/a
J—DirectEdge A	BATS PITCH	CQS/UQDF
K—DirectEdge X	BATS PITCH	CQS/UQDF
M—[CSX]CHX	[CQS/UQDF]CHX Book Feed	[n/a]CQS/UQDF
N—NYSE	NYSE OpenBook Ultra	CQS/UQDF
P—NYSE Arca	NYSE ARCA XDP	CQS/UQDF
T/Q—NASDAQ	ITCH 5.0	CQS/UQDF
X—NASDAQ OMX PSX	PSX ITCH 5.0	CQS/UQDF
Y—BATS Y-Exchange	BATS PITCH	CQS/UQDF
Z—BATS Exchange	BATS PITCH	CQS/UQDF

* * * * *

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 Exchange proposes to update and amend the table in Exchange Rule 4759 that sets forth on a market-by-market basis the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions.

Specifically, the table will be amended to update the symbol for the Chicago Stock Exchange, Inc. from "CSX" to "CHX", as well as to update the primary and secondary sources in the table for CHX. The primary source will be CHX Book Feed and the former primary source, CQS/UQDF, will become the secondary source. The change to the primary source reflects the Exchange's effort to increase the amount of data it gathers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general and with Sections [sic] 6(b)(5) of the Act,⁴ 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.

The Exchange believes that its proposal to amend the table in Exchange Rule 4759 to update the symbol for the Chicago Stock Exchange, Inc. and to amend the primary and secondary sources of data for CHX that the Exchange utilizes when performing (1) order handling and execution; (2) order routing; and (3) related compliance processes will ensure that Exchange Rule 4759 correctly identifies and publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The Exchange also believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and protects investors and

the public interest because it provides additional specificity, clarity and transparency.

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. To the contrary, the Exchange believes the proposal will enhance competition because including all of the correct information for the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)⁵ of the Act and Rule 19b-4(f)(6) thereunder.⁶

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(5).

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-NASDAQ-2016-060 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-2016-060. 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

the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2016-060, and should be submitted on or before May 25, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-10371 Filed 5-3-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77736; File No. SR-NASDAQ-2016-058]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 7023

April 28, 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 April 18, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend Nasdaq Rule 7023 (NASDAQ Depth-of-Book Data) to remove free top-of-file ("Top-of-File") data from Nasdaq OpenView.

The text of the proposed rule change is available at nasdaq.cchwallstreet.com, at Nasdaq's principal office, and at the Commission's Public Reference Room.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Nasdaq Rule 7023 (NASDAQ Depth-of-Book Data). Currently, Nasdaq does not charge a fee for use of Nasdaq OpenView Top-of-File data that is created using Nasdaq OpenView. Top-of-File data consists of Nasdaq's aggregate best bid and offer quotation for each security listed on an exchange other than Nasdaq. Vendors can create Top-of-File data from Nasdaq OpenView and offer it to both professionals and non-professionals either for display or non-display.

The Exchange proposes to keep Top-of-File data as part of Nasdaq OpenView, but to no longer provide for free the use of this data (e.g., a subscriber of Nasdaq OpenView may no longer create a Top-of-File data product and provide it for free to other market participants). All market participants that opt to receive Nasdaq OpenView and create a Top-of-File data product from it will be liable for the Nasdaq OpenView fee rate applicable to Non-Professional Subscribers³ or Professional Subscribers,⁴ as appropriate. The monthly fee is

³ See Nasdaq Rule 7023(a)(3)(A). This rule defines a Non-Professional Subscriber as a natural person who is not: (1) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (2) engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (3) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

⁴ See Nasdaq Rule 7023(a)(3)(B). This rule defines a Professional Subscriber as any subscriber other than a "Non-Professional Subscriber," as that term is defined in Nasdaq Rule 7023(a)(3)(A).

currently \$1 for Non-Professional Subscribers⁵ while the monthly fee for Professional Subscribers is currently \$6 each for any display usage, or for non-display usage based upon indirect access.⁶ Market participants cannot be charged for both Top-of-File data and OpenView.

Since no firms currently are utilizing Nasdaq OpenView Top-of-File data, there will be no immediate impact on any subscribers due to the proposed rule change. However, the proposed rule change makes clear going forward that any subscribers creating this data will not be able to use it for free.

To effectuate this proposed rule change, the Exchange will eliminate Nasdaq Rule 7023(b)(3)(C) and renumber Nasdaq Rule 7023(b)(3)(D) as Nasdaq Rule 7023(b)(3)(C).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 its facilities which the Exchange 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 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.”⁹

Likewise, in *NetCoalition v. Securities and Exchange Commission*¹⁰ (“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.¹¹ 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.”¹²

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’ . . .”¹³

Vendors can create Top-of-File data from Nasdaq OpenView and offer it to both professionals and non-professionals either for display or non-display. The Exchange believes that the proposed rule change to charge all market participants that opt to receive Nasdaq OpenView and create a Top-of-File data product the Nasdaq OpenView fee rate applicable to Non-Professional Subscribers or Professional Subscribers, as appropriate, is reasonable because the Exchange is entitled to receive a fee from each subscriber that receives such data to help offset costs associated with providing Nasdaq OpenView data to subscribers. Also, the proposed rule change is reasonable because a market participant must use Nasdaq OpenView data in order to create a Top-of-File data product and since Nasdaq OpenView is fee liable, the same should be true of the resulting Top-of-File data product.

The Exchange also believes that the proposed rule change is an equitable allocation of fees and is not unfairly discriminatory because market participants cannot be charged for both Top-of-File data and OpenView and the proposed rule change applies uniformly to all market participants since it treats all similarly situated market participants the same.

The renumbering of Nasdaq Rule 7023(b)(3)(D) as Nasdaq Rule 7023(b)(3)(C) is reasonable because it is a technical and clarifying change that is intended to maintain the coherency and consistency within the Nasdaq rule book.

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. Nasdaq believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange’s transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange’s customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer (“BD”) will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two

⁵ See Nasdaq Rule 7023(b)(3)(A).

⁶ See Nasdaq Rule 7023(b)(3)(B).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ Securities Exchange Act Release No. 34-51808 (June 9, 2005) (“Regulation NMS Adopting Release”).

¹⁰ *NetCoalition v. SEC* 615 F.3d 525 (D.C. Cir. 2010).

¹¹ *Id.* at 534-535.

¹² *Id.* at 537.

¹³ *Id.* at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

reasons. First, the product will contain less information, because executions of the BD's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'." ¹⁴ However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Nasdaq

pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an "excessive" price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems ("ATs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, AT, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE,

NYSE MKT, NYSE Arca, and BATS/Direct Edge.

Any AT or BD can combine with any other AT, BD, or multiple ATs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/Direct Edge. A proliferation of dark pools and other ATs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Cinnober aggregates and disseminates data from

¹⁴ *Id.*

over 40 brokers and multilateral trading facilities.¹⁵

In the case of TRFs, the rapid entry of several exchanges into this space in 2006–2007 following the development and Commission approval of the TRF structure demonstrates the contestability of this aspect of the market.¹⁶ Given the demand for trade reporting services that is itself a by-product of the fierce competition for transaction executions—characterized notably by a proliferation of ATSS and BDs offering internalization—any supra-competitive increase in the fees associated with trade reporting or TRF data would shift trade report volumes from one of the existing TRFs to the other¹⁷ and create incentives for other TRF operators to enter the space. Alternatively, because BDs reporting to TRFs are themselves free to consolidate the market data that they report, the market for over-the-counter data itself, separate and apart from the markets for execution and trade reporting services—is fully contestable.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at \$1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

In this instance, the proposed rule change to charge all market participants that create a Top-of-File product using Nasdaq OpenView data the fee rate applicable to Non-Professional Subscribers or Professional Subscribers, as appropriate, by eliminating current rule text in Nasdaq Rule 7023(b)(3)(C), does not impose a burden on competition because no firms currently

are utilizing this data so there will be no immediate impact on any subscribers.

In sum, if the rule change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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-2016-058 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-NASDAQ-2016-058. 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-NASDAQ-2016-058, and should be submitted on or before May 25, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-10370 Filed 5-3-16; 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:

Rule 6h-1, SEC File No. 270-497; OMB Control No. 3235-0555

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 6h-1 (17 CFR 240.6h-1) under the Securities Exchange Act of 1934, as amended ("Act") (15 U.S.C. 78a *et seq.*).

Section 6(h) of the Act (15 U.S.C. 78f(h)) requires national securities

¹⁵ See <http://www.cinnober.com/boat-trade-reporting>.

¹⁶ The low cost exit of two TRFs from the market is also evidence of a contestable market, because new entrants are reluctant to enter a market where exit may involve substantial shut-down costs.

¹⁷ It should be noted that the FINRA/NYSE TRF has, in recent weeks, received reports for almost 10% of all over-the-counter volume in NMS stocks.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 200.30-3(a)(12).

exchanges and national securities associations that trade security futures products to establish listing standards that, among other things, require that: (i) Trading in such products not be readily susceptible to price manipulation; and (ii) the market on which the security futures product trades has in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product. Rule 6h-1 implements these statutory requirements and requires that (1) the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and (2) the exchanges and associations trading security futures products halt trading in any security futures product for as long as trading in the underlying security, or trading in 50% or more of the underlying securities, is halted on the listing market.

It is estimated that approximately 1 respondent, consisting of a designated contract market not already registered as a national securities exchange under Section 6(g) of the Exchange Act that seeks to list or trade security futures products, will incur an average burden of 10 hours per year to comply with this rule, for a total burden of 10 hours. At an average cost per hour of approximately \$387, the resultant total cost of compliance for the respondents is \$3,870 per year (1 respondent $\times$ 10 hours/respondent $\times$ \$387/hour).

Compliance with Rule 6h-1 is mandatory. Any listing standards established pursuant to Rule 6h-1 would be filed with the Commission as proposed rule changes pursuant to Section 19(b) of the Act and would be published in the **Federal Register**.

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.

The public may view 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 by sending an email to: PRA_Mailbox@sec.gov. Comments must be

submitted to OMB within 30 days of this notice.

Dated: April 28, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-10365 Filed 5-3-16; 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:

Rule 20a-1, SEC File No. 270-132, OMB Control No. 3235-0158

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 20a-1 (17 CFR 270.20a-1) was adopted under Section 20(a) of the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a-20(a)) and concerns the solicitation of proxies, consents, and authorizations with respect to securities issued by registered investment companies ("Funds"). More specifically, rule 20a-1 under the 1940 Act (15 U.S.C. 80a-1 *et seq.*) requires that the solicitation of a proxy, consent, or authorization with respect to a security issued by a Fund be in compliance with Regulation 14A (17 CFR 240.14a-1 *et seq.*), Schedule 14A (17 CFR 240.14a-101), and all other rules and regulations adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 ("1934 Act") (15 U.S.C. 78n(a)). It also requires, in certain circumstances, a Fund's investment adviser or a prospective adviser, and certain affiliates of the adviser or prospective adviser, to transmit to the person making the solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation. In addition, rule 20a-1 instructs Funds that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited, to refer to section 14(c) of the 1934 Act (15 U.S.C. 78n(c)) and the information statement requirements set forth in the rules thereunder.

The types of proposals voted upon by Fund shareholders include not only the typical matters considered in proxy solicitations made by operating companies, such as the election of directors, but also include issues that are unique to Funds, such as the approval of an investment advisory contract and the approval of changes in fundamental investment policies of the Fund. Through rule 20a-1, any person making a solicitation with respect to a security issued by a Fund must, similar to operating company solicitations, comply with the rules and regulations adopted pursuant to Section 14(a) of the 1934 Act. Some of those Section 14(a) rules and regulations, however, include provisions specifically related to Funds, including certain particularized disclosure requirements set forth in Item 22 of Schedule 14A under the 1934 Act.

Rule 20a-1 is intended to ensure that investors in Fund securities are provided with appropriate information upon which to base informed decisions regarding the actions for which Funds solicit proxies. Without rule 20a-1, Fund issuers would not be required to comply with the rules and regulations adopted under Section 14(a) of the 1934 Act, which are applicable to non-Fund issuers, including the provisions relating to the form of proxy and disclosure in proxy statements.

The staff currently estimates that approximately 1,196 proxy statements are filed by Funds annually. Based on staff estimates and information from the industry, the staff estimates that the average annual burden associated with the preparation and submission of proxy statements is 85 hours per response, for a total annual burden of 101,660 hours (1,196 responses $\times$ 85 hours per response = 101,660). In addition, the staff estimates the costs for purchased services, such as outside legal counsel, proxy statement mailing, and proxy tabulation services, to be approximately \$30,000 per proxy solicitation.

Rule 20a-1 does not involve any recordkeeping requirements. Providing the information required by the rule is mandatory and information provided under the rule will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

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: April 26, 2016.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-10368 Filed 5-3-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-10074; 34-77743; File No. 265-27]

SEC Advisory Committee on Small and Emerging Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold a public meeting on Wednesday, May 18, 2016, in Multi-Purpose Room LL-006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 9:30 a.m. (EDT) and will be open to the public. The meeting will be webcast on the Commission's Web site at *www.sec.gov*. Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

DATES: The public meeting will be held on Wednesday, May 18, 2016. Written statements should be received on or before May 16, 2016.

ADDRESSES: The meeting will be held at the Commission's headquarters, 100 F Street NE., Washington, DC. Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acsec.shtml*); or

- Send an email message to *rule-comments@sec.gov*. Please include File Number 265-27 on the subject line; or

Paper Statements

- Send paper statements to Brent J. Fields, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. 265-27. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site (*http://www.sec.gov/spotlight/acsec-spotlight.shtml*).

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Julie Z. Davis, Senior Special Counsel, at (202) 551-3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.—App. 1, and the regulations thereunder, Keith Higgins, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: April 29, 2016.

Brent J. Fields,

Committee Management Officer.

[FR Doc. 2016-10406 Filed 5-3-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No 34-77744; File No. SR-MSRB-2016-04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Proposed Amendments to Rules G-12 and G-15 To Define Regular-Way Settlement for Municipal Securities Transactions as Occurring on a Two-Day Settlement Cycle and Technical Conforming Amendments

April 29, 2016.

I. Introduction

On March 1, 2016, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of proposed amendments to the MSRB Rules G-12 and G-15 to define regular-way settlement for municipal securities transactions as occurring on a two-day settlement cycle and technical conforming amendments (the “proposed rule change”).

The proposed rule change was published for comment in the **Federal Register** on March 18, 2016.³ The Commission received four comment letters on the proposed rule change.⁴ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The MSRB's proposed rule change consists of proposed amendments to Rule G-12, on uniform practice, and Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers, to define

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 77364 (Mar. 14, 2016), 81 FR 14906 (Mar. 18, 2016) (the “Notice of Filing”).

⁴ See Letters from Martin A. Burns, Chief Industry Operations Officer, Investment Company Institute (“ICI”), dated April 4, 2016 (“ICI Letter”); Michael Nicholas, Chief Executive Office, Bond Dealers of America (“BDA”), dated April 8, 2016 (“BDA Letter”); Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry Financial Markets Association (“SIFMA”), dated April 8, 2016 (“SIFMA Letter”); David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute (“FSI”), dated April 8, 2016 (“FSI Letter” and, together with the BDA Letter, the ICI Letter, and the SIFMA Letter, the “Comment Letters”).

regular-way settlement for municipal securities transactions as occurring on a two-day settlement cycle (“T+2”) and technical conforming amendments.⁵ According to the MSRB, following the financial crisis in 2008, regulators implemented additional rules and regulations designed to reduce risk in the markets, achieve greater transparency and improve efficiency in the financial industry.⁶ Consistent with those goals, the MSRB stated that the securities industry launched a voluntary initiative to shorten the settlement cycle for securities transactions to reduce counterparty risk, decrease clearing capital requirements, reduce liquidity demands, and harmonize the settlement cycle globally.⁷

The MSRB has identified two MSRB rules—G–12(b)(ii)(B)–(D) and Rule G–15(b)(ii)(B)–(C)—essential to facilitate the move to T+2.⁸ As stated by the MSRB, these rules currently define regular-way settlement as occurring on a three day settlement cycle (“T+3”).⁹ The MSRB, therefore, proposes to amend Rules G–12(b)(ii)(B)–(D) and G–15(b)(ii)(B)–(C) to define regular-way settlement as occurring on T+2, and to make certain technical conforming amendments to MSRB Rules G–12(b)(i)(B), G–15(b)(i)(B), and G–15(g)(ii)(B).¹⁰

According to the MSRB, the migration to T+2 will provide significant benefits to the financial industry broadly.¹¹ The MSRB stated that the benefits to the industry include the mitigation of counterparty risk, a decrease in margin requirements for National Securities Clearing Corporation’s (“NSCC”) clearing members, a reduction in procyclical margin and liquidity demands especially during periods of market volatility, and an increase in global settlement harmonization by aligning the U.S. markets with other major markets, such as the European Union.¹² The MSRB also asserted that by shortening the time between trade and execution and settlement by one business day (from T+3 to T+2), the risk of counterparty default and the capital required to mitigate this risk would be reduced.¹³ In the MSRB’s view, the likely costs of the proposed rule change, including the changes in processes and technology as well as behavioral modifications by the industry and

investors, are justified by the likely benefits associated with transitioning to T+2.¹⁴

Proposed Amendments to MSRB Rules G–12(b)(ii)(B)–(D) and G–15(b)(ii)(B)–(C)

According to the MSRB, Rule G–12 establishes uniform industry practices for processing, clearance and settlement of transactions in municipal securities between a broker, dealer or municipal securities dealer and any other broker, dealer or municipal securities dealer.¹⁵ Specifically, the MSRB noted that Rule G–12(b)(ii) defines “regular way” settlement as occurring on a T+3 basis.¹⁶ As proposed by the MSRB, the proposed rule change would amend Rule G–12(b)(ii)(B)–(D) to define “regular way” settlement as occurring on a T+2 basis.¹⁷

According to the MSRB, Rule G–15 requires municipal securities brokers and municipal securities dealers to provide customers with written confirmations of transactions, containing specified information; and prescribes certain uniform practice procedures for dealers that transact municipal securities business with customers.¹⁸ Specifically, the MSRB noted that Rule G–15(b)(ii) defines “regular way” settlement as occurring on a T+3 basis.¹⁹ As proposed by the MSRB, the proposed rule change would amend Rule G–15(b)(ii)(B)–(C) to define “regular way” settlement as occurring on a T+2 basis.²⁰

Technical Conforming Amendments

The MSRB has proposed technical conforming amendments to Rules G–12(b)(i)(B), G–15(b)(i)(B) and G–15(g)(ii)(B).²¹ As proposed by the MSRB, Rules G–12(b)(i)(B) and G–15(b)(i)(B) would both be revised by replacing the reference to “National Association of Securities Dealers, Inc.” with the “Financial Industry Regulatory Authority.”²² Similarly, the MSRB proposes to amend Rule G–15(g)(ii)(B) to replace the reference to “NASD Conduct Rule 2260(g),” which is retired, and replace it with the current relevant rule cite “FINRA Rule 2251(g).”²³

Compliance Date

The MSRB has stated that the compliance date of the proposed rule change will be announced by the MSRB

in a notice published on the MSRB Web site, which date would correspond with the industry’s transition to a T+2 regular-way settlement, which would include amendments by the SEC to Exchange Act Rule 15c6–1(a).²⁴

III. Summary of Comments Received

As noted previously, the Commission received four comment letters on the proposed rule change.²⁵ The commenters generally support the proposed rule change. The SIFMA Letter, ICI Letter, FSI Letter, and BDA Letter, each, expressed general support for the proposed rule change.²⁶ In its comment letter, however, BDA expressed concern with respect to the impact the proposed rule change will have on certain retail investors who purchase securities by written check.²⁷ BDA made a substantially similar comment in its response to the MSRB’s Request for Comment on Changes to MSRB Rules to Facilitate Shortening the Securities Settlement Cycle, published on November 10, 2015 (the “Request for Comment”), which the MSRB addressed in the Notice of Filing.²⁸ The MSRB stated in the Notice of Filing that it believes that the vast majority of firms have access to technology that would enable their clients to deliver funds in order to settle their municipal securities trades on a T+2 basis, and firms should encourage their customers to leverage electronic funds payment to streamline processing.

The BDA Letter and the SIFMA Letter each addressed the impact of the proposed rule change on MSRB Rule G–32.²⁹ BDA expressed its desire that the MSRB leave Rule G–32 unchanged,³⁰ while SIFMA expressed its belief that the proposed rule change provided “an opportune time to revise customer disclosure requirements of brokers, dealers, and municipal securities dealers” under Rule G–32 but stated that such considerations should not impede progress of the proposed rule change.³¹ Both BDA and SIFMA made substantially similar comments in their responses to the Request for Comment, which the MSRB noted in the Notice of Filing and stated that it may consider suggested clarifications in the future.³²

The FSI Letter also expressed general support and agreement with the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ See *supra* note 4.

²⁶ See SIFMA Letter; BDA Letter; ICI Letter; and FSI Letter.

²⁷ See BDA Letter.

²⁸ See *supra* note 3.

²⁹ See BDA Letter; See SIFMA Letter.

³⁰ See BDA Letter.

³¹ See SIFMA Letter.

³² See *supra* note 3.

⁵ See *supra* note 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

proposed rule change, and noted interest in seeing the MSRB coordinate with other regulators and market participants to educate investors and other market participants about the effects of shortening the settlement cycle to T+2.³³ The MSRB stated that it expects to coordinate implementation of a T+2 regular-way settlement cycle for municipal securities transactions with other regulators.³⁴

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change as well as the comments received. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,³⁵ which requires, among other things, that the rules of the MSRB be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest. The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because the proposed rule change is reasonably designed to remove impediments to, and perfect the mechanism of, a free and open market in municipal securities by shortening the time between trade execution and settlement by one business day. According to the MSRB, the benefits of the proposed rule change will enhance the overall efficiency of the securities markets, promote financial stability, and better align U.S. securities markets with global markets.

In approving the proposed rule change, the Commission has also considered the proposed rule change's impact on efficiency, competition, and capital formation.³⁶ The Commission does not believe that the proposed rule

change would impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Act.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁷ that the proposed rule change (SR-MSRB-2016-04) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.³⁸

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-10437 Filed 5-3-16; 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 0-2, SEC File No. 270-572, OMB Control No. 3235-0636.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Several sections of the Investment Company Act of 1940 ("Act" or "Investment Company Act")¹ give the Commission the authority to issue orders granting exemptions from the Act's provisions. The section that grants broadest authority is section 6(c), which provides the Commission with authority to conditionally or unconditionally exempt persons, securities or transactions from any provision of the Investment Company Act, or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.²

Rule 0-2 under the Investment Company Act,³ entitled "General Requirements of Papers and Applications," prescribes general instructions for filing an application seeking exemptive relief with the Commission for which a form is not specifically prescribed. Rule 0-2 requires that each application filed with the commission have (a) a statement of authorization to file and sign the application on behalf of the applicant, (b) a verification of application and statements of fact, (c) a brief statement of the grounds for application, and (d) the name and address of each applicant and of any person to whom questions should be directed. The Commission uses the information required by rule 0-2 to decide whether the applicant should be deemed to be entitled to the action requested by the application.

Applicants for orders can include registered investment companies, affiliated persons of registered investment companies, and issuers seeking to avoid investment company status, among other entities. Commission staff estimates that it receives approximately 184 applications per year under the Act. Although each application typically is submitted on behalf of multiple entities, the entities in the vast majority of cases are related companies and are treated as a single respondent for purposes of this analysis.

The time to prepare an application depends on the complexity and/or novelty of the issues covered by the application. We estimate that the Commission receives 25 of the most time-consuming applications annually, 125 applications of medium difficulty, and 34 of the least difficult applications. Based on conversations with applicants, we estimate that in-house counsel would spend from ten to fifty hours helping to draft and review an application. We estimate a total annual hour burden to all respondents of 5,340 hours [(50 hours × 25 applications) + (30 hours × 125 applications) + (10 hours × 34 applications)].

Much of the work of preparing an application is performed by outside counsel. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required for preparation. Based on conversations with attorneys who serve as outside counsel, the cost ranges from approximately \$10,000 for preparing a well-precedented, routine application to approximately \$150,000 to prepare a complex and/or novel application. This distribution gives a total estimated

³³ See FSI Letter.

³⁴ See *supra* note 3.

³⁵ 15 U.S.C. 78o-4(b)(2)(C).

³⁶ 15 U.S.C. 78c(f).

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 80a-1 *et seq.*

² 15 U.S.C. 80a-6(c).

³ 17 CFR 270.0-2.

annual cost burden to applicants of filing all applications of \$14,090,000 $[(25 \times \$150,000) + (125 \times \$80,000) + (34 \times \$10,000)]$.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

This collection of information is necessary to obtain a benefit and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid 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: April 28, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-10366 Filed 5-3-16; 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:

Rule 7d-1, SEC File No. 270-176, OMB Control No. 3235-0311.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 7(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-

7(d)) (the "Act" or "Investment Company Act") requires an investment company ("fund") organized outside the United States ("foreign fund") to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d-1 (17 CFR 270.7d-1) under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company ("Canadian fund") may request an order from the Commission permitting it to register under the Act. Although rule 7d-1 by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d-1 as a prerequisite to receiving an order permitting the foreign fund's registration under the Act.

The rule requires a Canadian fund proposing to register under the Act to file an application with the Commission that contains various undertakings and agreements of the fund. The requirement for the Canadian fund to file an application is a collection of information under the Paperwork Reduction Act. Certain of the undertakings and agreements, in turn, impose the following additional information collection requirements:

- (1) The fund must file with the Commission agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;
- (2) the fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file with the Commission an irrevocable designation of the fund's custodian in the United States as agent for service of process;
- (3) the fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;
- (4) the fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 (15 U.S.C.

77a), and the Securities Exchange Act of 1934 (15 U.S.C. 78a), as applicable; and (5) the fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

As noted above, under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the (Act)." The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Rule 7d-1 also contains certain information collection requirements that are associated with other provisions of the Act. These requirements are applicable to all registered funds and are outside the scope of this request.

The Commission believes that one foreign fund is registered under rule 7d-1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d-1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, certain fund agreements, designations of the fund's custodian as service agent, and the fund's list of affiliated persons. The Commission staff estimates that each year under the rule, the active registrant and its directors, officers, and service providers engage in the following collections of information and associated burden hours:

- For the fund and its investment adviser to maintain records in the United States:¹ 0 hours: 0 minutes of compliance clerk time.
- For the fund to update its list of affiliated persons: 2 hours: 2 hours of support staff time.
- For new officers, directors, and service providers to enter into and file agreements requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations:

¹ The rule requires an applicant and its investment adviser to maintain records in the United States (which, without the requirement, might be maintained in Canada or another foreign jurisdiction), which facilitates routine inspections and any special investigations of the fund by Commission staff. The registrant and its investment adviser, however, already maintain the registrant's records in the United States and in no other jurisdiction. Therefore, maintenance of the registrant's records in the United States does not impose an additional burden beyond that imposed by other provisions of the Act. Those provisions are applicable to all registered funds and the compliance burden of those provisions is outside the scope of this request.

0.5 hours: 7.5 minutes of director time; 2.5 minutes of officer time; 20 minutes of support staff time.

- For new officers, directors, and investment advisers who are not residents of the United States to file irrevocable designation of the fund's custodian as agent for process of service:

0.25 hours: 5 minutes of director time; 10 minutes of support staff time.

Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 2.75 hours.² We estimate that directors perform 0.21 hours of these burden hours at a total cost of \$924,³ officers perform 0.04 of these burden hours at a total cost of \$19.40,⁴ and support staff perform 2.5 of these burden hours at a total cost of \$142.50.⁵ Thus, the Commission estimates the aggregate annual cost of these burden hours associated with rule 7d-1 is \$1,085.90.⁶

If a fund were to file an application under rule 7d-1 to register under the Act, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no fund has applied to register

under the Act pursuant to rule 7d-1 in the last three years.

After registration, a Canadian fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d-1 does not mandate these applications. The active registrant last filed a substantive supplemental application in 2013. The Commission staff estimates that the rule would impose an additional information collection burden of 5 hours on a fund to comply with the Commission's application process at a cost of \$5,928.⁷ The staff understands that funds also obtain assistance from outside counsel to comply with the Commission's application process and the cost burden of using outside counsel is set forth below.

Therefore, the Commission estimates the aggregate annual burden hours of the collection of information associated with rule 7d-1 is 7.75 hours, at a cost of \$7,013.90.⁸ These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d-1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated \$20,000 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions, designations for service of process, and the list of affiliated persons). Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

⁷ The staff estimates that, on average, the fund's investment adviser spends approximately 4 hours to review an application, including 3.5 hours by an assistant general counsel at a cost of \$426 per hour, 0.5 hours by an administrative assistant, at a cost of \$74 per hour, and the fund's board of directors spends an additional 1 hour at a cost of \$4400 per hour for a total of 5 hours, for a total cost of \$5928. This estimate is based on the following calculation: (3.5 hours × \$426 per hour) + (0.5 hours × \$74 per hour) + (1 hour × \$4400 per hour) = \$5928.

⁸ These estimates are based on the following calculations: 2.75 hours × 5 hours = 7.75 hours; \$1085.90 + \$5928 = \$7013.90.

The Commission expects that a foreign fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be \$20,000 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no fund has applied under rule 7d-1 to register under the Act pursuant to rule 7d-1 in the last three years.

As indicated above, a Canadian fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d-1 does not mandate these applications. The active registrant filed a substantive application in the past three years. The staff understands that funds generally use outside counsel to prepare the application. The staff estimates that outside counsel spends 10 hours preparing the application, including 8 hours by an associate and 2 hours by a partner. Outside counsel billing arrangements vary based on numerous factors, but the staff has estimated the average cost of outside counsel at \$400 per hour, based on information received from funds, intermediaries and their counsel. The Commission therefore estimates that the fund would obtain assistance from outside counsel at a cost of \$4000.⁹

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

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

⁹ This estimate is based on the following calculation: 10 hours × \$400 per hour = \$4000.

² This estimate is based on the following calculation: (0 + 2 + 0.5 + 0.25) = 2.75 hours.

³ The director estimates are based on the following calculations: (7.5 minutes + 5 minutes)/60 minutes per hour = 0.21 hours; and 0.21 hours × \$4400 per hour = \$924. The per hour cost estimate is based on estimated hourly compensation for each board member of \$550 and an average board size of 8 members.

⁴ The officer estimates are based on the following calculations: 2.5 minutes/60 minutes per hour = 0.04 hours; 0.04 hours × \$485 per hour = \$19.40. This per hour cost estimate, as well as other internal cost estimates for management and professional earnings, is based on the figure for chief compliance officers found in SIFMA's *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

⁵ The support staff estimates are based on the following calculations: 2 hours + 20 minutes + 10 minutes = 2.5 hours; and 2.5 hours × \$60 per hour = \$150. The per hour cost estimate, as well as other internal cost estimates for office salaries, is based on the figure for compliance clerks found in SIFMA's *Management & Professional Earnings in the Securities Industry 2011*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

⁶ This estimate is based on the following calculation: \$1085.90 = \$924 + \$19.40 + \$142.50.

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: April 28, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-10367 Filed 5-3-16; 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: Rule 204-3, SEC File No. 270-42, OMB Control No. 3235-0047.

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 a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is "Rule 204-3 (17 CFR 275.204-3) under the Investment Advisers Act of 1940." (15 U.S.C. 80b). Rule 204-3, the "brochure rule," requires advisers to deliver their brochures and brochure supplements at the start of an advisory relationship and to deliver annually thereafter the full updated brochures or a summary of material changes to their brochures. The rule also requires that advisers deliver amended brochures or brochure supplements (or just a statement describing the amendments) to clients only when disciplinary information in the brochures or supplements becomes materially inaccurate.

The brochure assists the client in determining whether to retain, or continue employing, the adviser. The information that Rule 204-3 requires to be contained in the brochure is also used by the Commission and staff in its enforcement, regulatory, and examination programs. This collection of information is found at 17 CFR 275.204-3 and is mandatory.

The respondents to this information collection are investment advisers registered with the Commission. The Commission has estimated that

compliance with rule 204-3 imposes a burden of approximately 39 hours annually based on an average adviser having 1,494 clients. Our latest data indicate that there were 11,956 advisers registered with the Commission as of January 4, 2016. Based on this figure, the Commission estimates a total annual burden of 466,145 for this collection of information.

Rule 204-3 does not require recordkeeping or record retention. The collection of information requirements under the rule are mandatory. The information collected pursuant to the rule is not filed with the Commission, but rather takes the form of disclosures to clients and prospective clients. Accordingly, these disclosures are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

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: April 28, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-10369 Filed 5-3-16; 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 F-8.

SEC File No. 270-332, OMB Control No. 3235-0378.

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 this request for extension of the previously approved collection of information discussed below.

Form F-8 (17 CFR 239.38) may be used to register securities of certain Canadian issuers under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that will be used in an exchange offer or business combination. 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. The information provided is mandatory and all information is made available to the public upon request. We estimate that Form F-8 takes approximately one hour per response to prepare and is filed by approximately 5 respondents. We estimate that 25% of one hour per response (15 minutes) is prepared by the company for a total annual reporting burden of one hour (15 minutes/60 minutes per response × 5 responses = 1.25 hours rounded to nearest whole number).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

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: April 29, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-10395 Filed 5-3-16; 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:

Rule 19d-1, SEC File No. 270-242, OMB Control No. 3235-0206.

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") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 19d-1 (17 CFR 240.19d-1) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) ("Exchange Act").

Rule 19d-1 prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) Disciplinary actions with respect to any person; (2) denial, bar, prohibition, or limitation of membership, participation or association with a member or of access to services offered by an SRO or member thereof; (3) summarily suspending a member, participant, or person associated with a member, or summarily limiting or prohibiting any persons with respect to access to or services offered by the SRO or a member thereof; and (4) delisting a security.

The Rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to delist a security, discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The Rule requires that such actions be promptly reported to the Commission. The Rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission: (1) To determine whether the matter should be called up for review on the Commission's own motion; and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Exchange Act.

It is estimated that approximately eighteen respondents will utilize this application procedure annually, with a

total burden of approximately 2,250 hours, based upon past submissions. This figure is based on eighteen respondents, spending approximately 125 hours each per year. It is estimated that each respondent will submit approximately 250 responses. Commission staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d-1 for each submission is 0.5 hours. The average cost per hour, per each submission is approximately \$101. Therefore, it is estimated that the internal labor cost of compliance for all respondents is approximately \$227,250 (18 respondents $\times$ 250 responses per respondent $\times$ 0.5 hours per response $\times$ \$101 per hour).

The filing of notices pursuant to Rule 19d-1 is mandatory for the SROs, but does not involve the collection of confidential information. Rule 19d-1 does not have a record retention requirement.

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.

The public may view 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 C. Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 28, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-10364 Filed 5-3-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77742; File No. SR-CBOE-2016-032]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FLEX Options Pilot Program

April 29, 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 April 15, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Flexible Exchange Options ("FLEX Options") pilot program through May 3, 2017.⁵ The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Chicago Board Options Exchange,
Incorporated Rules

* * * * *

Rule 24A.4. Terms of FLEX Options
No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 29.18. The rules governing the trading of FLEX Options on the FLEX Request for Quote ("RFQ") System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVB.

. . . Interpretations and Policies:

.01 FLEX Index Option PM Settlements Pilot Program: Notwithstanding subparagraph (a)(2)(iv) above, for a pilot period ending the earlier of May 3, 2016⁷ or the date on which the pilot program is approved on a permanent basis, a FLEX Index Option that expires on an Expiration Friday may have any exercise settlement value that is permissible pursuant to subparagraph (b)(3) above.

.02 No change.

* * * * *

Rule 24B.4. Terms of FLEX Options No change.

. . . Interpretations and Policies:

.01 FLEX Index Option PM Settlements Pilot Program: Notwithstanding subparagraph (a)(2)(iv) above, for a pilot period ending the earlier of May 3, 2016⁷ or the date on which the pilot program is approved on a permanent basis, a FLEX Index Option that expires on an Expiration Friday may have any exercise settlement value that is permissible pursuant to subparagraph (b)(3) above.

.02 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 28, 2010, the Exchange received approval of a rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index

Options.⁶ The Exchange has extended the pilot period five times, which is currently set to expire on the earlier of May 3, 2016 or the date on which the pilot program is approved on a permanent basis.⁷ The purpose of this rule change filing is to extend the pilot program through the earlier of May 3, 2017 or the date on which the pilot program is approved on a permanent basis. This filing simply seeks to extend the operation of the pilot program and does not propose any substantive changes to the pilot program.

Under Rules 24A.4, *Terms of FLEX Options*, and 24B.4, *Terms of FLEX Options*, a FLEX Option may expire on any business day specified as to day, month and year, not to exceed a maximum term of fifteen years. In addition, the exercise settlement value for a FLEX Index Option can be specified as the index value determined by reference to the reported level of the index as derived from the opening or closing prices of the component securities ("a.m. settlement" or "p.m. settlement," respectively) or as a specified average, provided that the average index value must conform to the averaging parameters established by the

⁶ Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087) ("Approval Order"). The initial pilot period was set to expire on March 28, 2011, which date was added to the rules in 2010. See Securities Exchange Act Release No. 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR-CBOE-2010-026).

⁷ See Securities Exchange Act Release Nos. 64110 (March 23 [sic], 2011), 76 FR 17463 (March 29, 2011) (SR-CBOE-2011-024) (extending the pilot program through the earlier of March 30, 2012 or the date on which the pilot program is approved on the permanent basis); 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR-CBOE-2012-027) (extending the pilot through the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis); 68145 (November 2, 2012), 77 FR 67044 (November 8, 2012) (SR-CBOE-2012-102) (extending the pilot program through the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis); 70752 (October 24, 2013), 78 FR 65023 (October 30, 2013) (SR-CBOE-2013-099) (extending the pilot program through the earlier of November 3, 2014 or the date on which the pilot program is approved on a permanent basis); and 73460 (October 29, 2014), 79 FR 65464 (November 4, 2014) (SR-CBOE-2014-080) (extending the pilot program through the earlier of May 3, 2016 or the date on which the pilot program is approved on a permanent basis). At the same time the permissible exercise settlement values pilot was established for FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. See Approval Order, *supra* note 2 [sic]. The pilot program eliminating the minimum value size requirements was extended twice pursuant to the same rule filings that extended the permissible exercise settlement values (for the same extended periods) and was approved on a permanent basis in a separate rule change filing. See *id.* and Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR-CBOE-2012-040).

Exchange.⁸ However, prior to the initiation of the exercise settlement values pilot, only a.m. settlements were permitted if a FLEX Index Option expired on, or within two business days of, a third Friday-of-the-month expiration ("Expiration Friday").⁹

Under the exercise settlement values pilot, this restriction on p.m. and specified average price settlements in FLEX Index Options was eliminated.¹⁰ The exercise settlement values pilot is currently set to expire on the earlier of May 3, 2016 or the date on which the pilot program is approved on a permanent basis.

CBOE is proposing to extend the pilot program through the earlier of May 3, 2017 or the date on which the pilot program is approved on a permanent basis. CBOE believes the pilot program has been successful and well received by its Trading Permit Holders and the investing public for the period that it has been in operation as a pilot. In support of the proposed extension of the pilot program, and as required by the pilot program's Approval Order, the Exchange has submitted to the Securities and Exchange Commission (the "Commission") pilot program reports regarding the pilot, which detail the Exchange's experience with the program. Specifically, the Exchange provided the Commission with annual reports analyzing volume and open interest for each broad-based FLEX Index Options class overlying an Expiration Friday, p.m.-settled FLEX Index Options series.¹¹ The annual reports also contained information and analysis of FLEX Index Options trading

⁸ See Rules 24A.4(b)(3) and 24B.4(b)(3); see also Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR-CBOE-92-017). The Exchange has determined to limit the averaging parameters to three alternatives: The average of the opening and closing index values on the expiration date; the average of intra-day high and low index values on the expiration date; and the average of the opening, closing, and intra-day high and low index values on the expiration date. Any changes to the averaging parameters established by the Exchange would be announced to Trading Permit Holders via circular.

⁹ For example, prior to the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before Expiration Friday could have an a.m., p.m. or specified average settlement. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before Expiration Friday could only have an a.m. settlement.

¹⁰ No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

¹¹ The annual reports also contained certain pilot period and pre-pilot period analyses of volume and open interest for Expiration Friday, a.m.-settled FLEX Index series and Expiration Friday Non-FLEX Index series overlying the same index as an Expiration Friday, p.m.-settled FLEX Index option.

patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest. In providing the pilot reports to the Commission, the Exchange has requested confidential treatment of the pilot reports under the Freedom of Information Act ("FOIA").¹² The confidentiality of the pilot reports is subject to the provisions of FOIA.

The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement (as discussed below).

In that regard, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, CBOE continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.¹³ To the contrary,

CBOE believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Index Options in accordance with Rules 24A.7, *Position Limits and Reporting Requirements*, 24A.8, *Exercise Limits*, 24B.7, *Position Limits and Reporting Requirements*, and 24B.8, *Exercise Limits*. Additionally, all FLEX Options remain subject to the position reporting requirements in paragraph (a) of CBOE Rule 4.13, *Reports Related to Position Limits*.¹⁴ Moreover, the Exchange and its Trading Permit Holder organizations each have the authority, pursuant to CBOE Rule 12.10, *Margin Required is Minimum*, to impose additional margin as deemed advisable. CBOE continues to believe these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that

type of pre-opening imbalance disseminations as NYSE, so many stocks are not subject to the same procedures on Expiration Friday. In addition, the Exchange believes that NYSE has reduced the required time a specialist has to wait after disseminating a pre-opening indication. So, in this respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options (or certain average price settled options related to the closing price) that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange continues to believe that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

¹⁴ CBOE Rule 4.13(a) provides that "[i]n a manner and form prescribed by the Exchange, each Trading Permit Holder shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered." For purposes of Rule 4.13, the term "customer" in respect of any Trading Permit Holder includes "the Trading Permit Holder, any general or special partner of the Trading Permit Holder, any officer or director of the Trading Permit Holder, or any participant, as such, in any joint, group or syndicate account with the Trading Permit Holder or with any partner, officer or director thereof." Rule 4.13(d).

expire near Non-FLEX expirations and use a p.m. settlement.

CBOE is also cognizant of the OTC market, in which similar restrictions on exercise settlement values do not apply. CBOE continues to believe that the pilot program is appropriate and reasonable and provides market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE continues to believe that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened contra-party creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor of FLEX Options.

If, in the future, the Exchange proposes an additional extension of the pilot program, or should the Exchange propose to make the pilot program permanent, the Exchange will submit, along with any filing proposing such amendments to the pilot program, an annual report (addressing the same areas referenced above and consistent with the pilot program's Approval Order) to the Commission at least two months prior to the expiration date of the program. The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot program's Approval Order. All such pilot reports would continue to be provided by the Exchange along with a request for confidential treatment under FOIA.¹⁵ As noted in the pilot program's Approval Order, any positions established under the pilot program would not be impacted by the expiration of the pilot program.¹⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act

¹⁵ See *supra* note 7 [sic] and surrounding discussion. If the Exchange seeks permanent approval of the pilot program, the Exchange recognizes that certain information in the pilot reports may need to be made available on a public basis.

¹⁶ For example, a position in a p.m.-settled FLEX Index Option series that expires on Expiration Friday in January 2018 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. See Approval Order at footnotes 9 and 10, *supra* note 2 [sic].

¹² 5 U.S.C. 552.

¹³ In further support, the Exchange also notes that the p.m. and specified average price settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, Expiration Friday. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates addressed under the pilot program). The Exchange is also not aware of any market disruptions or problems caused by the use of customized options in the over-the-counter ("OTC") markets that expire on or near Expiration Friday and have a p.m. or specified average exercise settlement value. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange ("NYSE") at the close that are no longer relevant in today's market. Today, the Exchange believes stock exchanges are able to better handle volume. There are multiple primary listing and unlisted trading privilege ("UTP") markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today, order flow is predominantly electronic and the ability to smooth out openings and closes is greatly reduced (e.g., market-on-close procedures work just as well as openings). Also, other markets, such as the NASDAQ Stock Exchange, do not have the same

and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the pilot program, which permits additional exercise settlement values, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement. CBOE believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to extend the pilot program prior to its expiration on May 3, 2016, and maintain the status quo, thereby reducing market disruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay will allow the Exchange to extend the pilot program prior to its expiration on May 3, 2016, which will ensure that the program continues to operate uninterrupted. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.²⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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

and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ *Id.*

• Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2016-032 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2016-032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2016-032 and should be submitted on or before May 25, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-10436 Filed 5-3-16; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Announcement of Growth Accelerator Fund Competition

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: The U.S. Small Business Administration (SBA) announces the 2016 Growth Accelerator Fund Competition, pursuant to the America Competes Act, to identify the nation's most innovative accelerators and similar organizations and award them cash prizes they may use to fund their operations costs and allow them to bring startup companies to scale and new ideas to life.

DATES: The submission period for entries begins 12:00 p.m. EDT, May 2, 2016 and ends June 3, 2016 at 11:59 p.m. EDT. Winners will be announced no later than August 24, 2016.

FOR FURTHER INFORMATION CONTACT: Nareg Sagherian, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., 6th Floor Washington, DC 20416, (202) 205-7576, accelerators@sba.gov.

SUPPLEMENTARY INFORMATION:

Competition Details

1. *Subject of Competition:* The SBA is seeking to identify the nation's most innovative and promising small business accelerators and incubators in order to infuse them with additional resource capital that ultimately stimulates the growth and development of startups from within the entrepreneurial communities they serve. For the purposes of this competition, Growth Accelerators include accelerators, incubators, co-working startup communities, shared tinkerspaces or other models to accomplish similar goals. Regardless of the specific model employed, Growth Accelerators focus on helping entrepreneurs and their startups speed the launch, growth and scale of their businesses. A broad set of models used to support start-ups will better serve the entire entrepreneurial ecosystem. Whether an accelerator is industry focused, technology focused, product centric, cohort based or more long term, all are valuable players in the nation's high-growth entrepreneurial ecosystem that ultimately creates jobs.

2. *Eligibility Rules for Participating in the Competition:* This Competition is open only to private entities, such as corporations or non-profit organizations that are incorporated in and maintain a primary place of business in the United States. Entities that have an outstanding, unresolved financial obligation to, or that are currently suspended or debarred by, the federal government are not eligible for this Competition. Federal, state, local and tribal agencies are also not eligible for this Competition. Additionally, participants in this Competition must utilize models

of operation that include most, if not all, of the following elements:

- Selective process to choose participating startups.
- Regular networking opportunities offered to startups.
- Introductions to customers, partners, suppliers, advisory boards and other players.
- High-growth and tech-driven startup mentorship and commercialization assistance.
- Shared working environments focused on building a strong startup community.
- Resource sharing and co-working arrangements for startups.
- Opportunities to pitch ideas and startups to investors along with other capital formation avenues to startups.
- Small amounts of angel money, seed capital or structured loans to startups.

• Service to underserved communities, such as women, veterans, and economically disadvantaged individuals.

3. *Registration Process for Participants:* Competition participants must submit their 2016 Growth Accelerator Fund applications online using the link designated for that purpose on challenge.gov, either by filtering search criteria to "Small Business Administration" or going to sba.gov/accelerators, where the link will be posted. In addition to the basic details collected in that short application form, contestants must also complete and submit via challenge.gov a deck, similar to one that would be used in a pitch competition, which must address all of the items identified below:

Mission and Vision

- What is your accelerator's mission in one sentence?
- What specific elements make your accelerator model stand out?
- What experiences prepare your team for this?

Impact

- What gaps does or will your accelerator fill?
- What are the specifics of your model and how it will accomplish the above?
- For existing accelerators, what has been your success/metrics so far?
- For existing accelerators, please explain your overall statistics of the start-up life cycle?

Implementation

- What is your plan for the prize money if you win?
- If you are an existing accelerator using the funds to scale up, provide

²⁵ 17 CFR 200.30-3(a)(12) and (59).

details of current operations, phases for scale up and Web site; or

- If you are creating a new accelerator, provide basics of business plan and phases for implementation.
- Aside from the founding team members, what do you look for in staff?
- What are the largest risk factors you see?

Metrics

- What are your fundraising goals or metrics? (aside from the 4-to-1 match)
- Is there a plan in place to secure/work to secure funds (cash, in-kind donations, or sponsorships) in a 4-to-1 proportion to the prize dollars received?
- Aside from metrics required by SBA, what are 5 key metrics you will use to self-evaluate?
- What does success look like?

4. *Prizes for Winners:* In 2016, SBA is partnering with several U.S. agencies (NIH, NSF, DoED, USDA) to provide additional prizes to accelerators that assist entrepreneurs in submitting SBIR/STTR proposals. SBA is also partnering with the Inter-American Development Bank to provide prizes to accelerators that assist the African descendant start-up community in the Latin America and the Caribbean. Special consideration will be given to these accelerator models which support women-owned or minority-owned small businesses, with the highest-rated contestants that also represent the greatest degree of achieving national geographic distribution in both urban and rural areas. SBA's Office of Investment and Innovation (OII) will also be partnering with the Office of Native American Affairs (ONAA) and the Office of Veterans Business Development (OVBD) to award additional prizes to accelerators assisting the Native American and U.S. Veterans start-up community. Prizes will be paid in lump sum via the Automated Clearing House (ACH). Winners will be required to create an account in the System for Award Management (SAM) in order to receive an award.

5. *Selection of Winners:* Winners will be selected based upon how well they address the criteria identified in Items 2 and 3 of this Competition announcement. In addition, in order to achieve nationwide distribution of prizes for the purpose of stimulating the growth and development of startups across the entire United States, SBA may take into account applicants' geographic locations and areas of service when selecting winners, including support to geographic regions that traditionally have limited access to capital, the underserved, women, the maker community, and American

Indian, Alaska Native or Native Hawaiian populations.

6. *Applicable Law:* This Challenge is being conducted by SBA pursuant to the America Competes Act (15 U.S.C. 3719) and is subject to all applicable federal laws and regulations. By participating in this Challenge, each contestant gives its full and unconditional agreement to the Official Rules and the related administrative decisions described in this notice, which are final and binding in all matters related to the Challenge. A contestant's eligibility for a prize award is contingent upon their fulfilling all requirements identified in this notice. Publication of this notice is not an obligation of funds on the part of SBA. SBA reserves the right to modify or cancel this Challenge, in whole or in part, at any time prior to the award of prizes.

7. *Conflicts of Interest:* No individual acting as a judge at any stage of this Challenge may have personal or financial interests in, or be an employee, officer, director, or agent of any contestant or have a familial or financial relationship with a contestant.

8. *Intellectual Property Rights:* All entries submitted in response to this Challenge will remain the sole intellectual property of the individuals or organizations that developed them. By registering and entering a submission, each contestant represents and warrants that it is the sole author and copyright owner of the submission, and that the submission is an original work of the contestant, or if the submission is a work based on an existing application, that the contestant has acquired sufficient rights to use and to authorize others to use the submission, and that the submission does not infringe upon any copyright or upon any other third party rights of which the contestant is aware.

9. *Publicity Rights:* By registering and entering a submission, each contestant consents to SBA's and its agents' use, in perpetuity, of its name, likeness, photograph, voice, opinions, and/or hometown and state information for promotional or informational purposes through any form of media, worldwide, without further payment or consideration.

10. *Liability and Insurance Requirements:* By registering and entering a submission, each contestant agrees to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in this

Challenge, whether the injury, death, damage, or loss arises through negligence or otherwise. By registering and entering a submission, each contestant further represents and warrants that it possesses sufficient liability insurance or financial resources to cover claims by a third party for death, bodily injury, or property damage or loss resulting from any activity it carries out in connection with its participation in this Challenge, or claims by the Federal Government for damage or loss to Government property resulting from such an activity. Challenge winners should be prepared to demonstrate proof of insurance or financial responsibility in the event SBA deems it necessary.

11. *Record Retention and Disclosure:* All submissions and related materials provided to SBA in the course of this Competition automatically become SBA records and cannot be returned. Contestants should identify any confidential commercial information contained in their entries at the time of their submission.

Award Approving Official: Mark Walsh, Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Authority: Pub. L. 111-358 (2011).

Dated: April 20, 2016.

Mark Walsh,
Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2016-10467 Filed 5-3-16; 8:45 a.m.]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14708 and #14709]

Texas Disaster #TX-00468

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-4269-DR), dated 04/25/2016.

Incident: Severe Storms and Flooding.
Incident Period: 04/17/2016 through 04/24/2016.

Effective Date: 04/25/2016.

Physical Loan Application Deadline Date: 06/24/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 01/25/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and

Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/25/2016, 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 (Physical Damage and Economic Injury Loans): Fayette Grimes Harris Parker

Contiguous Counties (Economic Injury Loans Only):

Texas: Austin, Bastrop, Brazoria, Brazos, Caldwell, Chambers, Colorado, Fort Bend, Galveston, Gonzales, Hood, Jack, Johnson, Lavaca, Lee, Liberty, Madison, Montgomery, Palo Pinto, Tarrant, Walker, Waller, Washington, Wise

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
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
<i>For Economic Injury:</i>	
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 147086 and for economic injury is 147090.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,
Associate Administrator for Disaster Assistance.

[FR Doc. 2016-10468 Filed 5-3-16; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Main Street Mezzanine Fund, L.P., License No. 06/06-0326; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Main Street Mezzanine Fund, L.P., 1300 Post Oak Blvd., Suite 800, Houston, TX 77056, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR part 107). Main Street Mezzanine Fund, L.P. proposes to provide loan financing to PCI Holding Company, Inc., 1007 Church Street, Suite 420, Evanston, IL 60201.

The financing is brought within the purview of § 107.730(a) of the Regulations because Main Street Capital II, L.P., an Associate of Main Street Mezzanine Fund, L.P., holds a direct ownership interest in PCI Holding Company, Inc., of greater than 10 percent. Therefore, PCI Holding Company Inc. is an Associate of Main Street Mezzanine Fund, L.P. Therefore this transaction requires a prior SBA exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: April 28, 2016.

Mark L. Walsh,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2016-10469 Filed 5-3-16; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice: 9545]

30-Day Notice of Proposed Information Collection: Overseas Schools—Grant Status Report

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of

Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to June 3, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email:* oira_submission@omb.eop.gov. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Keith D. Miller, Office of Overseas Schools, U.S. Department of State, 2201 C Street NW., Washington, DC 20520 and can be reached on 202-261-8200 or at millerkd2@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Overseas Schools—Grant Status Report.
- *OMB Control Number:* 1405-0033.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, A/OPR/OS.
- *Form Number:* DS-2028.
- *Respondents:* Overseas schools grantees.
- *Estimated Number of Respondents:* 195.
- *Estimated Number of Responses:* 195.
- *Average Time per Response:* 15 minutes.
- *Total Estimated Burden Time:* 49 hours.

- *Frequency:* Annually.
- *Obligation to Respond:* Required to obtain or retain a benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The Office of Overseas Schools of the Department of State (A/OPR/OS) is responsible for determining that adequate educational opportunities exist at Foreign Service Posts for dependents of U.S. Government personnel stationed abroad, and for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The information gathered provides the technical and professional staff of A/OPR/OS the means by which obligations, expenditures and reimbursements of the grant funds are monitored to ensure the grantee is in compliance with the terms of the grant.

Methodology: The DS-2028 is in a Microsoft Excel spreadsheet, and is sent as a link to the school along with the grant documents. School officials can complete the form electronically and forward the form to post for forwarding to A/OPR/OS.

Dated: April 27, 2016.

Janice DeGarmo,

Executive Director, Bureau of Administration, Department of State.

[FR Doc. 2016-10477 Filed 5-3-16; 8:45 am]

BILLING CODE 4710-24-P

DEPARTMENT OF STATE

[Public Notice: 9544]

Overseas Schools Advisory Council Notice of Meeting

The Department of State Overseas Schools Advisory Council will hold its next Executive Committee Meeting on Thursday, June 16, 2016, at 9:30 a.m. in Conference Room 1482, Marshall Center, Department of State Building, 2201 C Street NW., Washington, DC. The meeting is open to the public and will last until approximately 12:00 p.m.

The Overseas Schools Advisory Council works closely with the U.S. business community to improve American-sponsored schools overseas that are assisted by the Department of

State and attended by dependents of U.S. government employees, and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and support provided by the Overseas Schools Advisory Council to American-sponsored overseas schools. There will be a report and discussion about the status of the Council-sponsored projects such as The World Virtual School and The Child Protection Project. The Regional Education Officers in the Office of Overseas Schools will make presentations on the activities and initiatives in American-sponsored overseas schools.

Members of the public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, telephone 202-261-8200, prior to June 9, 2016. Each visitor will be asked to provide his/her date of birth and either a driver's license or passport number at the time of registration and attendance, and must bring a valid photo ID to the meeting.

Personal data 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 <http://foia.state.gov/docs/SORN/State-36.pdf> for additional information.

Any requests for reasonable accommodation should be made at the time of registration. All such requests will be considered, however, it might not be possible to accommodate requests made after June 9, 2016. All attendees must use the C Street entrance to the building.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 2016-10475 Filed 5-3-16; 8:45 am]

BILLING CODE 4710-24-P

DEPARTMENT OF STATE

[Public Notice: 9546]

Culturally Significant Objects Imported for Exhibition Determinations: "Splendor, Myth and Vision: Nudes From the Prado" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257-1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "Splendor, Myth and Vision: Nudes from the Prado," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Sterling and Francine Clark Art Institute, Williamstown, Massachusetts, from on or about June 11, 2016, until on or about October 10, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (*telephone:* 202-632-6471; *email:* section2459@state.gov). The mailing address is U.S. Department of State, L/PD, SA-5, Suite 5H03, Washington, DC 20522-0505.

Dated: April 20, 2016.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016-10543 Filed 5-3-16; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****[Docket No. FMCSA–2012–0032]****Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America (Daimler)****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Daimler Trucks North America (Daimler) has requested a five-year exemption for one of its employees from the Federal requirement to hold a U.S. commercial driver's license (CDL). Mr. Henning Oeltjenbruns, general manager of the Daimler Truck Plant in Cleveland, NC, holds a valid German commercial license and wants to test drive Daimler vehicles on U.S. roads to better understand product requirements in "real world" environments, and verify results. Daimler believes the requirements for a German commercial license ensure that operation under the exemption will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: Comments must be received on or before June 3, 2016.**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2012–0032 using any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at

any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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: For information concerning this notice, contact Ms. Pearl Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:**I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2012–0032), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, "FMCSA–2012–0032" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Section 5206(a)(3) of the "Fixing America's Surface Transportation Act," (FAST Act) amended 49 U.S.C. 31315 by adding a new paragraph (b)(2) to permit exemptions for no longer than five years from their dates of inception, instead of the previous two years. This statutory provision will be codified in 49 CFR part 381 in a forthcoming rulemaking.

III. Request for Exemption

On behalf of Henning Oeltjenbruns, Daimler has applied for a 5-year exemption from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Mr. Oeltjenbruns is unable to obtain a CDL in any of the States due to his lack of residency in the United States. A copy of the application is in Docket No. FMCSA–2012–0032.

The exemption would allow Mr. Oeltjenbruns to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and

environmental requirements and to promote technological advancements in vehicle safety systems and emissions reductions. Mr. Oeltjenbruns needs to drive Daimler vehicles on public roads to better understand “real world” environments in the U.S. market. According to Daimler, Mr. Oeltjenbruns will typically drive for no more than 6 hours per day, and 10 percent of the test driving will be on two-lane state highways, while 90 percent will be on interstate highways. The driving will consist of no more than 200 miles per day, during a two-day period on a quarterly basis. He will in all cases be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled.

Mr. Oeltjenbruns would be required to comply with all applicable Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) except the CDL provisions described in this notice.

Mr. Oeltjenbruns holds a valid German commercial license, and as explained by Daimler in its exemption request, the requirements for that license ensure that the same level of safety is met or exceeded as if this driver had a U.S. CDL. Furthermore, according to Daimler, Mr. Oeltjenbruns is familiar with the operation of CMVs worldwide.

FMCSA has previously determined that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. Since 2012, FMCSA has granted Daimler drivers similar exemptions [May 25, 2012 (77 FR 31422); July 22, 2014 (79 FR 42626); March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410)].

Issued on: April 27, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–10416 Filed 5–3–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America (Daimler)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Daimler Trucks North America (Daimler) has requested a five-year exemption for one of its employees from the Federal requirement to hold a U.S. commercial driver's license (CDL). Mr. Sebastian Boehm, a project engineer, holds a valid German commercial license and wants to test drive Daimler vehicles on U.S. roads to better understand product requirements in “real world” environments, and verify results. Daimler believes the requirements for a German commercial license ensure that operation under the exemption will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: Comments must be received on or before June 3, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2012–0032 using any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; *Telephone:* 202–366–4325. *Email:* MCPDSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2012–0032), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA–2012–0032” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an

opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Section 5206(a)(3) of the “Fixing America’s Surface Transportation Act,” (FAST Act) amended 49 U.S.C 31315 by adding a new paragraph (b)(2) to permit exemptions for no longer than five years from their dates of inception, instead of the previous two years. This statutory provision will be codified in 49 CFR part 381 in a forthcoming rulemaking.

III. Request for Exemption

On behalf of Sebastian Boehm, Daimler has applied for a 5-year exemption from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Mr. Boehm is unable to obtain a CDL in any of the States due to his lack of residency in the United States. A copy of the application is in Docket No. FMCSA–2012–0032.

The exemption would allow Mr. Boehm to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental requirements and to promote technological advancements in vehicle safety systems and emissions reductions. Mr. Boehm needs to drive Daimler vehicles on public roads to better understand “real world” environments in the U.S. market. According to Daimler, Mr. Boehm will typically drive for no more than 6 hours per day, and that 10 percent of the test driving will be on two-lane state highways, while 90 percent will be on interstate highways. The driving will consist of no more than 200 miles per day, for one to two weeks on a quarterly basis. He will in all cases be accompanied by a holder of a U.S. CDL

who is familiar with the routes to be traveled.

Mr. Boehm would be required to comply with all applicable Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) except the CDL provisions described in this notice.

Mr. Boehm holds a valid German commercial license, and as explained by Daimler in its exemption request, the requirements for that license ensure that the same level of safety is met or exceeded as if this driver had a U.S. CDL. Furthermore, according to Daimler, Mr. Boehm is familiar with the operation of CMVs worldwide.

FMCSA has previously determined that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver’s ability to operate CMVs in the U.S. Since 2012, FMCSA has granted Daimler drivers similar exemptions [May 25, 2012 (77 FR 31422); July 22, 2014 (79 FR 42626); March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410)].

Issued on: April 27, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–10415 Filed 5–3–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0058; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2008 Aston Martin Vantage V8 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that model year (MY) 2008 Aston Martin Vantage V8 passenger cars (PC) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the

safety standards (the U.S.-certified version of the 2008 Aston Martin Vantage V8 PC) and they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is June 3, 2016.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- **Hand Delivery or Courier:** West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- **Fax:** 202–493–2251.

Instructions: 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. Please see the Privacy Act heading below.

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).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further,

some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT:

George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

U.S. Specs of Harve de Grace, Maryland (Registered Importer R–03–321) has petitioned NHTSA to decide whether nonconforming 2008 Aston Martin Vantage V8 PCs are eligible for importation into the United States. The vehicles which U.S. Specs believes are substantially similar are MY 2008 Aston Martin Vantage V8 PCs sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2008 Aston Martin Vantage V8 PCs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

U.S. Specs submitted information with its petition intended to demonstrate that non-U.S. certified MY 2008 Aston Martin Vantage V8 PCs, as originally manufactured, conform to many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being

readily altered to conform to those standards.

Specifically, the petitioner claims that the non U.S.-certified MY 2008 Aston Martin Vantage V8 PCs, as originally manufactured, conform to: Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic and Certain Specialty Tires*, 113 *Hood Latch System*, 114 *Theft Protection*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 135 *Light Vehicle Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202a *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 302 *Flammability of Interior Materials*, 401 *Interior Trunk Release*.

The petitioner also contends that the subject non-U.S. certified vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: replacement of the original instrument cluster with the U.S. model component and reprogramming the associated software as described in the petition, or modifying the existing instrument cluster such that speed is displayed in miles per hour (MPH) and the brake telltale displays the word “BRAKE” when activated.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: installation of U.S.-conforming front side marker lamps, headlamps, high mounted stop lamp, and rear and side mounted reflex reflectors.

Standard No. 110 *Tire Selection and Rims*: installation of the required tire information placard.

Standard No. 111 *Rearview Mirrors*: inscription of the required warning statement on the face of the passenger mirror, or replacement of the passenger side mirror with the U.S. model component.

Standard No. 118 *Power-Operated Window, Partition and Roof Panel Systems*: rewiring and reprogramming the power-operated window, partition, and roof panel systems if necessary for the vehicle to fully conform to the standard.

Standard No. 138 *Tire Pressure Monitoring Systems*: installation of U.S. model tire pressure sensor, tire valve kit and tire pressure monitor module. The

system must also be reprogrammed with the U.S. model tire pressure loss warning software.

Standard No. 208 *Occupant Crash Protection*: installation of U.S. model software such that the seat belt warning lamp and audio alert function as required by the standard.

In response to NHTSA’s letter dated August 7, 2014, requesting additional information, the petitioner provided supplemental information in the form of an email from Aston Martin Lagonda Limited stating that the passenger side seat weight sensor and passenger side seat module (which may need to be individually identified for each vehicle), and fixed height cushion frame are required for the vehicle. In addition, Aston Martin Lagonda Limited stated that two air bag [warning] labels will need to be installed to conform the vehicle to the standard.

Standard No. 225 *Child Restraint Anchorage Systems*: the seat cushion frame must be replaced with the U.S. part in order to meet this standard.

Standard No. 301 *Fuel System Integrity*: in response to NHTSA’s letter dated August 7, 2014, requesting additional information, the petitioner provided supplemental information in the form of an email from Aston Martin Lagonda Limited indicating that various components of the vapor recovery system are required.

The petitioner also provided a copy of a letter from Aston Martin Lagonda Limited stating, “Aston Martin will provide the software configuration file to a United States Aston Martin Dealership for U.S. Specs. U.S. Specs will be required to take the vehicle to the dealership for programming. Once the vehicle has been re-programmed and diagnosed that all systems are functioning properly, the dealership will provide U.S. Specs with documentation confirming that all vehicle systems are functioning as a 2008 Aston Martin Vantage V8, United States model.”

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicle near the left windshield pillar to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,
Director, Office of Vehicle Safety Compliance.
 [FR Doc. 2016-10350 Filed 5-3-16; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0082; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2009 Mercedes-Benz G Class Long Wheelbase (463 Chassis) Multipurpose Passenger Vehicle Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that model year (MY) 2009 Mercedes-Benz G Class Long Wheelbase (LWB) (463 Chassis) multipurpose vehicles (MPVs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2009 Mercedes-Benz G Class LWB MPV) and they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is June 3, 2016.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- **Fax:** 202-493-2251.

Instructions: 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. Please see the Privacy Act heading below.

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).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202-366-5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies LLC (JK) of Baltimore, Maryland (Registered Importer R-90-006) has petitioned NHTSA to decide whether nonconforming 2009 Mercedes-Benz G Class LWB MPVs are eligible for importation into the United States. The vehicles which JK believes are substantially similar are MY 2009 Mercedes-Benz G Class LWB MPVs sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2009 Mercedes-Benz G Class LWB MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

JK submitted information with its petition intended to demonstrate that non-U.S. certified MY 2009 Mercedes-Benz G Class LWB MPVs, as originally manufactured, conform to many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non U.S.-certified MY 2009 Mercedes-Benz G Class LWB MPVs, as originally manufactured, conform to: Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 118 *Power-Operated Window, Partition, and Roof panel System*, 124 *Accelerator Control Systems*, 135 *Light Vehicle Brake Systems*, 138 *Tire Pressure Monitoring Systems*, 139 *New pneumatic radial tires for light vehicles*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210

Seat Belt Assembly Anchorages, 212
Windshield Mounting, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

The petitioner also contends that the subject non-U.S. certified vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: Replacement of the original instrument cluster with the U.S. model component and reprogramming the associated software as described in the petition. Inspection of each vehicle, and replacement of the cruise control lever with the U.S.-model component if required for the vehicle to conform to the standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: Replacement of the front and rear turn signal and side marker lamps, headlamps, taillamps, stop lamps, and backup lamps with U.S.-conforming components.

Standard No. 110 *Tire Selection and Rims*: Installation of the required tire information placard.

Standard No. 111 *Rearview Mirrors*: Replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the face of the existing mirror.

No. 114 *Theft Protection and Rollaway Prevention*: Reprograming to activate the audible key warning and belt warning as described in the petition.

Standard No. 208 *Occupant Crash Protection*: The petitioner states that the passive restraint systems of the international specification vehicles comply with the requirements of this standard and are identical to the U.S. version with respect to all aspects of this standard, except for the passenger sun visor and dash mounted air bag warning labels. The petitioner also states that all software used to control the occupant crash protection systems bears the U.S. program codes and all hardware parts bear the U.S. part numbers.

Standard No. 225 *Child Restraint Anchorage Systems*: Installation of U.S. model anchorages and labels.

Standard No. 301 *Fuel System Integrity*: The petitioner states that the fuel systems in these vehicles are identical to those in the U.S.-certified model. Fuel spillage problems are controlled by the evaporative system that was installed to meet EPA

requirements. These evaporative systems have a rollover and check valve incorporated into their design.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield pillar to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016-10349 Filed 5-3-16; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: FS Form 2001—Release

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Release.

DATES: Written comments should be received on or before July 5, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4-A, Parkersburg, WV 26106-1328, or bruce.sharp@fiscal.treasury.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions

should be directed to Ron Lewis; 200 Third Street Room 515, Parkersburg, WV 26106-1328, or ron.lewis@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Form Number and Titles: FS Form 2001—Release.

OMB Number: 1530-0053. (Previously approved as 1535-0114 as a collection conducted by Department of the Treasury/Bureau of the Public Debt.) Transfer of OMB Control Number: The Bureau of Public Debt (BPD) and the Financial Management Service (FMS) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by BPD and FMS will now be identified by a 1530 prefix, designating Fiscal Service.

Abstract: The information is requested to ratify payment of savings bonds/notes and release the United States of America from any liability.

Current Actions: Revision of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 25.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 2.5.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 28, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016-10358 Filed 5-3-16; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 416, 418, et al.

Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 416, 418, 460, 482, 483, and 485

[CMS-3277-F]

RIN 0938-AR72

Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule will amend the fire safety standards for Medicare and Medicaid participating hospitals, critical access hospitals (CAHs), long-term care facilities, intermediate care facilities for individuals with intellectual disabilities (ICF-IID), ambulatory surgery centers (ASCs), hospices which provide inpatient services, religious non-medical health care institutions (RNHCIs), and programs of all-inclusive care for the elderly (PACE) facilities. Further, this final rule will adopt the 2012 edition of the Life Safety Code (LSC) and eliminate references in our regulations to all earlier editions of the Life Safety Code. It will also adopt the 2012 edition of the Health Care Facilities Code, with some exceptions.

DATES: This regulation is effective July 5, 2016.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 5, 2016.

FOR FURTHER INFORMATION CONTACT:

Kristin Shifflett, (410) 786-4133.
Danielle Shearer, (410) 786-6617.

SUPPLEMENTARY INFORMATION:

Acronyms

ABHR—Alcohol Based Hand Rubs
ADA—Americans with Disabilities Act
AHJ—Authority Having Jurisdiction
ASC—Ambulatory Surgical Center
ASHRAE—American Society of Heating, Refrigeration, and Air Conditioning Engineers
CAH—Critical Access Hospital
CDC—Centers for Disease Control and Prevention
CFR—Code of Federal Regulations
CMS—Centers for Medicare & Medicaid
DOJ—Department of Justice
EES—Essential Electrical System
FR—Federal Register
FSES—Fire Safety Evaluation System
GAO—Government Accountability Office
HHS—Department of Health and Human Services

HVAC—Heating, Ventilation, and Air Conditioning
ICF-IID—Intermediate Care Facilities for Individuals with Intellectual Disabilities
LSC—Life Safety Code
LTC—Long-term Care
NFPA—National Fire Protection Association
OPPS—Outpatient Prospective Payment System
PACE—Programs of All-inclusive Care for the Elderly
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis
RNHCI—Religious Non-Medical Health Care Institution
TIA—Tentative Interim Amendment
UMRA—Unfunded Mandates Reform Act
WAGD—Waste Anesthetic Gas Disposal System

Definitions

Approved, Automatic Sprinkler System: A fire protection system, deemed acceptable by the Authority Having Jurisdiction, consisting of an integrated network of piping designed in accordance with fire protection engineering standards and including a water supply, a water control valve, a water flow alarm, a drain, and automatic sprinklers which are fire suppression or control devices that operate automatically when their heat-actuated element is heated to its thermal rating or above, allowing water to discharge over a specified area.

Deck: An exterior floor supported on at least two opposing sides by an adjacent structure and/or posts, piers, or other independent supports.

Porch: An outside walking area having a floor that is elevated more than 8 in. (203 mm) above grade.

Space: A portion of the health care facility designated by the governing body that serves a specific purpose.

Note: The word “space” takes its meaning from the context in which it is used as it is a definable area, such as a room, toilet room, storage room, assembly room, corridor, or lobby.

Non-Supervised Automatic Sprinkler System: An automatic sprinkler system lacking electrical supervisory attachments and; therefore, unable to provide a distinctive supervisory signal to indicate a condition that would impair the satisfactory operation of the sprinkler system.

Supervised Automatic Sprinkler System: An automatic sprinkler system equipped with electrical supervisory attachments, installed and monitored for integrity in accordance with NFPA 72, *National Fire Alarm and Signaling Code*, that provides a distinctive supervisory signal to indicate a condition that would impair the satisfactory operation of the sprinkler system.

Note: For a sprinkler system to be considered supervised as required by NFPA 101, the supervision must be electrical as contrasted with supervision via chaining and locking of valves in the open position as permitted for supervision by NFPA 13. Supervision in accordance with NFPA 101 involves more than valve monitoring as any condition that would impair satisfactory operation of the sprinkler system must provide a supervisory signal.

I. Background

A. Overview

The Life Safety Code (LSC) is a compilation of fire safety requirements for new and existing buildings, and is updated and published every 3 years by the National Fire Protection Association (NFPA), a private, nonprofit organization dedicated to reducing loss of life due to fire. The LSC regulations adopted by Centers for Medicare & Medicaid Services (CMS) apply to hospitals, long-term care facilities (LTC), critical access hospitals (CAHs), ambulatory surgical centers (ASC), intermediate care facilities for individuals with intellectual disabilities (ICF-IIDs), hospice inpatient care facilities, programs for all inclusive care for the elderly (PACE), and religious non-medical health care institutions (RNHCIs). The Medicare and Medicaid regulations have historically incorporated these requirements by reference, along with Secretarial waiver authority. The statutory basis for incorporating NFPA's LSC into the regulations we apply to Medicare and, as applicable, Medicaid providers and suppliers is the Secretary of the Department of Health and Human Services (the Secretary's) authority to stipulate health and safety regulations for each type of Medicare and (if applicable) Medicaid-participating facility, as well as the Secretary's general rulemaking authority, set out at sections 1102 and 1871 of the Social Security Act (the Act).

In our regulations, issued pursuant to the Act, we have stated that we believe CMS has the authority to grant waivers of some provisions of the LSC when necessary; for instance, to hospitals under section 1861(e)(9) of the Act, and to LTC facilities at sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act. Under our current regulations, the Secretary may waive specific provisions of the LSC for any type of facility, if application of our rules would result in unreasonable hardship for the facility, and if the health and safety of its patients would not be compromised by such waiver.

We do not consider it always necessary for a facility to be cited for a

deficiency before it can apply for or receive a waiver. This is particularly the case when we have evaluated specific provisions of the LSC, determined that a waiver would arguably apply to all similarly-situated facilities with respect to the LSC requirement in question, and issued a public communication describing the specifics of such a categorical waiver, including any particular requirements that must be met in order for the waiver to apply to a facility. Waiver approval in these instances would be subject to a review of documentation maintained by the facility, verification of the applicability of the waiver, and confirmation that the terms and requirements of the waiver have been implemented by the facility. In most cases such verification occurs when an onsite survey of the facility is conducted. We plan to continue this approach, but would like to clarify that in those cases where we have issued a prior public communication providing for a categorical waiver, an advance recommendation from a state survey agency or accrediting organization (as applicable), is not required in order for a waiver to be granted. We have issued categorical waivers of LSC requirements when newer editions of the LSC provided equally effective means of ensuring life safety compared to requirements of earlier LSC editions. When CMS has evaluated the alternative (such as examining new fire safety research and technology), and concluded that the specific alternative would improve or maintain the safety of the residents or patients of the facility, CMS may defer to newer editions of the LSC. CMS requires that providers comply with any applicable non-waived provisions of the version of the LSC referenced in the categorical waiver.

In addition, the Secretary may accept a state's fire and safety code instead of the LSC if CMS determines that the protections of the state's fire and safety code are equivalent to, or more stringent than, the protections offered by the LSC. Further, the NFPA's Fire Safety Evaluation System (FSES), an equivalency system, provides alternatives to meeting various provisions of the LSC, thereby achieving the same level of fire protection as the LSC. These flexibilities mitigate the potential unnecessary burdens of applying the requirements of the LSC to all affected health care facilities.

On January 10, 2003, we published a final rule in the **Federal Register** (68 FR 1374) adopting the 2000 edition of the LSC. In that final rule, we required that all affected providers and suppliers meet the provisions of the 2000 edition of the LSC, except for certain specific

sections. One of the exceptions to the 2000 edition of the LSC is the code's use of roller latches on corridor doors in buildings that are fully protected by a sprinkler system. We believe that roller latches on corridor doors are a safety hazard under all circumstances, and prohibit their use on corridor doors in all Medicare and applicable Medicaid facilities. We also removed references to all previous editions of the LSC.

In 2002, the Centers for Disease Control and Prevention (CDC) published on its Web site (<http://www.cdc.gov/handhygiene/Guidelines.html>) an initial set of hand hygiene guidelines for health care settings. The guidelines recommended the use of alcohol-based hand rub (ABHR) dispensers. On September 22, 2006, we published a final rule (71 FR 55326) to allow certain health care facilities to place ABHR dispensers in exit corridors under specified conditions. To accommodate the placement of ABHR dispensers in health care facilities, the NFPA retroactively amended the 2000 edition of the code. When CMS adopts an edition of the LSC, it adopts that edition as it existed on the day of publication of the proposed rule. Since the changes to the 2000 edition of the LSC occurred after publication of the January 2003 final rule that adopted the 2000 edition of the LSC, CMS was required to use the notice and comment rulemaking process to adopt the amendment that the NFPA made to the code.

The September 2006 final rule also required that LTC facilities, at a minimum, install battery-powered single station smoke alarms in resident rooms and common areas if their buildings were not fully sprinklered, or if the building did not have system-based smoke detectors. A Government Accountability Office (GAO) report entitled "Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight" GAO-04-660, July 16, 2004 (<http://www.gao.gov/products/GAO-04-660>) examined two LTC facility fires (Hartford and Nashville) in 2003, that resulted in 31 total resident deaths. The report examined Federal fire safety standards and enforcement procedures, as well as results from the fire investigations of these two incidents. It specifically cited requiring smoke detectors in these facilities as one way to strengthen the requirements. We agreed with the GAO findings and added this smoke alarm requirement in response to the GAO report.

On August 13, 2008, we published a final rule (73 FR 47075) to require all LTC facilities to install automatic sprinkler systems throughout their

buildings in accordance with the technical provisions of the 1999 edition of NFPA 13, *Standard for the Installation of Sprinkler Systems*, and to test, inspect, and maintain sprinkler systems in accordance with the technical requirements of the 1998 edition of NFPA 25, *Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems*. The August 2008 final rule required all LTC facilities to be equipped with sprinkler systems by August 13, 2013. This rule was also in response to the July 2004 GAO report on nursing home fire safety. In addition to its findings related to smoke alarms, the GAO recommended that fire safety standards for unsprinklered LTC facilities be strengthened and stated that sprinklers were the single most effective fire protection feature for LTC facilities.

On May 12, 2014 CMS also published a final rule, "Part II Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction" (79 FR 27106) that allows CMS to grant very limited extensions of the due date for a facility that is building a replacement facility or undergoing major modifications to unsprinklered living areas.

On October 24, 2011, we published a proposed rule (76 FR 65891), to reform hospital and critical access hospital conditions of participation. Many of the public comments received during the comment period strongly encouraged CMS to adopt the 2012 edition of the LSC. The commenters stated that the 2012 edition of the LSC would clarify several issues and would be beneficial to facilities.

On April 16, 2014, we published a proposed rule (79 FR 21552), "Fire Safety Requirements for Certain Health Care Facilities" that would amend the fire safety standards. We proposed the adoption of the 2012 edition of the NFPA LSC and the elimination of references to earlier editions of the LSC.

CMS must emphasize that the LSC is not an accessibility code, and compliance with the LSC does not ensure compliance with the requirements of the Americans with Disabilities Act (ADA). State and local government programs and services, including health care facilities, are required to comply with Title II of the ADA. Private entities that operate public accommodations such as nursing homes, hospitals, and social service center establishments are required to comply with Title III of the ADA. The same accessibility standards apply regardless of whether health care facilities are covered under Title II or

Title III of the ADA.¹ For more information about the ADA's requirements, see the Department of Justice's Web site at <http://www.ada.gov> or call 1-800-514-0301 (voice) or 1-800-514-0383 (TTY).

B. 2012 Edition of the Life Safety Code

The 2012 edition of the LSC includes new provisions that we believe are vital to the health and safety of all patients and staff. Our intention is to ensure that patients and staff continue to experience the highest degree of fire safety possible. The term "Patient(s)" will be globally used throughout this document, and refers to patient, clients, residents and all other terms used to describe the type of individuals cared for in each provider type.

The use of earlier editions of the code can become problematic due to advances in safety and technology, and changes made to each edition of the code. Newer buildings are typically built to comply with the newer versions of the LSC because state and local jurisdictions, as well as non-CMS-approved accreditation programs, often adopt and enforce newer versions of the code as they become available. Therefore, a health care facility that is constructed or renovated in 2015 would likely be required by its state and local authorities to comply with a more recent edition of the LSC, while also being required to comply with the 2000 edition of the LSC in order to meet the Medicare and applicable Medicaid regulatory requirements. Requiring compliance with two different editions of the LSC at the same time can create unnecessary conflicts, duplications, and inconsistencies that increase construction and compliance costs without any fire safety or patient care benefits. For example, the 2000 edition of the LSC limits ABHRs to gel form, whereas the 2012 edition of the LSC expands to allow aerosol and gel ABHRs. Limiting the choice of ABHRs creates barriers to improved hand hygiene, which has been shown to reduce the number of health care associated infections. We believe that adopting the 2012 LSC would simplify

and modernize the construction and renovation process for affected health care providers and suppliers, reduce compliance-related burdens, and allow for more resources to be used for patient care.

The 2012 edition of the LSC contains a new chapter,—"Building Rehabilitation." This new chapter allows for the application of the requirements for new construction versus the requirements for existing construction to vary based on the type and extent of rehabilitation work being done to a given building. This chapter sets out different types of building rehabilitation work (that is, repair, renovation, modification, reconstruction, change of use, change of occupancy and addition) to which different standards apply.

Buildings that have not received, all pre-construction governmental approvals before the rule's effective date, or those buildings that begin construction after the effective date of this regulation, will be required to meet the New Occupancy chapters of the 2012 edition of the LSC. Buildings constructed before the effective date of this regulation will be required to meet the Existing Occupancy chapters of the 2012 edition of the LSC. Any changes made to buildings will be required to comply with Chapter 43—Building Rehabilitation, which depending on the changes being made, could require compliance with the new or existing occupancy chapters. In any instances where mandatory LSC references do not include existing chapters, such as Chapter 43—Building Rehabilitation, existing occupancies must ensure buildings and equipment are in compliance with provisions previously adopted by CMS at the time they were constructed or installed.

C. Incorporation by Reference

In this final rule we are incorporating by reference the NFPA 101® 2012 edition of the LSC, issued August 11, 2011, and all Tentative Interim Amendments issued prior to April 16, 2014; and the NFPA 99® 2012 edition of the Health Care Facilities Code, issued August 11, 2011, and all Tentative Interim Amendments issued prior to April 16, 2014.

(1) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011;

(i) TIA 12-1 to NFPA 101, issued August 11, 2011.

(ii) TIA 12-2 to NFPA 101, issued October 30, 2012.

(iii) TIA 12-3 to NFPA 101, issued October 22, 2013.

(iv) TIA 12-4 to NFPA 101, issued October 22, 2013.

(2) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.

(i) TIA 12-2 to NFPA 99, issued August 11, 2011.

(ii) TIA 12-3 to NFPA 99, issued August 9, 2012.

(iii) TIA 12-4 to NFPA 99, issued March 7, 2013.

(iv) TIA 12-5 to NFPA 99, issued August 1, 2013.

(v) TIA 12-6 to NFPA 99, issued March 3, 2014.

The materials that are incorporated by reference are reasonably available to interested parties and can be inspected at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, www.nfpa.org, 1.617.770.3000. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

The NFPA 101® 2012 edition of the LSC (including the TIAs) provides minimum requirements, with due regard to function, for the design, operation and maintenance of buildings and structures for safety to life from fire. Its provisions also aid life safety in similar emergencies.

The NFPA 99® 2012 edition of the Health Care Facilities Code (including the TIAs) provides minimum requirements for health care facilities for the installation, inspection, testing, maintenance, performance, and safe practices for facilities, material, equipment, and appliances, including other hazards associated with the primary hazards.

Health Care Occupancies

The following are key provisions that appear in the 2012 edition of the LSC for Chapter 18, "New Health Care Occupancies," and Chapter 19, "Existing Health Care Occupancies." We have provided the LSC citation and a description of the 2012 requirement at the beginning of each section discussed.

The 2012 edition of the LSC classifies a "Health Care Occupancy" as a facility having 4 or more patients on an inpatient basis. We proposed that the LSC exception for health care occupancy facilities with fewer than four occupants/patients would be inapplicable to the Medicare and Medicaid facilities; all health care occupancies that provide care to one or more patients would be required to comply with the relevant requirements of the 2012 edition of the LSC.

¹ Facilities newly constructed or altered after March 15, 2012 must comply with the 2010 Standards for Accessible Design (2010 Standards). Facilities newly constructed or altered between September 15, 2010 and March 15, 2012 had the option of complying with either the 1991 Standards for Accessible Design (1991 Standards) or the 2010 Standards. Facilities newly constructed between January 26, 1993 and September 15, 2010, or altered between January 26, 1992 and September 15, 2010 were required to comply with the 1991 Standards under Title III and either the 1991 Standards or the Uniform Federal Accessibility Standards under Title II.

Sections 18.2.3.4(2) and 19.2.3.4(2)—Corridor Projections

This provision requires noncontinuous projections to be no more than 6 inches from the corridor wall. In addition to following the requirements of the LSC, health care facilities must comply with the requirements of the ADA, including the requirements for protruding objects. The 2010 Standards for Accessible Design (2010 Standards) generally limit the protrusion of wall-mounted objects into corridors to no more than 4 inches from the wall when the object's leading edge is located more than 27 inches, but not more than 80 inches, above the floor. See Sections 204.1 and 307 of the 2010 Standards, available at <http://www.ada.gov/regs2010/2010ADAStandards/Guidance2010ADAStandards.htm>² ("2010 Standards"). This requirement protects persons who are blind or have low vision from being injured by bumping into a protruding object that they cannot detect with a cane.

Although the LSC allows 6-inch projections, under the ADA, objects mounted above 27 inches and no more than 80 inches high can only protrude a maximum of 4 inches into the corridor beyond a detectable surface mounted less than 27 inches above the floor (except for certain handrails which may protrude up to 4½"). See section 307 of the 2010 standards for requirements for handrails and post-mounted objects. CMS intends to provide technical assistance regarding strategies for how to avoid noncompliance with the ADA's protruding objects requirement, as well as how to modify non-compliant protruding objects.

Sections 18.7.5.7.2 and 19.7.5.7.2—Recycling

This new provision requires that containers used solely for recycling clean waste be limited to a maximum capacity of 96 gallons. If the recycling containers are located in a protected hazardous area, container size will not be limited.

Sections 18.3.6.3.9.1 and 19.3.6.3.5—Roller Latches

A roller latch is a type of door latching mechanism to keep a door closed. The 2012 edition of the LSC requires corridor doors to be provided with a means for keeping the door

closed that is acceptable to the authority having jurisdiction. The LSC permits roller latches capable of keeping the door fully closed if a force of 5 pounds is applied at the latch edge or roller latches in fully sprinklered buildings. However, we proposed not to adopt these standards from the 2012 LSC. Through fire investigations, roller latches have proven to be an unreliable door latching mechanism requiring extensive maintenance to operate properly. Many roller latches in fire situations failed to provide adequate protection to residents in their rooms during an emergency. Roller latches will be prohibited in existing and new Health Care Occupancies for corridor doors and doors to rooms containing flammable or combustible materials. These doors will be required to have positive latching devices instead.

Sections 18.4.2 and 19.4.2—Sprinklers in High-Rise Buildings

This provision requires buildings over 75' (generally greater than 7 or 8 stories) in height to have automatic sprinkler systems installed throughout the building. The 2012 LSC allows 12 years from when the authority having jurisdiction (which in this case is CMS) officially adopts the 2012 edition of the LSC for existing facilities to comply with the sprinkler system installation requirement. Therefore, those facilities that are not already required to do so will have 12 years following publication of this final rule, which adopts the 2012 LSC, to install sprinklers in high-rise buildings.

Sections 18.2.2.2.5.2 and 19.2.2.2.5.2—Door Locking

Where the needs of patients require specialized protective measures for their safety, door-locking arrangements are permitted by this section. For example, locked psychiatric facilities are designed such that the entire facility is secure and obstructs patients and others from improperly entering and exiting. This provision allows interior doors to be locked, subject to the following requirements: (1) All staff must have keys; (2) smoke detection systems must be in place; (3) the facility must be fully sprinklered; (4) the locks are electrical locks that will release upon loss of power to the device; and (5) the locks release by independent activation of the smoke detection system and the water flow in the automatic sprinkler system.

Sections 18.3.2.6 and 19.3.2.6—Alcohol Based Hand Rubs (ABHRs)

This provision explicitly allows aerosol dispensers, in addition to gel hand rub dispensers. The aerosol

dispensers are subject to limitations on size, quantity, and location, just as gel dispensers are limited. Automatic dispensers are also now permitted in health care facilities, provided that the following requirements are met: (1) They do not release contents unless they are activated; (2) the activation occurs only when an object is within 4 inches of the sensing device; (3) any object placed in the activation zone and left in place must not cause more than one activation; (4) the dispenser must not dispense more than the amount required for hand hygiene consistent with the label instructions; (5) the dispenser is designed, constructed and operated in a way to minimize accidental or malicious dispensing; and (6) all dispensers are tested in accordance with the manufacturer's care and use instructions each time a new refill is installed. The provision further defines prior language regarding "above or adjacent to an ignition source" as being "within 1 inch" of the ignition source.

Sections 18.3.5 and 19.3.5—Extinguishment Requirements

This provision is related to sprinkler system requirements and requires the evacuation of a building or the instituting of an approved fire watch when a sprinkler system is out of service for more than 10 hours in a 24-hour period until the system has been returned to service. We proposed not to adopt this requirement. In its place, we proposed that a health care occupancy must evacuate a building or institute an approved fire watch when a sprinkler system is out of service for more than 4 hours. Based on comments received from the industry, we are withdrawing our proposal and adopting the requirement as specified by NFPA for an evacuation of a building or the instituting of an approved fire watch when a sprinkler system is out of service for more than 10 hours in a 24-hour period until the system has been returned to service.

Section 18.3.2.3 and 19.3.2.3—Anesthetizing Locations

This provision requires that anesthetizing locations be protected in accordance with the 2012 edition of NFPA 99, Health Care Facilities Code. Separate from the requirements of the NFPA 99, we proposed that dedicated supply and exhaust systems for windowless anesthetizing locations must be arranged to automatically vent smoke and products of combustion to prevent the circulation of smoke originating from within and outside the operating rooms.

² Regardless of which set of ADA Standards for Accessible Design applied at the time a facility was built or altered, the requirements for wall-mounted protruding objects are essentially the same. See Section 4.4 of the 1991 Standards, available at <http://www.ada.gov/1991standards/1991standards-archive.html>.

Sections 18.2.3.4 and 19.2.3.4— Corridors

This provision allows for wheeled equipment that is in use, medical emergency equipment not in use, and patient lift and transportation equipment be permitted to be kept in the corridors for more timely patient care. This provision also allows facilities to place fixed furniture in the corridors, although the placement of furniture or equipment must not obstruct accessible routes required by the ADA. See section 403.5 of the 2010 Standards.

Sections 18.3.2.5.3 and 19.3.2.5.3— Cooking Facilities

Cooking facilities are allowed in a smoke compartment where food is prepared for 30 individuals or fewer (by bed count). The cooking facility is permitted to be open to the corridor, provided that the following conditions are met:

- The area being served is limited to 30 beds or less.
- The area is separated from other portions of the facility by a smoke barrier.
- The range hood and stovetop meet certain standards—
 - ++ A switch must be located in the area that is used to deactivate the cook top or range whenever the kitchen is not under staff supervision.
 - ++ The switch also has a timer, not exceeding 120-minute capacity that automatically shuts off after time runs out.
 - Two smoke detectors must be located no closer than 20 feet and not further than 25 feet from the cooktop or range.

Sections 18.7.5.1 and 19.7.5.1— Furnishings & Decorations

This provision allows combustible decor in any health care occupancy as long as the décor is flame-retardant or treated with approved fire-retardant coating that is listed and labeled, and meet fire test standards. Additionally, decor may not exceed—(1) 20 percent of the wall, ceiling and doors, in any room that is not protected by an approved automatic sprinkler system; (2) 30 percent of the wall, ceiling and doors, in any room (no maximum capacity) that is not protected by an approved, supervised automatic sprinkler system; and (3) 50 percent of the wall, ceiling and doors, in any room with a capacity of 4 people (the actual number of occupants in the room may be less than its capacity) that is not protected by an approved, supervised automatic sprinkler system.

Sections 18.5.2.3 and 19.5.2.3— Fireplaces

This provision allows direct-vent gas fireplaces in smoke compartments without the 1 hour fire wall rating. Fireplaces must not be located inside of any patient sleeping room. Solid fuel-burning fireplaces are permitted and can be used only in areas other than patient sleeping rooms, and must be separated from sleeping rooms by construction of no less than a 1 hour fire resistance wall rating.

Outside Window or Door Requirements

Separate from the requirements of the LSC, we proposed that every health care occupancy patient sleeping room must have an outside window or outside door with an allowable sill height not to exceed 36 inches above the floor with certain exceptions, as follows:

- Newborn nurseries and rooms intended for occupancy for less than 24 hours have no sill height requirements.
- Windows in atrium walls shall be considered outside windows for the purposes of this requirement.
- The window sill height in special nursing care areas shall not exceed 60 inches above the floor.

Ambulatory Health Care Occupancies

The following are key provisions in the 2012 edition of the LSC from Chapter 20, “New Ambulatory Health Care Occupancies” and Chapter 21, “Existing Ambulatory Health Care Occupancies.” We have provided the LSC citation and a description of the requirement at the beginning of each section discussed.

The 2012 edition of the LSC defines an “Ambulatory Health Care Occupancy” as a facility capable of treating 4 or more patients simultaneously on an outpatient basis. CMS regulations at 42 CFR 416.44 require that all ASCs meet the provisions applicable to Ambulatory Health Care Occupancy, regardless of the number of patients served. We believe that hospital outpatient surgical departments are comparable to ASCs and thus should also be required to meet the provisions applicable to Ambulatory Health Care Occupancy Chapters, regardless of the number of patients served.

Sections 20.3.2.1 and 21.3.2.1—Doors

This provision requires all doors to hazardous areas be self-closing or close automatically.

Sections 20.3.2.6 and 21.3.2.6—ABHRs

This provision explicitly allows aerosol dispensers, in addition to gel hand rub dispensers. The aerosol

dispensers are subject to limitations on size, quantity, and location, just as gel dispensers are limited. Automatic dispensers are also now permitted in ambulatory care facilities, provided, among other things, that—(1) they do not release contents unless they are activated; (2) the activation occurs only when an object is within 4 inches of the sensing device; (3) any object placed in the activation zone and left in place must not cause more than one activation; (4) the dispenser must not dispense more than the amount required for hand hygiene consistent with the label instructions; (5) the dispenser is designed, constructed and operated in a way to minimize accidental or malicious dispensing; (6) all dispensers are tested in accordance with the manufacturer's care and use instructions each time a new refill is installed. The provision further defines prior language regarding “above or adjacent to an ignition source” as being “within 1 inch” of the ignition source.

Sections 20.3.5 and 21.3.5— Extinguishment Requirements

This provision is related to sprinkler system requirements and requires the evacuation of a building or the instituting of an approved fire watch when a sprinkler system is out of service for more than 10 hours in a 24-hour period until the system has been returned to service. We proposed to replace this requirement with a separate requirement for evacuation or a fire watch when a sprinkler system is out of service for more than 4 hours. Based on comments received from the industry, we are withdrawing our proposal and adopting the requirement as specified by NFPA for an evacuation of a building or the instituting of an approved fire watch when a sprinkler system is out of service for more than 10 hours in a 24-hour period until the system has been returned to service.

Section 20.3.2.3 and 21.3.2.3— Anesthetizing Locations

This provision requires that anesthetizing locations be protected in accordance with the 2012 edition of NFPA 99, Health Care Facilities Code. The 2012 edition of NFPA 99 does not require a smoke control ventilation system in anesthetizing locations. We proposed a requirement, separate from the LSC and NFPA 99, to require air supply and exhaust systems for windowless anesthetizing locations that is arranged to automatically vent smoke and products of combustion to prevent the circulation of smoke originating from within and outside the operating room.

Residential Board and Care Occupancies

Both the 2000 and 2012 editions of the LSC classify “board and care” as a facility “used for lodging or boarding of 4 or more patients not related to the owners or operators by blood or marriage, for the purpose of providing personal care services.” We proposed that the LSC requirements would apply to a facility regardless of the number of patients served. We note that the only CMS-regulated facilities that would be subject to these provisions would be intermediate care facilities for individuals with intellectual disabilities (ICF-IIDs), which are regulated under 42 CFR part 483, subpart I.

The following are key provisions that appear in the 2012 edition of the LSC for Chapter 32, “New Residential Board and Care Occupancies” and Chapter 33, “Existing Residential Board and Care Occupancies.” We are providing the LSC citation and a description of the requirement at the beginning of each section discussed.

Section 32.2.3.5.3.2—Sprinklers

This revised provision has been expanded to require that sprinkler systems be installed in all habitable areas, closets, roofed porches, balconies and decks of new occupancies.

Sections 32.2.3.5.7 and 33.2.3.5.7—Attics

This new provision requires attics of new and existing facilities to be sprinklered. For both new and existing board and care facilities, if the attic is used for living purposes, storage, or housing of fuel fired equipment, it must be protected with an automatic approved sprinkler system. If the attic is used for other purposes or is not used, then it must meet one of the following requirements: (1) Have a heat detection system that activates the building fire alarm system; (2) have automatic sprinklers; (3) be of noncombustible or limited-combustible construction; or (4) be constructed of fire-retardant-treated wood.

Section 32.3.3.4.7—Smoke Alarms

This provision will only affect newly constructed facilities. Approved smoke alarms are required to be installed inside every sleeping room, outside every sleeping area, in the immediate vicinity of the bedrooms, and on all levels within a resident unit.

Section 33.3.3.2.3—Hazardous Areas

This provision is for existing facilities with impractical evacuation capabilities. All hazardous areas must be separated from other parts of the building by smoke partitions.

Waiver Authority

We proposed to retain our existing authority to waive provisions of the LSC under certain circumstances, further reducing the exposure to additional cost and burden for facilities with unique situations. A waiver may be granted for a specific LSC requirement if we determine that—(1) the waiver would not adversely affect patient/staff health and safety; and (2) it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. In cases where a provider or supplier has been cited for a LSC deficiency, the provider or supplier may request a waiver recommendation from its State Survey Agency or Accrediting Organization (AO) with a CMS-approved Medicare and applicable Medicaid accreditation program. The State Survey Agency or AO reviews the request and makes a recommendation to the appropriate CMS Regional Office. The CMS Regional Office will review the waiver request and the recommendation and make a final decision. CMS will not grant a waiver if patient health and safety is compromised.

The LSC recognizes alternative systems, methods, or devices approved as equivalent by the authority having jurisdiction (AHJ) as being in compliance with the LSC. CMS, as the AHJ for certification, will determine equivalency through the waiver approval process.

State Fire Codes

In addition to the proposed waiver option, a state may request that its state fire safety requirements, imposed by state law, be used in lieu of the 2012 edition of the LSC. The state must submit the request to the appropriate CMS Regional Office, and the Regional Office will forward the request to CMS central office for final determination.³

Fire Safety Evaluation System (FSES)

We retain our authority to apply the Fire Safety Evaluation System (FSES) option within the LSC as an alternative approach to meeting the requirements of the LSC. This includes the determination of how the FSES will be applied to each occupancy and which edition of the FSES is most appropriate to use.

³ CMS reminds such states that compliance with state fire safety requirements, like compliance with the LSC, does not ensure compliance with the ADA requirements.

D. 2012 Edition of the Health Care Facilities Code

The 2012 edition of the NFPA 99, “Health Care Facilities Code,” addresses requirements for both health care occupancies and ambulatory care occupancies, and serves as a resource for those who are responsible for protecting health care facilities from fire and associated hazards. The purpose of this Code is to provide minimum requirements for the installation, inspection, testing, maintenance, performance, and safe practices for health care facility materials, equipment and appliances. This Code is a compilation of documents that have been developed over a 40-year period by NFPA, and is intended to be used by those persons involved in the design, construction, inspection, and operation of health care facilities, and in the design, manufacture, and testing of appliances and equipment used in patient care areas of health care facilities. It provides information on subjects, for example, medical gas and vacuum systems, electrical systems, electrical equipment, and gas equipment. The NFPA 99 applies specific requirements in accordance with the results of a risk-based assessment methodology. A risk-based approach allows for the application of requirements based upon the types of treatment and services being provided to patients or residents rather than the type of facility in which they are being performed. In order to ensure the minimum level of protection afforded by NFPA 99 is applicable to all patient and resident care areas within a health care facility, CMS proposed the adoption of the 2012 edition of NFPA 99, with the exception of chapters 7—Information Technology and Communications Systems for Health Care Facilities; 8—Plumbing; 12—Emergency Management; and 13—Security Management. In the following section, we describe the key provisions within the NFPA 99.

The first three chapters of the NFPA 99 address the administration of the NFPA 99, the referenced publications and definitions.

Chapter 4—Fundamentals

Chapter 4 provides guidance on how to apply NFPA 99 requirements to health care facilities based upon “categories” determined when using a risk-based methodology.

There are four categories utilized in the risk assessment methodology, depending on the types of treatment and services being provided to patients or residents. Section 4.1.1 of NFPA 99

describes Category 1 as, “Facility systems in which failure of such equipment or system is likely to cause major injury or death of patients or caregivers. . . .” Section A.4.1.1 provides examples of what a major injury could include, such as amputation or a burn to the eye. Section 4.1.2 describes Category 2 as, “Facility systems in which failure of such equipment is likely to cause minor injury to patients or caregivers. . . .” Section A.4.1.2 describes a minor injury as one that is not serious or involving risk of life. Section 4.1.3 describes Category 3 as, “Facility systems in which failure of such equipment is not likely to cause injury to patients or caregivers, but can cause patient discomfort. . . .” Section 4.1.4 describes Category 4 as, “Facility systems in which failure of such equipment would have no impact on patient care. . . .”

Section 4.2 requires that each facility that is a health care or ambulatory occupancy define its risk assessment methodology, implement the methodology, and document the results. CMS does not require the submission of risk assessment methods to CMS. However, CMS, will confirm that facilities are using risk assessment methodologies when conducting onsite surveys. We did not propose to require the use of any particular risk assessment procedure. However, if future situations indicate the need to define a particular risk assessment procedure, we would pursue that through a separate notice and comment rulemaking.

Chapter 5—Gas and Vacuum Systems

The hazards addressed in Chapter 5 include the ability of oxygen and nitrous oxide to exacerbate fires, safety concerns from the storage and use of pressurized gas, and the reliance upon medical gas and vacuum systems for patient care. Chapter 5 does not mandate the installation of any systems; rather, if they are installed or are required to be installed, the systems will be required to comply with NFPA 99. Chapter 5 covers the performance, maintenance, installation, and testing of the following:

- Nonflammable medical gas systems with operating pressure below a gauge pressure of 300 psi;
- Vacuum systems in health care facilities;
- Waste anesthetic gas disposal systems (WAGD); and
- Manufactured assemblies that are intended for connection to the medical gas, vacuum, or WAGD systems.

Chapter 6—Electrical Systems

The hazards addressed in Chapter 6 are related to the electrical power distribution systems in health care facilities, and address issues such as electrical shock, power continuity, fire, electrocution, and explosions that might be caused by faults in the electrical system.

Chapter 6 covers the performance, maintenance, and testing of the electrical systems in health care facilities.

Chapter 9—Heating, Ventilation, and Air Conditioning (HVAC)

Chapter 9 requires HVAC systems serving spaces- a portion of the health care facility designated by the governing body that serves a specific purpose or providing health care functions to be in accordance with the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) Standard 170- Ventilation of Health Care Facilities (2008 edition) (<http://www.ashrae.org>).

Chapter 9 does not apply to existing HVAC systems, but applies to the construction of new health care facilities, and the altered, renovated, or modernized portions of existing systems or individual components. Chapter 9 ensures minimum levels of heating, ventilation, and air conditioning performance in patient and resident care areas. Some of the issues discussed in Chapter 9 are:

- HVAC system energy conservation.
- Commissioning.
- Piping.
- Ductwork.
- Acoustics.
- Requirements for the ventilation of medical gas storage and trans-filling areas.
- Waste anesthetic gases.
- Plumes from medical procedures.
- Emergency power system rooms.
- Ventilation during construction.

Chapter 10—Electrical Equipment

Chapter 10 covers the performance, maintenance, and testing of electrical equipment in health care facilities. Much of this chapter applies to requirements for portable electrical equipment in health care facilities, but there are also requirements for fixed-equipment and information on administrative issues.

Chapter 11—Gas Equipment

The hazards addressed in Chapter 11 relate to general fire, explosions, and mechanical issues associated with gas equipment, including compressed gas cylinders.

Chapter 14—Hyperbaric Facilities

Chapter 14 addresses the hazards associated with hyperbaric facilities in health care facilities, including electrical, explosive, implosive, and fire hazards. Chapter 14 sets forth minimum safeguards for the protection of patients and personnel administering hyperbaric therapy and procedures. Chapter 14 contains requirements for hyperbaric chamber manufacturers, hyperbaric facility designers, and personnel operating hyperbaric facilities. It also contains requirements related to construction of the hyperbaric chamber itself and the equipment used for supporting the hyperbaric chamber, as well as administration and maintenance. Many requirements in this chapter are applicable only to new construction and new facilities.

Chapter 15—Features of Fire Protection

Chapter 15 covers the performance, maintenance, and testing of fire protection equipment in health care facilities. Issues addressed in this chapter range from the use of flammable liquids in an operating room to special sprinkler protection. These fire protection requirements are independent of the risk-based approach, as they are applicable to all patient care areas in both new and existing facilities.

Chapter 15 has several sections taken directly from the NFPA 101, including requirements for the following:

- Construction and compartmentalization of health care facilities.
- Laboratories.
- Utilities.
- Heating, ventilation and air conditioning systems.
- Elevators.
- Escalators.
- Conveyors.
- Rubbish Chutes.
- Incinerators.
- Laundry Chutes.
- Fire detection, alarm and communication systems.
- Automatic sprinklers and other extinguishing equipment.
- Compact storage including mobile storage and maintenance.
- Testing of water based fire protection systems.

These sections have requirements for inspection, testing and maintenance which apply to all facilities, as well as specific requirements for existing systems and equipment that also apply to all facilities.

II. Provisions of the Proposed Regulations

This section details the specific regulatory changes for each affected

provider and supplier. Due to the similar content and structure of the regulations for the various providers and suppliers, most of the information presented repeats for each provider.

1. Religious Nonmedical Health Care Institutions: Condition of Participation: Life Safety From Fire (§ 403.744)

In § 403.744, we proposed to maintain most of the current provisions for Religious Nonmedical Health Care Institutions (RNHCI) published in the **Federal Register** on January 10, 2003 (68 FR 1374), except if they conflicted with the 2012 LSC and the requirements were within the provisions detailed in Section I of this preamble regardless of the number of patients the facility served.

In addition, we proposed to—

- Retain the requirements at § 403.744(a)(1)(ii) related to the prohibition of roller latches in health care facilities. We also proposed to update the LSC chapter reference from “19.3.6.3.2 exception number 2” to “19.3.6.3.5 numbers 1 and 2 and 19.3.6.3.6 number 2”.
- Modify the requirements specific to ABHRs, since most of the requirements in our regulation are now included in the 2012 edition of the LSC. Therefore, we proposed to remove the requirements at § 403.744(a)(4)(i), (ii), (iv) and (v).
 - Retain the requirements at § 403.744(a)(4)(iii) related to protection against inappropriate access, and redesignate it at § 403.744(a)(4).
 - Add a new requirement at § 403.744(a)(5) that required facilities with sprinkler systems that were out of service for more than 4 hours in a 24-hour period to evacuate the building or portion of the building affected by the system outage, or establish a fire watch until the system is back in service, notwithstanding the lower standard of the LSC.
 - Add a new requirement at § 403.744(a)(6) to require window sills must not exceed 36 inches above the floor.
 - Retain the requirement at § 403.744(b) related to the Secretary’s waiver authority and state imposed codes. We did not propose to make any changes to this section.
 - Remove the requirements at § 403.744(c) related to the phase-in period for compliance with emergency lighting. In the 2003 final rule, we allowed facilities until March 13, 2006, to upgrade their emergency lighting equipment. This phase-in period has now expired and is no longer a necessary regulatory provision.

- Add a new Condition of Participation at § 403.745 requiring RNHCIs to comply with the 2012 edition of the NFPA 99.
- Chapters 7, 8, 12, and 13 of the NFPA 99 would not apply to RNHCIs.
- Allow for waivers of these provisions under the same conditions and procedures that we currently use for waivers of applicable provisions of the LSC.

2. Ambulatory Surgery Centers: Condition for Coverage: Environment (§ 416.44)

In § 416.44, we proposed that all ASCs meet the provisions applicable to Ambulatory Health Care Centers in the 2012 edition of the LSC, except as detailed in section I of this preamble, regardless of the number of patients the facility serves. We also proposed to retain the provision at § 416.44(b)(2) and (b)(3) related to the Secretary’s waiver authority and state imposed codes. We did not propose to make any changes to these provisions.

In addition, we proposed to—

- Remove the requirements at § 416.44(b)(4) related to the phase-in period for compliance with emergency lighting. This phase-in period has now expired and this phase-in provision is no longer a necessary regulatory provision.
- Modify the requirements specific to ABHRs since most of the requirements are now included in the 2012 edition of the LSC. Specifically, we proposed to remove the requirements at § 416.44(b)(5)(i), (ii), (iv), (A) through (G), and (v).
 - Retain the requirements at § 416.44(b)(5)(iii) related to protection against inappropriate access and redesignate it at § 416.44(b)(4).
 - Add a new requirement at § 416.44(b)(5) to require a facility with a sprinkler system that is out of service for more than 4 hours in a 24-hour period to evacuate the building or portion of the building affected by the system outage, or establish a fire watch until the system is back in service, notwithstanding the lower standard of the 2012 LSC.
 - Add a new requirement at § 416.44(b)(6) to require facilities with windowless anesthetizing locations to have an air supply and exhaust system that automatically vents smoke and products of combustion, prevents recirculation of smoke originating within the operating room, and prevents the circulation of smoke entering the system intake.
 - Add a new paragraph at § 416.44(c) requiring ASCs to comply with the 2012 edition of the NFPA 99.

- Chapters 7, 8, 12, and 13 of the NFPA 99 would not apply to ASCs.
- Allow for waivers of these provisions under the same conditions and procedures that we currently use for waivers of applicable provisions of the LSC.

3. Hospice Care: Condition of Participation: Hospices That Provides Inpatient Care Directly (§ 418.110)

In § 418.110, we proposed that all inpatient hospice facilities meet the provisions applicable to health care occupancies in the 2012 edition of the LSC, with the exceptions discussed in section I of this preamble, regardless of the number of patients they serve. We note that this is not a change in requirements, but merely a clarification that, for LSC purposes, an inpatient hospice facility is considered a health care occupancy. The LSC does not apply to hospice care that is provided in a patient’s home.

In addition, we proposed to—

- Retain the requirements at § 418.110(d)(1)(ii) related to the prohibition of roller latches in health care facilities. We proposed to update the LSC chapter reference from “19.3.6.3.2 exception number 2” to “19.3.6.3.5 numbers 1 and 2 and 19.3.6.3.6 number 2.”
- Retain the provision at § 418.110(d)(2) and (3) related to the Secretary’s waiver authority and state imposed codes. We did not propose any changes to these provisions.
- Modify the requirements specific to ABHRs because most of the requirements are now included in the 2012 edition of the LSC. We proposed to remove the requirements at § 418.110(d)(4)(i), (ii) and (iv). We proposed to retain the requirements at § 418.110(d)(4)(iii) related to protection against inappropriate access and redesignate this requirement at § 418.110(d)(4).
- Add a new requirement at § 418.110(d)(5) to require a facility with a sprinkler system that is out of service for more than 4 hours in a 24-hour period to evacuate the building or portion of the building affected by the system outage, or establish a fire watch until the system is back in service, notwithstanding the lower standard of the 2012 LSC.
- Add a new requirement at § 418.110(d)(6) to require that window sills must not exceed 36 inches.
- Add a new paragraph at § 418.110(e) requiring hospices to comply with the 2012 edition of the NFPA 99.
- Chapters 7, 8, 12, and 13 of the NFPA 99 not would apply to hospices.

- Allow for waivers of these provisions under the same conditions and procedures that we currently use for waivers of applicable provisions of the LSC.

4. Programs of All-Inclusive Care for the Elderly (PACE): Condition of Participation: Physical Environment (§ 460.72)

In § 460.72, we proposed to retain most of the provisions of the existing final regulation for Programs of All-Inclusive Care for the Elderly (PACE) published in the **Federal Register** on January 10, 2003 (68 FR 1374), regardless of the number of patients the PACE facility serves. PACE providers will continue to be required to meet LSC specifications for the type of facilities in which the programs are located (that is, hospitals and office buildings).

In addition, we proposed to—

- Retain the requirements at § 460.72(b)(1)(ii) related to the prohibition of roller latches in health care facilities. We proposed to update the LSC chapter reference from “19.3.6.3.2 exception number 2” to “19.3.6.3.5 numbers 1 and 2 and 19.3.6.3.6 number 2.”
- Retain the provision at § 460.72(b)(2)(i) and (ii) related to the Secretary’s waiver authority and state imposed codes. We did not propose to make any changes to these provisions.
- Remove the requirement at § 460.72(b)(3) related to the phase-in period for compliance with emergency lighting. This phase-in period has now expired and is no longer a necessary regulatory provision.
- Remove the requirements at § 460.72(b)(4) related to the phase-in period for the prohibition of roller latches in health care facilities. This phase-in period has now ended and is no longer a necessary regulatory provision.
- Modify the requirements specific to ABHRs because most of the requirements are now located in the 2012 edition of the LSC. We proposed to remove the requirements at § 460.72(b)(5)(i), (ii), (iv) and (v). We proposed to retain the requirements at § 460.72(b)(5)(iii) related to protection against inappropriate access, and redesignate it to § 460.72(b)(3). We proposed to add a new requirement at § 460.72(b)(4) to require a facility with a sprinkler system that is out of service for more than 4 hours in a 24-hour period to evacuate the building or portion of the building affected by the system outage, or establish a fire watch until the system is back in service, notwithstanding the lower standard of the 2012 LSC.

- Add a new paragraph at § 460.72(d) to require PACE centers to comply with the 2012 edition of the NFPA 99.

- Chapters 7, 8, 12, and 13 of the NFPA 99 would not apply to PACEs.
- Allow for waivers of these provisions under the same conditions and procedures that we currently use for waivers of applicable provisions of the LSC.

5. Hospitals: Condition of Participation: Physical Environment (§ 482.41)

In § 482.41, we proposed that the hospitals meet the health care occupancy provisions of the 2012 edition of the LSC, regardless of the number of patients the hospital serves. There can be multiple occupancy classifications within a single hospital. Therefore, multiple chapters of the code may be applied to a single hospital in accordance with the Multiple Occupancies provisions in 18.1.3 and 19.1.3. We also proposed that hospital outpatient surgical departments are comparable to ASCs and thus should be required to meet the provisions applicable to Ambulatory Health Care Occupancy chapters, regardless of the number of patients served.

In addition, we proposed to—

- Retain most of the provisions from the existing final regulation for hospitals published in the **Federal Register** on January 10, 2003 (68 FR 1374).
- Retain the requirements at § 482.41(b)(1)(ii) related to the prohibition of roller latches in health care facilities. We proposed to update the LSC chapter reference from “19.3.6.3.2 exception number 2” to “19.3.6.3.5 numbers 1 and 2 and 19.3.6.3.6 number 2.”
- Retain the provision at § 482.41(b)(2) and (3) related to the Secretary’s waiver authority and state imposed codes. We did not propose to make any changes to these provisions.
- Remove the requirements at § 482.41(b)(4) related to the phase-in period for compliance with emergency lighting. This phase-in period has now ended, and is no longer a necessary regulatory provision.
- Remove the requirements at § 482.41(b)(5) related to the phase-in period of the prohibition on roller latches in health care facilities. This phase-in period has now expired and is no longer a necessary regulatory provision.
- Retain the requirements at § 482.41(b)(6) through (b)(8), and redesignate them at § 482.41(b)(4) through (b)(6), without changes.
- Modify the requirements specific to ABHRs since most of the requirements are now located in the 2012 edition of

the LSC. We proposed to remove the requirements at § 482.41(b)(9)(i), (ii), (iv) and (v). We proposed to retain the requirement at § 482.41(b)(9)(iii) related to protection against inappropriate access and redesignate it at § 482.41(b)(7).

- Add a new requirement at § 482.41(b)(8) to require a facility with a sprinkler system that is out of service for more than 4 hours in a 24-hour period to evacuate the building or portion of the building affected by the system outage, or establish a fire watch until the system is back in service, notwithstanding the lower standard of the 2012 LSC.

- Add a new requirement at § 482.41(b)(9) that to require facilities with windowless anesthetizing locations to have an air supply and exhaust system that automatically vents smoke and products of combustion, prevents recirculation of smoke originating within the surgical suite, and prevents the circulation of smoke entering the system intake.

- Add a new requirement at § 482.41(b)(10) to require a minimum 36 inch window sill, with certain exceptions for newborn nurseries, rooms intended for occupancy for less than 24 hours, and special nursing care areas.

- Add a new paragraph at § 482.41(c) requiring hospitals to comply with the 2012 edition of the NFPA 99.

- Chapters 7, 8, 12, and 13 of the NFPA 99 would not apply to hospitals.

- Allow for waivers of these provisions under the same conditions and procedures that we currently use for waivers of applicable provisions of the LSC.

6. Long-Term Care Facilities: Condition of Participation: Physical Environment (§ 483.70)

In § 483.70, we proposed to retain most of the provisions of the existing final regulation for LTC facilities published in the **Federal Register** on January 10, 2003 (68 FR 1374) regardless of the number of residents the facility serves.

In addition, we proposed to—

- Retain the requirements at § 483.70(a)(1)(ii) related to the prohibition of roller latches in health care facilities. We proposed to update the LSC chapter reference from “19.3.6.3.2 exception number 2” to “19.3.6.3.5 numbers 1 and 2 and 19.3.6.3.6 number 2.”
- Retain the provision at § 483.70(a)(2) and (3) related to the Secretary’s waiver authority and state imposed codes. We did not propose to make any changes to these provisions.

- Remove the requirements at § 483.70(a)(4) related to the phase-in period for compliance with emergency lighting. This phase-in period has now expired and is no longer a necessary regulatory provision.

- Remove the requirements at § 483.70(a)(5) related to the phase-in period for the prohibition of roller latches in health care facilities. This phase-in period has now ended and is no longer a necessary regulatory provision.

- Modify the requirements specific to ABHRs since most of the requirements are now included in the 2012 edition of the LSC. Specifically, we proposed to remove the requirements at § 483.70(a)(6)(i), (ii), (iv) and (v). We proposed to retain the requirement at § 483.70(a)(6)(iii) related to protection against inappropriate access, and redesignate it at § 483.70(a)(4).

- Retain the requirements at § 483.70(a)(7)(i), (ii), (iii), (A) and (B) related to installation, inspection, testing and maintenance of battery operated single station smoke alarms, without changes. We proposed to redesignate these requirements at § 483.70(a)(5) (i), (ii), (iii) (A) and (B).

- Retain the requirements at § 483.70(a)(8)(i) and (ii) related to the installation of supervised automatic sprinklers and the testing, inspection and maintenance of the sprinkler system. We proposed to redesignate these requirements as § 483.70(a)(6)(i) and (ii), without changes.

- Add a new requirement at § 483.70(a)(7) to require a minimum 36 inch window sill.

- Add a new paragraph at § 483.70(b) to require LTC facilities to comply with the 2012 edition of the NFPA 99.

- Chapters 7, 8, 12, and 13 of the NFPA 99 would not apply to LTC facilities.

- Allow for waivers of these provisions under the same conditions and procedures that we currently use for waivers of applicable provisions of the LSC.

7. Intermediate Care Facilities for Individuals With Intellectual Disabilities: Condition of Participation: Physical Environment (§ 483.470)

In § 483.470, we proposed to retain most of the provisions of the existing regulation for ICFs/IID. In accordance with the regulatory requirements at § 483.470 (j)(2), ICFs/IID will continue to be permitted to meet either the Residential Board and Care Occupancies chapter or the Health Care Occupancy chapter of the LSC, as appropriate, in accordance with the determination of the State survey agency, regardless of

the number of patients the facility serves.

In addition, we proposed to—

- Not adopt the provisions at Chapters 32.3.2.11.2 and 33.3.2.11.2, related to “lockups.” Lock-ups, as described in the LSC, are not appropriate under any circumstances for board and care facilities.

- Retain the requirements at § 483.470(j)(1)(ii) related to the prohibition of roller latches in health care facilities. We proposed to update the LSC chapter reference from “19.3.6.3.2 exception number 2” to “19.3.6.3.5 numbers 1 and 2 and 19.3.6.3.6 number 2.”

- Retain the requirements at § 483.470(j)(2), (3), and (4).

- Remove the requirements at § 483.470(j)(5) related to the phase-in period for compliance with emergency lighting. This phase-in period has expired and is no longer a necessary regulatory provision.

- Remove § 483.470(j)(6) related to the phase-in period for the prohibition of roller latches in health care facilities. This phase-in period has now ended and is no longer a necessary regulatory provision.

- Retain the provision at § 483.470(j)(7)(A) and (B) related to the Secretary’s waiver authority and state imposed codes. We proposed to redesignate these provisions at § 483.470(j)(5)(A) and (B) without change.

- Modify the requirements specific to ABHRs since most of the requirements are now included in the 2012 edition of the LSC. Specifically, we proposed to remove the requirements at § 483.470(j)(7)(ii)(A), (B), (D) and (E). We proposed to retain the requirements at § 483.470(j)(7)(ii)(C) related to protection against inappropriate access, and redesignate it at § 483.470(j)(5)(ii).

- Add a new requirement at § 483.470(j)(5)(iii) to require a facility with a sprinkler system that is out of service for more than 4 hours in a 24-hour period to evacuate the building or portion of the building affected by the system outage, or establish a fire watch until the system is back in service, notwithstanding the lower standard of the 2012 LSC.

- Add a new paragraph at § 483.470(j)(5)(iv) to require ICF–IIDs to comply with the 2012 edition of the NFPA 99.

- Chapters 7, 8, 12, and 13 of the NFPA 99 would not apply to ICF–IIDs.

- Allow for waivers of these provisions under the same conditions and procedures that we currently use for waivers of applicable provisions of the LSC.

8. Critical Access Hospitals: Condition of Participation: Physical Plant and Environment (§ 485.623)

In § 485.623, we proposed to retain most of the provisions of the existing final regulation for Critical Access Hospitals (CAHs) published in the **Federal Register** on January 10, 2003 (68 FR 1374), regardless of the number of patients the facility serves.

In addition, we proposed to—

- Retain the requirements at § 485.623(d)(1)(ii) related to the prohibition of roller latches in health care facilities. We proposed to update the LSC chapter reference from “19.3.6.3.2 exception number 2” to “19.3.6.3.5 numbers 1 and 2 and 19.3.6.3.6 number 2.”

- Retain the requirements at § 485.623(d)(2) through (d)(4), without any changes.

- Remove the requirement at § 485.623(d)(5) related to the phase-in period for compliance with emergency lighting. This phase-in period has now expired and is no longer a necessary regulatory provision.

- Remove the requirement at § 485.623(d)(6) related to the phase-in period of the prohibition on roller latches in health care facilities. This phase-in period has also expired and is no longer a necessary regulatory provision.

- Modify the requirements specific to ABHRs since most of the requirements are now incorporated in the 2012 edition of the LSC. Specifically, we proposed to remove the requirements at § 485.623(d)(7)(i), (ii), (iv) and (v). We proposed to retain the requirement at § 485.623(d)(7)(iii) related to protection against inappropriate access and redesignate it at § 485.623(d)(5).

- Add a new requirement at § 485.623(d)(6) to require a facility with a sprinkler system that is out of service for more than 4 hours in a 24-hour period to evacuate the building or portion of the building affected by the system outage, or establish a fire watch until the system is back in service, notwithstanding the lower standard of the 2012 LSC.

- Add a new requirement at § 485.623(d)(7) to require facilities with windowless anesthetizing locations to have an air supply and exhaust system that automatically vents smoke and products of combustion, prevents recirculation of smoke originating within the surgical suite, and prevents the circulation of smoke entering the system intake.

- Add a new requirement at § 485.623(d)(8) to require a minimum 36 inch window sill, with the exception of

newborn nurseries, rooms intended for occupancy for less than 24 hours, and special nursing care areas. Windows in atrium walls are considered outside windows for the purposes of this provision.

- Add a new paragraph at § 485.623(e) requiring CAHs to comply with the 2012 edition of the NFPA 99.
- Chapters 7, 8, 12, and 13 of the NFPA 99 would not apply to CAHs.
- Allow for waivers of these provisions under the same conditions and procedures that we currently use for waivers of applicable provisions of the LSC.

III. Analysis of and Responses to Public Comments

We received over 362 public comments concerning the LSC proposed rule, “Fire Safety Requirements for Certain Health Care Facilities” (79 FR 21552), which this rule is finalizing. The majority of the comments were from medical societies, hospital associations, hospitals, medical centers, LTC facilities, and advocate groups for different provider types. The remaining comments were from individual physicians, nurses, facility engineers, and private citizens. A summary of the major issues and our responses follow:

LSC—Health Care Occupancies

We note that only the following CMS-regulated facilities would be subject to these comments, unless otherwise specified: Hospitals, CAHs, LTC facilities, hospices, RNHCIs, and PACE facilities.

Comment: One commenter recommended adding language to the LTC requirements at § 483.70, similar to other provider sections, about establishing a firewatch or evacuating a building when a sprinkler system is out of service for more than 4 hours in a 24 hour period. The commenter stated that adding this requirement to the LTC regulations would provide protection for the residents of nursing homes when the sprinkler system is out of service.

Response: We thank the commenter for their comment. We agree that requiring additional safety measures when a sprinkler system is out of service for a significant amount of time is important in the LTC facility environment. We originally intended to include this regulatory requirement in the proposed rule; however, it was inadvertently left out of regulations text. We would like to clarify that we have removed the 4 hour requirement and are now following the LSC requirement of implementing a fire watch or building evacuation if the sprinkler system is out for more than 10 hours in a 24-hour

period. We have made the appropriate correction in this final rule, and have included the appropriate language in the regulation text at § 483.70(a)(8).

Comment: One commenter stated that the proposed rule does not address whether a hospital that is not fully sprinklered and provides swing beds needs to meet the more stringent requirements from S & C–13–55–LSC that applies to hospitals.

Response: The survey and certification memorandum that the commenter references is related to the requirements for the installation and maintenance of automatic sprinkler systems in LTC facilities. Swing beds are not considered to be LTC facilities. Rather, swing beds are part of a hospital or CAH and must meet the LSC provisions applicable to those facility-types. Therefore, swing beds are only required to meet certain specified regulations for LTC facilities, not including the LTC facility sprinkler system requirements.

Comment: CMS solicited public comment to determine if a phase-in period of 12 years is enough time for facilities to install fully compliant sprinkler systems in high-rise buildings, and asked whether other provider types are, or may be, located in a high-rise building. We received very few responses to this solicitation. The majority of the commenters who responded stated that 12 years was enough time to fully sprinkler a high-rise healthcare facility, and some commenters stated that 12 years was more than enough time. We did not receive any comments stating that this was not enough time to install sprinkler systems in high-rise buildings. Commenters also stated that ambulatory care and residential board and care occupancies may also be located within high-rise hospital buildings.

Response: We agree with commenters that 12 years is an appropriate phase-in period, and we are finalizing this proposal with a phase-in period of 12 years from the publication date of this rule. We thank the commenters for the input on other occupancy types that could be located in high-rise buildings. Since these occupancy types are located in hospital buildings, we have already accounted for them in our total number of high-rise hospital buildings.

Comment: One commenter asked whether an alternative care setting used to provide services to PACE participants would be required to meet the ABHR requirements and the sprinkler system outage requirement.

Response: All PACE center facilities are required to meet the requirements found at 42 CFR 460.72, “Physical

Environment”. This includes meeting all the requirements for the specific occupancy type they fall under within the LSC. This requirement also applies to the type of setting in which a center is located, which would include alternative care settings.

Comment: Some commenters have expressed concern regarding cooking facilities that are open to the corridor. One commenter did not support cooking facilities being open to the corridor and believes that it could increase the number of fires in these facilities due to misuse. Other commenters supported having cooking facilities that are open to the corridor and believed it would promote person-centered care and make for a more home-like atmosphere. A few commenters suggested changes to this requirement, including—

- Requiring that an operational exhaust hood for the cooking facility should not contribute to nor create an egress corridor return air plenum (an air pressure differential between different parts of a building);
- Requiring that the activate/deactivate switch be hidden from view;
- Requiring that staff must be present when a range hood or stovetop is in use; and
- Requiring that cooking facilities be screened off when not in use to prevent resident access.

Response: We appreciate the suggestions concerning cooking facilities in LTC facilities; however we feel that the LSC includes many requirements to make sure that cooking facilities are safe. All facilities are ultimately responsible for assuring the safety of all residents at all times, and they may choose to implement additional safety precautions, such as those described above, to further assure safety. Since other fire safety standards prohibit the use of a corridor as a plenum in the facility ventilation system, the introduction of a cooking exhaust fan would need to be accounted for in the design and not create a corridor plenum situation.

Comment: One commenter suggested that, in addition to installing sprinklers in existing high-rise health care occupancies, we should also require existing non high-rise health care occupancies to install sprinkler systems throughout their buildings.

Response: While we encourage all facilities to install sprinklers, there is not enough evidence for CMS to support requiring all facilities to be retrofitted for sprinklers. In the event that the NFPA should incorporate a requirement for universal sprinklers into a future edition of the LSC, we would strongly consider adopting such a change.

Comment: Some commenters stated that medical equipment should not be permanently fixed in the corridors. This could present a safety issue during a fire or evacuation and also makes the corridor smaller in size.

Response: We follow the LSC requirement for medical equipment in the corridors, which allows any equipment that is in use, including medical emergency equipment and patient lift and transportation equipment to be permitted to be kept in the corridors for more timely patient care. Facilities may place fixed furniture in the corridors, although the placement of furniture or equipment must not obstruct accessible routes required by the ADA. The potential risks of this change are low because the LSC has shifted to a “defend in place” approach that does not rely upon evacuation as the primary means of fire safety.

Comment: One commenter suggested that CMS only permit decorations in rooms that have sprinklers in them. Furthermore, the commenter stated that, with such sprinkler protection, there would not be a need to mandate a maximum percentage of space that could be covered by decorations.

Response: The NFPA, through its committee of experts and consensus process, determined that decorations may not exceed—(1) 20 percent of the wall, ceiling and doors, in any room that is not protected by an approved automatic sprinkler system; (2) 30 percent of the wall, ceiling and doors, in any room that is not protected by an approved, supervised automatic sprinkler system; and (3) 50 percent of the wall, ceiling and doors, in any room with a capacity of 4 people (the actual number of occupants in the room may be less than its capacity) that is not protected by an approved, supervised automatic sprinkler system. We believe that it is appropriate to adopt these consensus standards. We also note that the health care occupancy type that is most likely to have a significant amount of room décor is a LTC facility, given that patients reside in such facilities for longer periods of time, and that all LTC facilities are required to have sprinklers installed throughout their buildings.

Comment: One commenter recommended that two smoke detectors be located no closer than 20 feet and not further than 25 feet from a fireplace.

Response: There are currently no requirements for smoke detectors within a certain distance of a fireplace. If a facility wants to add additional smoke detectors closer to fireplaces they are free to do so. An electrically supervised (connected to the facility fire alarm panel) carbon monoxide detector is

required in the room containing the fireplace to increase the level of safety for the residents or patients in the facility. We believe that the current requirements for sprinklers and smoke detectors are sufficient to assure resident safety, particularly because fireplaces are only in open areas and not permitted in resident rooms. The health care occupancy type that is most likely to have a fireplace is a LTC facility, because there are more options for the location of fireplaces in LTC facilities, making the facilities feel more home-like. All LTC facilities should be fully sprinklered, with smoke detectors in designated areas of the facilities, such as corridors and resident sleeping areas.

LSC—ASC

We note that the only CMS-regulated facilities that would be subject to these comments would be ambulatory surgical centers, which are regulated under 42 CFR part 416.

Comment: One commenter believes that we should allow grandfathering for ASCs that meet previous editions of the LSC. The commenter states that trying to modify an existing facility to meet provisions in the 2012 edition of the LSC would have significant cost implications for existing ASCs, and may cause ASCs to close.

Response: For existing ASCs, most provisions in the 2012 edition of the LSC are similar to past editions. Furthermore, existing facilities in compliance with previous editions of the LSC are not required to upgrade to a later edition of the LSC for certain provisions, unless there is a building renovation, which could require compliance with new occupancy chapters. In addition, an ASC may also request a waiver for a specific provision of the LSC, further reducing the exposure to additional costs and burden for ASCs with unique situations that can justify the application of waivers and will not endanger the health and safety of patients. A waiver may be granted for a specific LSC requirement if we determine: (1) The waiver would not adversely affect patient and staff health and safety; and (2) it would impose an unreasonable hardship on the facility to meet a specific LSC requirement.

Comment: One commenter suggested an increase to Medicare reimbursements to freestanding ASCs, stating that the current reimbursement model is not sufficient.

Response: We thank the commenter for this comment; however, reimbursement rates are beyond the scope of this rule. We recommend submitting such comments separately to CMS or commenting on the next

Outpatient Prospective Payment System/Ambulatory Surgical Centers (OPPS/ASC) proposed rule.

LSC—Board & Care

We note that the only CMS-regulated facilities that would be subject to these comments would be intermediate care facilities for individuals with intellectual disabilities (ICF—IIDs), which are regulated under 42 CFR part 483, subpart I.

Comment: One commenter expressed concern about a process that permits board and care occupancies to assess their own evacuation capacity. The commenter notes that facilities have strong incentive to overestimate their evacuation capability in order to avoid more stringent requirements. The commenter believes that this provision would undermine CMS’ efforts to improve safety.

Response: CMS looks at the assessment of evacuation capabilities as part of the survey process to verify the accuracy of the self-evaluation. CMS requires surveyors to independently determine the evacuation difficulty score at each survey and use the determined evacuation difficulty score to perform the survey.

Comment: CMS solicited comments regarding whether or not CMS should require existing facilities to install smoke alarms in accordance with section 9.6.2.10, which would require the addition of smoke alarms inside sleeping rooms, outside every sleeping area, in the immediate vicinity of the bedrooms, and on all levels within the resident units. The commenters who responded to this solicitation unanimously agreed that CMS should not require existing residential board and care facilities to install smoke alarms inside sleeping rooms, outside every sleeping area, in the immediate vicinity of the bedrooms, and on all levels within the resident units. All of the commenters believed that it would be an undue burden, and suggested that, in order for them to meet this requirement, a payment rate adjustment would be in order.

Response: We agree that a regulation to require smoke alarms is not necessary at this time, as there is not enough evidence for us to make it a requirement to upgrade existing facilities. We strongly encourage existing residential board and care facilities to install smoke alarms inside sleeping rooms, outside every sleeping area, in the immediate vicinity of the bedrooms, and on all levels within the resident units to provide an additional level of safety. With regards to any payment rate adjustment, we remind commenters that

payment rates are not within the scope of this rule, but recommend submitting comments on such issues separately to CMS.

Comment: The LSC requires newly constructed residential board and care occupancies to install sprinklers in habitable areas, closets, roofed porches, balconies and decks. In the proposed rule, CMS recommended that existing facilities also install sprinklers in the same areas. Commenters stated that CMS should continue to recommend, but not require, sprinklers for existing residential board and care. The commenters also stated that if CMS were to require the installation of sprinklers in those areas that they would need to have at least a 5 year phase-in period, and that a payment rate adjustment would be in order for affected facilities.

Response: We thank the commenters for their comments regarding this topic. We would like to clarify that sprinklers are only required for new residential board and care construction and existing facilities rated as impractical evacuation capability. The facility itself determines their evacuation capability, and must ensure that the appropriate safety protections are in place to protect the patients and staff within the building, if they are determined to have an impractical evacuation capabilities. CMS regulations require the use of NFPA 101A, Guide on Alternative Approaches to Life Safety, 2010 Edition, Chapter 6, Evacuation Capability Determination for Board and Care Occupancies to determine the evacuation difficulty index. CMS continues to recommend that existing facilities install sprinklers in habitable areas, closets, roofed porches, balconies and decks as an additional safety precaution. Decks being an exterior floor supported on at least two opposing sides by an adjacent structure and/or posts, piers, or other independent supports and, porches being an outside walking area having a floor that is elevated more than 8 in. (203 mm) above grade. With regards to any payment rate adjustment, we remind commenters that payment rates are not within the scope of this rule, but recommend submitting such comments separately to CMS.

Comment: A few commenters expressed concern with having to install sprinklers in attics used for living purposes, storage, or housing of fuel-fired equipment. Commenters also expressed concern with having to install either a heat detection system that activates the building fire alarm, or having automatic sprinklers, or constructing attics of noncombustible or

limited-combustible construction or constructing attics of fire-retardant-treated-wood if the attic is used for other purposes. The commenters stated that compliance with this provision would be expensive and possibly warrant a payment rate adjustment. The commenters requested a minimum 5-year phase-in period to install new protection systems in attics.

Response: A 5-year phase-in period is, we believe, significantly more time than is actually needed to meet this requirement. According to the information gathered by CMS from the installation of sprinklers in LTC facilities requirement, which was required to be in compliance by August 13, 2013, most LTC facilities were able to install sprinklers throughout their entire buildings in 5 years. Attics have much less square footage than an entire building. We believe that 3 years from the effective date of this rule would be an ample amount of time to come into compliance with this requirement, therefore, we are finalizing a 3-year phase-in period. With regards to any payment rate adjustment, we remind commenters that payment rates are not within the scope of this rule, but recommend submitting such comments separately to CMS.

Comment: One commenter requested additional explanation regarding our proposed exclusion of the lock-up provisions contained within the board and care occupancy chapters of the LSC. The commenter proposed an alternative to this exclusion, which would allow lock-ups while requiring a specific staffing ratio requirement.

Response: Lock-ups are incidental use areas where occupants are restrained and such occupants are mostly incapable of self-preservation because of security measures not under the occupants' control. Lock-ups are prohibited in Medicare and Medicaid participating ICF-IID facilities. The health and safety regulations for ICF-IIDs at 42 CFR 483.450 effectively prohibit the use of lock-up spaces as described in the LSC; therefore, there should be no lock-up space in the building.

LSC—General

Comment: Some commenters questioned whether Tentative Interim Amendments (TIAs) that have been written with regards to the NFPA 101 and NFPA 99 apply, since some of them were published after CMS published the proposed rule.

Response: Because the TIAs are considered a component of the LSC, the following TIAs issued prior to the publication of the proposed rule on

April 16, 2014, will apply to all facilities. We have also included language in the final regulations text to this effect. The following TIAs will apply:

(i) TIA 12–1 to NFPA 101, issued August 11, 2011.

(ii) TIA 12–2 to NFPA 101, issued October 30, 2012.

(iii) TIA 12–3 to NFPA 101, issued October 22, 2013.

(iv) TIA 12–4 to NFPA 101, issued October 22, 2013.

(v) TIA 12–2 to NFPA 99, issued August 11, 2011.

(vi) TIA 12–3 to NFPA 99, issued August 9, 2012.

(vii) TIA 12–4 to NFPA 99, issued March 7, 2013.

(viii) TIA 12–5 to NFPA 99, issued August 1, 2013.

(ix) TIA 12–6 to NFPA 99, issued March 3, 2014.

Comment: Some commenters agree with the continued prohibition of roller latches in facilities, as they are a safety concern. However, some commenters stated that some doors are not required to latch (that is, toilet rooms, bathrooms) and that roller latches should be allowed on those particular doors with no penalty. A few commenters also discussed the importance of roller latches in psychiatric units. Those commenters stated that roller latches have limited uses on psychiatric units to address patients barricading themselves in their rooms or using hanging points (on the levers) for potential suicides.

Response: CMS would like to clarify that roller latches are prohibited on all corridor doors. However, doors to toilet rooms, bathrooms, shower rooms, sink closets, and similar auxiliary spaces that do not contain flammable or combustible materials would be allowed to have roller latches. We do not believe that permitting the use of roller latches in auxiliary spaces presents a danger to patients or staff. Therefore, we have revised the proposed regulatory requirement throughout this rule to clarify this distinction. We note that this requirement is different than the 2012 LSC requirement for door latching.

Comment: A few commenters expressed concern with Chapter 43, “Renovation”, of the NFPA 101. The commenters suggested that the date of submission of construction plans to the State for plan review should be the “trigger” to apply chapter 43. They also stated that facilities have no control over when plans are actually reviewed; for example, a building may be designed under the current 2000 NFPA 101 code, but may not be approved until after the final publication of this rule, which means they would have to meet the

2012 NFPA 101 code. Commenters also asked CMS to define “constructed” in reference to determining whether a building is consider new or existing.

Response: Buildings that have not yet received all pre-construction governmental approvals required by the jurisdictions in which the building is to be built before the rule’s effective date, or those buildings that begin construction after the effective date of this regulation, would be required to meet the New Occupancy chapters of the 2012 edition of the LSC. While we share the commenter’s concern regarding plans that may be under review for a lengthy period of time, we do not believe that it is in the best interest of patient and staff safety to permit constructing of a building that does not meet the codes that are effective as of the day that construction begins.

Comment: One commenter suggested that hospitals and ASCs should be required to test their emergency generators when they are disconnected from the normal utility.

Response: Facilities are required to test their load emergency power systems on a monthly basis, per the requirements of section 8.4.1, 2010 edition of NFPA 110, Standard for Emergency and Standby Power Systems.

Comment: Some commenters suggested that CMS should provide training for surveyors and providers regarding the new codes, updated guidance, and forms. One commenter suggested that CMS not only provide training for State fire authorities, but also for architects, engineers, and building officials.

Response: CMS agrees that training is very important, and does provide training for state surveyors who work with CMS to enforce these regulations. However, we do not provide training for any provider/supplier type for any health and safety rules, including those related to the LSC. We encourage providers/suppliers, architects, engineers or building officials to contact the NFPA and their relevant industry associations to identify their specific training needs and appropriate offerings that may address those needs with regards to the LSC.

Comment: Many commenters support the adoption of the 2012 NFPA 101 LSC. However, the majority of those commenters also stated that CMS should adopt the 2012 NFPA 101 in its entirety, without any changes to the provisions.

Response: Through our surveys, comments, and experience, we have determined that for the health and safety of patients and staff we could not

adopt the LSC in its entirety. We believe that the provisions that we have not adopted are not appropriate for Medicare and Medicaid providers and suppliers. For example, we continue to prohibit roller latches on corridor doors because, in our view, they present a safety hazard. Also, we are not adopting the provision regarding lock-ups because lock-ups are prohibited in the ICF-IIDs regulations, separate from the LSC. This practice is permitted under the National Technology Transfer and Advancement Act (<http://www.gpo.gov/fdsys/pkg/PLAW-104publ113/pdf/PLAW-104publ113.pdf>), which does not mandate that we use an entire code without exceptions if we determine it is impractical or unnecessary to do so.

Comment: Several commenters requested CMS to revise the rule to allow health care facilities to choose other codes that are nationally recognized, such as the International Building Code and International Fire Code. The commenters asserted that referencing only the NFPA’s LSC creates conflict for many jurisdictions that enforce other equivalent or more stringent fire and life safety requirements. The commenters further stated that, by not referencing other applicable codes, CMS favors one code to the detriment of other codes.

Response: We continue to specifically cite the LSC because under sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act, nursing homes must meet the provisions of “such edition (as specified by the Secretary in regulation) of the LSC of the National Fire Protection Association” To avoid confusion, and to be consistent for all provider types, we require the LSC for all facilities. This is especially applicable for facilities with mixed occupancies. For example, a health care facility’s west wing could be a nursing home while the rest of the facility is a hospital. It would be impractical as well as burdensome for the facility to follow the LSC for the nursing home and another health and safety code for the hospital. The regulation reflects this by requiring a single code for all health care facilities. The NFPA and the IBC organizations try to align their respective requirements as much as possible and the 2012 LSC is a reflection of that effort. We also note that jurisdictions are permitted to enforce more stringent requirements on top of those required by the Federal LSC requirements.

Comment: Some commenters requested CMS to adopt updated versions of the LSC more quickly in the future. One commenter requested that CMS should adopt any updated version

of the LSC within 90 days of the LSC publication.

Response: We cannot adopt the LSC within 90 days of the LSC publication because we are required to give notice to the public that we are proposing to revise a regulation. Once we notify the public of the proposal, the public must have the opportunity to comment on the revisions, and we must respond to the comments before the update becomes final and legally enforceable. We do review each edition of the NFPA 101 and NFPA 99 every 3 years to see if there are any significant provisions that we need to adopt and will continue to do so. We have reviewed the 2015 edition of the LSC and do not feel that there are any significant provisions that need to be addressed at this time.

Comment: Many commenters have suggested that CMS develop a process to be able to permit a facility to apply for a waiver prior to being cited for a deficiency. The commenters stated that it is currently standard practice for CMS to decline to review any requests for waivers filed before there has been a deficiency cited during a survey.

Response: We agree and have implemented a process to approve categorical waivers. We do not consider it always necessary for a facility to be cited for a deficiency before it can apply for or receive a waiver. This is particularly the case when we have evaluated specific provisions of the LSC, determined that a waiver would apply to all similarly-situated facilities with respect to the LSC requirement in question, and issued a public communication describing the specifics of such a categorical waiver, including any particular requirements that must be met in order for the waiver to apply to a facility. Facilities may still submit requests for non-categorical waivers, which is currently done after a citation of a deficiency is found on a fire safety survey. The waiver request includes the reason why the waiver of a specific life safety requirement cannot be complied with, and is submitted as part of the facility Plan of Correction of Deficiencies found on the survey to the State Agency or Regional Office for review and approval/disapproval by the CMS Regional Office. For example, CMS released the following Survey & Cert (S&C) Memos on categorical waivers, and the application process:

- April 19, 2013—S&C: 13–25: Relative Humidity (RH): Waiver of LSC Anesthetizing Location Requirements; Discussion of Ambulatory Surgical Center (ASC) Operating Room Requirements <http://www.cms.gov/Medicare/Provider-Enrollment-and->

Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-25.pdf.

- August 30, 2013—S&C: 13–58: 2000 Edition National Fire Protection Association (NFPA) 101® LSC Waivers <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-58.pdf>.
- September 26, 2014—S&C: 14–46 Categorical Waiver for Power Strips Use in Patient Care Areas <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-14-46.pdf>.

Comment: One commenter expressed concern with the proposal that facilities maintain antifreeze in their sprinkler systems in certain proportions. The commenter recommended that CMS withdraw this requirement, or reconsider its inclusion, until products become available which do not require more than 50 percent antifreeze (in compliance with the proposed rule), but which would still keep the sprinkler systems from freezing.

Response: Where traditional antifreeze solutions for existing systems remain an option, consideration should be given to alternatives to using antifreeze. Antifreeze is not required to prevent the freezing of systems. Owners should investigate alternative methods to prevent the freezing of wet pipe systems in environments or locations that may be subject to freezing.

Comment: A few commenters suggested that CMS allow facilities the opportunity to apply for a waiver rather than install sprinklers if they can show that staff and patients can be quickly evacuated or that they offer the same level of protection without the sprinklers.

Response: Sprinklers are considered to be a basic level of protection for new and certain rehabilitated buildings, and we do not believe that it would be in the best interest of building occupants to waive these sprinkler requirements. Furthermore, we only require universal retrofitting to add sprinklers in high-rise health care occupancies, LTC facilities, in the attics of board and care facilities. Impractical evacuation capability facilities are all required to be protected throughout by an approved automatic sprinkler system. There is strong evidence that sprinklers in these particular environments are an essential fire safety feature; therefore we do not

believe it is in the best interest of patients and staff to waive these requirements under any circumstances. <http://www.facilitiesnet.com/firesafety/article/Fire-Safety-Facilities-Management-Fire-Safety-Feature-1620>.

Comment: Some commenters expressed concern with the use of the term “inappropriate access” in regards to the placement of ABHRs. The commenters requested clarification of what is meant by the regulatory requirement that dispensers are installed in a manner that adequately protects against inappropriate access.

Response: As stated in the ABHR final rule published in September 22, 2006 (71 FR 55326), there are certain patients or resident populations, such as residents of dementia wards, who may misuse ABHR solutions, which are both toxic and flammable. As a toxic substance, ABHR solutions are very dangerous if they are ingested, placed in the eyes, or otherwise misused. As a flammable substance, ABHR solutions could be used to start fires that endanger lives and destroy property. Due to disability or disease, some patients are more likely to harm themselves or others by inappropriately using ABHR solutions. In order to avoid any and all dangerous situations, a facility will have to take all appropriate precautions to secure the ABHR dispensers from inappropriate access. This may mean that facilities choose to not install ABHR dispensers in corridors in or near dementia or psychiatric units. It may also mean that facilities choose to install ABHR dispensers only in areas that can be easily and frequently monitored, such as in view of a nursing station or a continuously monitored security camera. These are just a few of the many options that facilities may choose to utilize in securing ABHR dispensers against inappropriate access.

Comment: A few commenters expressed concern with the requirement in Chapter 8 of the 2012 edition of NFPA 101, which stipulates that all penetrations of a fire-rated wall or floor must be protected by an “Approved Fire Stop System or Device,” instead of simply offering protection equivalent to the surfaces penetrated, as was required in the 2000 edition of NFPA 101. The commenters stated that this requirement would result in higher costs for new facilities required to use proprietary devices or systems. If CMS requires an existing facility to meet this new standard due to application for a new provider agreement, the cost implications could be even greater as existing wires and other penetrating elements would need to be removed then reinstalled as necessary in order to

comply. The commenters requested that existing facilities be exempted from this requirement.

Response: The 2012 edition of NFPA 101, Section 8.3.5 states “The provisions of 8.3.5 shall not apply to approved existing materials and methods of construction used to protect existing through-penetrations and existing membrane penetrations in fire walls, fire barrier walls, or fire resistance-rated horizontal assemblies, unless otherwise required by Chapters 11 through 43.” Section 8.3.5.1 requires firestop systems and devices; therefore, this requirement would not be applicable to existing installations.

Comment: Many commenters expressed concerns with our proposed regulation regarding fire watches. We proposed to require a fire watch if a sprinkler system is out for more than 4 hours. Commenters explained that most system maintenance extends over an 8-hour period of time during a normal workday, and that, during the outage additional staff with expertise in sprinkler system operation are present to address sprinkler system problems. Additionally, during a sprinkler system outage, the fire alarms are still functioning to detect a fire. Therefore, commenters recommend only requiring the fire watch if the system will be out of service for 10 hours or more.

Response: We agree that most sprinkler system outages occur during a regular work day with sufficient staff levels to provide appropriate monitoring and assure patient safety from fire. Therefore, we are withdrawing the proposal that all system shutdowns of more than 4 hours would require a fire watch. We believe a fire watch would consist of dedicated staff with no other duties constantly circulating throughout the facility or the portion of the facility affected by the sprinkler system impairment looking for a fire, fire hazards or hazardous conditions that may affect the fire safety of the facility. Facilities may wish to maintain documentation of the rounds of a fire watch, but this is not required.

Comment: The 2000 edition of the NFPA 99 required separate ventilation systems for windowless anesthetizing locations in all newly constructed health care occupancies. Although the NFPA removed the ventilation system requirement from the 2012 edition of the NFPA 99, CMS proposed to retain the ventilation requirement for all hospitals and ASCs. Approximately one third of commenters who submitted comments on this rule commented on this proposal. With the exception of two commenters who supported the proposal, the vast majority of

commenters who commented on this issue strongly disagreed with this proposal. The commenters stated that installing and maintaining separate ventilation systems in windowless anesthetizing locations in existing buildings would be a significant expense, with estimates of \$30,000 per system per anesthetizing location. The commenters stated that installing and maintaining separate ventilation systems as part of constructing a new building is also a significant expense, with estimates ranging from \$75,000 to \$100,000 per anesthetizing location. The commenters stated that installing and maintaining ventilation systems in windowless anesthetizing locations, and thus incurring this large expense, is unnecessary for the following reasons:

- Of the millions of surgical procedures performed each year, 0.00092 percent per year results in surgical fires;
- Surgical fires are largely preventable, and training on prevention of and prompt response to fires is much more likely to be effective for patient safety than installing and maintaining ventilation systems;
- While anesthetics used to be flammable, they are not flammable anymore, which significantly reduces the risk of fires in anesthetizing locations;
- Most anesthetizing locations have quick response sprinklers present to extinguish any fire that may occur, eliminating the need for a smoke ventilation system. Healthcare occupancies required to install sprinklers to fulfill new construction or renovation requirements would need to install quick response sprinklers through smoke compartments containing patient rooms. If an anesthetizing location is located in the same compartment as the patient sleeping rooms, then the anesthetizing location would require quick response sprinklers;
- The types of fires that occur in anesthetizing locations produce such a small amount of smoke that the smoke would not compromise the ability of staff to implement emergency interventions to extinguish a fire;
- Staff in anesthetizing locations have training in updated techniques to quickly extinguish any fire that may occur;
- Some facilities have smoke purge systems that are just as capable of smoke control as the proposed ventilation system; and
- The proposed smoke ventilation system may, under certain circumstances, create an increased risk

for surgical infections in the affected anesthetizing locations.

Response: In light of the concerns raised by commenters, we agree that requiring the installation of smoke ventilation systems would not be an effective use of hospital and ASC resources. We agree that a focus on preventing and quickly extinguishing surgical fires will likely have a more significant positive impact on patient safety, and encourage hospitals, CAHs, and ASCs to continue this important work. We also agree that the presence of quick response sprinkler heads, alternative smoke purge systems, which can continue to be used, and the use of non-flammable anesthetics all contribute to a very minimal risk of smoke requiring ventilation in the first place. Therefore, we have removed this requirement from the regulations text for hospitals, CAHs, and ASCs.

Comment: The LSC applies a specific occupancy type to a facility that has 4 or more patients. Many commenters disagreed with our proposal to require all facilities to meet the occupancy requirements regardless of the number of patients because it would require small facilities to meet more stringent requirements. Commenters stated that there is no evidence to support the need for additional safety measures in these facilities.

Response: We agree with the commenters that meeting a more stringent occupancy classification is not necessary for very small health care occupancies with less than 4 patients at any given time, and therefore, are withdrawing our proposal. This will not affect any facilities as we are keeping the requirement as it was in the 2000 edition of the LSC and are not making any changes. ASCs continue to be required to meet the occupancy requirements for ambulatory care occupancies "regardless of the number of patients served." While this requirement is different from the definition of ambulatory care occupancy in the LSC, it is consistent with the previous rule adopting the 2000 edition of the NFPA 101 (68 FR 1374), which applied the ambulatory care occupancy chapter to all ASCs, regardless of the number of patients served.

Comment: Many commenters expressed concern with the window sill height requirement. The 2000 edition of the LSC required that newly constructed health care occupancies cannot have a sill height exceeding 36 inches above the floor (with certain exceptions). The NFPA removed this requirement from the 2012 edition of the LSC. However, CMS proposed to retain this requirement and apply it to all facilities,

whether they were new or existing construction. The vast majority of the commenters expressed concern with retrofitting existing facilities to meet this proposed requirement, and the financial burden they would incur. Commenters also disagreed with the justification for the proposal.

Response: We agree with commenters that requiring existing facilities to change their existing window structures to meet this requirement would be an undue burden. We have revised the regulation to assure that any facilities built after the effective date of this final rule will have to meet the 36 inch window sill height requirement, in accordance with the 2000 edition of the LSC. Existing facilities that were not required to meet this specification at the time of construction would not be required to change window sill heights at this time. The Secretary does not have statutory authority to require a minimum window sill requirement, however we believe that while window sill height is not directly associated with fire safety, but it is important to quality of life and beneficial to the healing process.

Comment: Many commenters expressed concern with the corridor projections requirement. The LSC allows for 6" corridor projections, but the 2010 ADA Standards for Accessible Design (2010 Standards) only allow 4" corridor projections. The commenters suggested only requiring 4" corridor projections in new construction and newly renovated construction. The commenters also noted that ABHR dispensers, TV/computer monitors, and computer kiosks often project more than 4" and would have to be moved. A few commenters stated that projections of 4" or more should be allowed if alternative means are used such as vertical guards. Some commenters also asked why the LSC and CMS allows fixed furniture in corridors of LTC facilities up to 2 feet, but will not allow projections of more than 4". One commenter suggested not adopting section 7.2.2.4.4.5 regarding the installation of handrails. This section requires handrails be mounted to provide a clearance of not less than 2¼ inches from the wall. The commenter states that this is not ADA compliant or IBC compliant, there is no maximum distance from the wall, that this wider gap increases the risk of entrapment if a person's hand slips while going down the stairs, and that this should also apply to existing construction. One commenter also questioned whether or not the ADA 4" projections apply to areas that are not patient treatment areas, like mechanical or chemical rooms.

Response: As noted, CMS recognizes that the LSC is not an accessibility code and stresses that compliance with this code is not a substitute for compliance with the ADA. The 2010 ADA standards address many concerns raised by commenters, including the clear floor width of walking surfaces in corridors and handrail clearance. See Section 403.5 and 505.5 of the 2010 ADA standards at <http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm>. In addition to following the requirements of the LSC, health care facilities are also required to follow all requirements of the ADA. Where there are conflicts between the LSC and the ADA, the more stringent standard takes precedence. Therefore, facilities must comply with the ADA's requirements for protruding objects, which establishes more stringent protrusion limits so that a person using a cane may avoid bodily harm. See section 307.2 of the 2010 ADA standards, available at <http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm> (establishing a 4" limit for wall-mounted protruding objects and a 4½" limit for handrails). Title II of the ADA applies to health care programs and services of state and local governments; and Title III of the ADA applies to private entities providing health care services. When structural changes are made to existing facilities to provide program access required by Title II, the 2010 ADA standards are the applicable accessibility standard. Newly constructed or altered Title II and Title III facilities must also comply with the 2010 ADA standards. Existing Title III facilities are required to remove barriers to accessibility when barrier removal is readily achievable, and the 2010 ADA standards are the applicable accessibility standard. Changes to the 2010 ADA standards are beyond the scope of this rule. Any questions regarding the requirements of the ADA should be directed to DOJ. Technical assistance regarding ADA compliance can be obtained at <http://www.ada.gov> or 1-800-514-0301 (voice) and 1-800-514-0383 (TTY).

Comment: One commenter suggested that there be a requirement for each provider or supplier to conduct an annual inspection and maintenance of fire door assemblies. Another commenter explicitly disagreed with this recommendation, stating that the final rule should clarify that annual inspection of doors in an egress path is not required in healthcare, ambulatory care, and business occupancies. Specifically, the commenter stated that

hospitals are already performing visual inspection of these door assemblies and already assure latching and smooth operation at all times. The commenter asserted that conducting an additional annual inspection would be unnecessarily burdensome.

Response: As proposed, we will maintain the required annual inspection and maintenance of door assemblies. This rule will thus require documentation that the facility actually inspected and performed maintenance necessary on this important fire protection feature. This inspection could be combined with any other maintenance effort that the facility may be performing.

Comment: One commenter questioned whether the requirement that a recycling bin must be 96 gallons or less would apply to recycling bins that are stored outside.

Response: This requirement only applies to any recycling bins located within a building.

Comment: One commenter stated that 1 year is an adequate timeframe to allow facilities to make necessary changes to add smoke partitions around hazardous areas, and that this requirement will not require many facilities to make changes because building codes have required separation of hazardous areas for a long period of time.

Response: Since most building codes already require the separation of hazardous areas, and facilities are probably already meeting this requirement, we agree that a 1 year phase-in period from the effective date of this final rule is appropriate to enable affected facilities to comply with the requirement for hazardous areas separation. Affected facilities will have 1 year from the effective date of this final rule to add smoke partitions around hazardous areas that are not already protected by this feature.

Comment: We proposed to adopt the 2012 edition of the NFPA 101, which references the 2010 edition of NFPA 101A, Guide on Alternative Approaches to Life Safety. One commenter recommended that we adopt the 2013 edition of the NFPA 101A instead. The commenter believes that there are some very significant differences between the 2010 and 2013 editions of NFPA 101A, including:

- Section 4.3.2 "Selection of Zones to be Evaluated"
- Section 4.6.9.3 "Mechanically Assisted Systems"
- Section 4.7.10 "Step 10—Determine Equivalency Conclusion"
- Worksheet 4.7.11 "Conclusions"

Response: In order to be consistent with the 2012 edition of the LSC, we are

not separately adopting the 2013 edition of the NFPA 101A. We will continue to follow the 2010 edition of the NFPA 101A. If we adopt a newer version of the LSC in the future that also adopts the 2013 edition of the NFPA 101A, we will review that document at that time.

Comment: One commenter suggested that CMS and, by extension, those accreditation organizations that perform deeming surveys, should not cite LSC deficiencies that are self-identified by the provider or supplier. The commenter believes that a survey policy which encourages non-citation of self-identified LSC deficiencies will provide an incentive to hospital facility managers to self-identify their LSC deficiencies, record them on a list, and manage the resolution of the deficiencies.

Response: We applaud facilities that self-identify LSC deficiencies; however, CMS is most concerned with the safety of patients and staff. Therefore, if the facility is able to self-identify deficiencies, they should be in the process of fixing those deficiencies and able to develop a suitable plan of correction for any deficiencies that are cited by surveyors.

Comment: A commenter is concerned that the 2012 edition of the LSC eases the requirements for smoke barriers in existing facilities with less than 30 beds. The commenter suggested that CMS should require any facilities with less than 30 beds that were originally built with or added a smoke barrier dividing the floor into at least two smoke compartments to keep that smoke barrier, even though the 2012 edition would allow the facility to remove the smoke barrier.

Response: We appreciate the suggestion. We do not anticipate facilities actively taking steps to remove existing smoke barriers in light of this change in the LSC. Should facilities undertake construction at a future date, they would still be required to meet the 2012 edition of the LSC. We believe that the 2012 edition of the LSC assures the appropriate level of safety for all residents/patients.

NFPA 99—Health Care Facilities Code

Comment: Many commenters support the adoption of the 2012 NFPA 99 Health Care Facilities code. However, many commenters expressed confusion as to why the NFPA 99 is not being adopted in full, and some chapters are being excluded.

Response: As stated in the proposed rule, we will not be adopting Chapters 7, 8 and 13 because we have no authority to regulate these specific topics in health care facilities.

Additionally, the content of Chapter 12, Emergency management, is already being addressed in a separate rule for emergency preparedness. Although, we have not adopted these chapters, providers may use these chapters for their individual facility needs.

Comment: Some commenters encouraged the adoption of the 2012 edition of the NFPA 99 Health Care Facilities code because it allows for the use of relocatable power taps, which provide additional electrical receptacles. The 1999 edition of the NFPA 99 does not allow the use of relocatable power taps.

Response: We appreciate the support of the commenters, and agree that relocatable power taps can be appropriately used in health care environments. Therefore, we are finalizing this change as proposed.

Comment: A few commenters expressed concerns with multiple issues found in the 2012 edition of the NFPA 99 that they believe would require a facility to upgrade to be in compliance with the following: Ductwork, HVAC system designs, electrical and medical gas system requirements, ground fault protection requirements, piped medical gas systems, and receptacle requirements. The commenters suggested that these sections be applied only to new facilities and facilities being remodeled.

Response: We appreciate the opportunity to clarify the requirements of NFPA 99. The 2012 edition of the NFPA 99 does not divide its chapters and requirements into new and existing. We note that in the 2012 edition of NFPA 99 Section 1.3.2 states "Construction and equipment requirements shall be applied only to new construction and new equipment, except as modified in individual chapters." The sections described in the comments do not have any modified requirements; therefore, in accordance with the requirements of NFPA 99, these requirements only apply to new construction and new equipment.

General or Other Comments

Comment: One commenter suggested that we add a list of acronyms at the beginning of the rule.

Response: We have added a list of acronyms to the beginning of the document. We have also spelled out each acronym the first time it is used in the rule.

IV. Provisions of the Final Regulations

We are adopting the provisions of this rule as proposed, except for the following changes and clarifications:

RNHCI—

We are clarifying that our adoption of the 2012 edition of the NFPA 101 and NFPA 99, includes the following TIAs issued prior to April 16, 2014:

- (i) TIA 12–1 to NFPA 101, issued August 11, 2011.
- (ii) TIA 12–2 to NFPA 101, issued October 30, 2012.
- (iii) TIA 12–3 to NFPA 101, issued October 22, 2013.
- (iv) TIA 12–4 to NFPA 101, issued October 22, 2013.
- (v) TIA 12–2 to NFPA 99, issued August 11, 2011.
- (vi) TIA 12–3 to NFPA 99, issued August 9, 2012.
- (vii) TIA 12–4 to NFPA 99, issued March 7, 2013.
- (viii) TIA 12–5 to NFPA 99, issued August 1, 2013.
- (ix) TIA 12–6 to NFPA 99, issued March 3, 2014.

- We are clarifying that the prohibition on roller latches applies only to doors to corridors and to rooms containing flammable or combustible materials.

- We are revising the requirements for the shutdown of a sprinkler system for an extended period of time.

- We are revising the window sill requirement for new construction only to indicate that such sills must not be higher than 36 inches above the floor.

ASCs—

We are clarifying that our adoption of the 2012 edition of the NFPA 101 and NFPA 99, includes the following TIAs issued prior to April 16, 2014, regardless of the number of patients served:

- (i) TIA 12–1 to NFPA 101, issued August 11, 2011.
- (ii) TIA 12–2 to NFPA 101, issued October 30, 2012.
- (iii) TIA 12–3 to NFPA 101, issued October 22, 2013.
- (iv) TIA 12–4 to NFPA 101, issued October 22, 2013.
- (v) TIA 12–2 to NFPA 99, issued August 11, 2011.
- (vi) TIA 12–3 to NFPA 99, issued August 9, 2012.
- (vii) TIA 12–4 to NFPA 99, issued March 7, 2013.
- (viii) TIA 12–5 to NFPA 99, issued August 1, 2013.
- (ix) TIA 12–6 to NFPA 99, issued March 3, 2014.

- We are removing the requirements for the installation of a dedicated air supply and exhaust system in windowless anesthetizing locations.

- We are revising the requirements for door locking mechanisms on hazardous areas.

- We are revising the requirements for the shutdown of a sprinkler system for an extended period of time.

- We are revising the window sill requirements for new construction only to indicate that such sills must not be higher than 36 inches above the floor.

Hospice—

We are clarifying that our adoption of the 2012 edition of the NFPA 101 and NFPA 99, includes the following TIAs issued prior to April 16, 2014:

- (i) TIA 12–1 to NFPA 101, issued August 11, 2011.
- (ii) TIA 12–2 to NFPA 101, issued October 30, 2012.
- (iii) TIA 12–3 to NFPA 101, issued October 22, 2013.
- (iv) TIA 12–4 to NFPA 101, issued October 22, 2013.
- (v) TIA 12–2 to NFPA 99, issued August 11, 2011.
- (vi) TIA 12–3 to NFPA 99, issued August 9, 2012.
- (vii) TIA 12–4 to NFPA 99, issued March 7, 2013.
- (viii) TIA 12–5 to NFPA 99, issued August 1, 2013.
- (ix) TIA 12–6 to NFPA 99, issued March 3, 2014.

- We are clarifying that the prohibition on roller latches applies only to doors to corridors and to rooms containing flammable or combustible materials.

- We are revising the requirements for the shutdown of a sprinkler system for an extended period of time.

- We are revising the window sill requirement for new construction only to indicate that such sills must not be higher than 36 inches above the floor.

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We are clarifying that our adoption of the 2012 edition of the NFPA 101 and NFPA 99, includes the following TIAs issued prior to April 16, 2014:

- (i) TIA 12–1 to NFPA 101, issued August 11, 2011.
- (ii) TIA 12–2 to NFPA 101, issued October 30, 2012.
- (iii) TIA 12–3 to NFPA 101, issued October 22, 2013.
- (iv) TIA 12–4 to NFPA 101, issued October 22, 2013.
- (v) TIA 12–2 to NFPA 99, issued August 11, 2011.
- (vi) TIA 12–3 to NFPA 99, issued August 9, 2012.
- (vii) TIA 12–4 to NFPA 99, issued March 7, 2013.
- (viii) TIA 12–5 to NFPA 99, issued August 1, 2013.
- (ix) TIA 12–6 to NFPA 99, issued March 3, 2014.

- We are clarifying that the prohibition on roller latches applies

only to doors to corridors and to rooms containing flammable or combustible materials.

- We are revising the requirements for the shutdown of a sprinkler system for an extended period of time.

Hospitals—

We are clarifying that our adoption of the 2012 edition of the NFPA 101 and NFPA 99, includes the following TIAs issued prior to April 16, 2014:

- (i) TIA 12–1 to NFPA 101, issued August 11, 2011.
- (ii) TIA 12–2 to NFPA 101, issued October 30, 2012.
- (iii) TIA 12–3 to NFPA 101, issued October 22, 2013.
- (iv) TIA 12–4 to NFPA 101, issued October 22, 2013.
- (v) TIA 12–2 to NFPA 99, issued August 11, 2011.
- (vi) TIA 12–3 to NFPA 99, issued August 9, 2012.
- (vii) TIA 12–4 to NFPA 99, issued March 7, 2013.
- (viii) TIA 12–5 to NFPA 99, issued August 1, 2013.
- (ix) TIA 12–6 to NFPA 99, issued March 3, 2014.

- We are clarifying that the prohibition on roller latches applies only to doors to corridors and to rooms containing flammable or combustible materials.

- We are clarifying that all outpatient surgical departments must meet applicable provisions in Ambulatory Health Care occupancy chapter, regardless of the number of patients served.

- We are revising the requirements for the shutdown of a sprinkler system for an extended period of time.
- We are removing the requirement for installation of a dedicated air supply and exhaust system in windowless anesthetizing locations.

- We are revising the window sill requirement for new construction only to indicate that such sills must not be higher than 36 inches above the floor.

LTC—

We are clarifying that our adoption of the 2012 edition of the NFPA 101 and NFPA 99, includes the following TIAs issued prior to April 16, 2014:

- (i) TIA 12–1 to NFPA 101, issued August 11, 2011.
- (ii) TIA 12–2 to NFPA 101, issued October 30, 2012.
- (iii) TIA 12–3 to NFPA 101, issued October 22, 2013.
- (iv) TIA 12–4 to NFPA 101, issued October 22, 2013.
- (v) TIA 12–2 to NFPA 99, issued August 11, 2011.
- (vi) TIA 12–3 to NFPA 99, issued August 9, 2012.

- (vii) TIA 12–4 to NFPA 99, issued March 7, 2013.

- (viii) TIA 12–5 to NFPA 99, issued August 1, 2013.

- (ix) TIA 12–6 to NFPA 99, issued March 3, 2014.

- We are clarifying that the prohibition on roller latches applies only to doors leading into corridors and leading into rooms containing flammable or combustible materials.

- We are revising the requirements for the shutdown of a sprinkler system for an extended period of time.

ICF-IIDs—

We are clarifying that our adoption of the 2012 edition of the NFPA 101 and NFPA 99, includes the following TIAs issued prior to April 16, 2014:

- (i) TIA 12–1 to NFPA 101, issued August 11, 2011.
- (ii) TIA 12–2 to NFPA 101, issued October 30, 2012.
- (iii) TIA 12–3 to NFPA 101, issued October 22, 2013.
- (iv) TIA 12–4 to NFPA 101, issued October 22, 2013.
- (v) TIA 12–2 to NFPA 99, issued August 11, 2011.
- (vi) TIA 12–3 to NFPA 99, issued August 9, 2012.
- (vii) TIA 12–4 to NFPA 99, issued March 7, 2013.
- (viii) TIA 12–5 to NFPA 99, issued August 1, 2013.
- (ix) TIA 12–6 to NFPA 99, issued March 3, 2014.

- We are clarifying that the prohibition on roller latches applies only to doors to corridors and to rooms containing flammable or combustible materials.

- We are revising the exclusion of provisions related to “Lockups.”
- We are revising the requirements for the shutdown of a sprinkler system for an extended period of time.

- We are revising the window sill requirement for new construction only to indicate that such sills must not be higher than 36 inches above the floor.

CAHs—

We are clarifying that our adoption of the 2012 edition of the NFPA 101 and NFPA 99, includes the following TIAs issued prior to April 16, 2014:

- (i) TIA 12–1 to NFPA 101, issued August 11, 2011.
- (ii) TIA 12–2 to NFPA 101, issued October 30, 2012.
- (iii) TIA 12–3 to NFPA 101, issued October 22, 2013.
- (iv) TIA 12–4 to NFPA 101, issued October 22, 2013.
- (v) TIA 12–1 to NFPA 99, issued August 11, 2011.
- (vi) TIA 12–2 to NFPA 99, issued August 11, 2011.

- (vii) TIA 12–3 to NFPA 99, issued August 9, 2012.

- (viii) TIA 12–4 to NFPA 99, issued March 7, 2013.

- (ix) TIA 12–5 to NFPA 99, issued August 1, 2013.

- (x) TIA 12–6 to NFPA 99, issued March 3, 2014.

- We are clarifying that the prohibition on roller latches applies only to doors to corridors and to rooms containing flammable or combustible materials.

- We are revising the requirements for the shutdown of a sprinkler system for an extended period of time.

- We are removing the requirement for installation of a dedicated air supply and exhaust system in windowless anesthetizing locations.

- We are revising the window sill requirement for new construction only to indicate that such sills must not be higher than 36 inches above the floor.

V. Collection of Information Requirements

This final rule does not impose any new reporting, recordkeeping or third-party disclosure requirements. However, this final rule does reference the NFPA 99 that has several non-reported recordkeeping requirements for medical gas and vacuum systems, and electrical equipment. We believe that documenting maintenance and testing is a usual and customary business practice in accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA) at 5 CFR 1320.3(b)(2), and it would not impose any additional information collection burden beyond that associated with the normal course of business. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Analysis

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

A. Overall Impact

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), Executive Order 13132 on Federalism

(August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

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. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). The overall economic impact for this rule is estimated to be \$18 million in the first year of implementation, \$12 million, annually, for years 2 and 3 of implementation, and \$6 million, annually, for years 4–12 of implementation. We estimate that this rulemaking is not “economically significant” as measured by the \$100 million threshold, and hence not a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis (RIA) that, to the best of our ability, presents the costs and benefits of rulemaking.

B. Statement of Need

The 2012 edition of the LSC includes new provisions that we believe are vital

to the health and safety of all patients and staff. Our intention is to ensure that patients and staff continue to experience the highest degree of fire safety possible. The use of earlier editions of the code can become problematic due to advances in safety and technology and changes made to each edition of the code. Newer buildings are typically built to comply with the newer versions of the LSC because state and local jurisdictions, as well as non-CMS-approved accreditation programs, often adopt and enforce newer versions of the code as they become available. We believe that adopting the 2012 LSC would simplify and modernize the construction and renovation process for affected health care providers and suppliers, reduce compliance-related burdens, and allow for more resources to be used for patient care. Many health care facilities complete unnecessary work and incur unnecessary expense without any gain in fire safety by continuing to comply with the 2000 edition of the LSC.

The 2012 edition of the NFPA 99, “Health Care Facilities Code,” addresses requirements for both health care occupancies and ambulatory care occupancies, and serves as a resource for those who are responsible for protecting health care facilities from fire and associated hazards. The purpose of this Code is to provide minimum requirements for the installation, inspection, testing, maintenance, performance, and safe practices for health care facility materials, equipment

and appliances. This Code is a compilation of documents that have been developed over a 40-year period by NFPA, and is intended to be used by those persons involved in the design, construction, inspection, and operation of health care facilities, and in the design, manufacture, and testing of appliances and equipment used in patient care areas of health care facilities. Many requirements of the LSC already cross reference the NFPA 99, and it addresses additional building safety topics that are related to important fire safety issues specific to health care facilities.

We believe that it is in the best interest of CMS to adopt the more recent 2012 edition of the NFPA 101 and the 2012 edition of the NFPA 99, in order to be up to date with all of the latest upgrades to health care facilities and safety requirements.

C. Summary of Impacts

TABLE 1—TOTAL ANNUAL COST OF IMPLEMENTATION FOR ALL YEARS

	Millions
Year 1 of implementation	\$18
Years 2–3 of implementation	24
Years 4–12 of implementation	53
Total Years 1–12 of implementation	95

Note: This cost may be less depending on the number of States that have already adopted the 2012 edition of the LSC.

TABLE 2—TOTAL ANNUAL COST FOR IMPLEMENTATION IN YEAR 1

Requirement	Provider type affected	Cost per affected provider	Cost for all providers
High-rise sprinkler installation	Hospitals, partially sprinklered	\$34,075	\$4,429,783
High-rise sprinkler installation	Hospitals, non-sprinklered	117,028	1,053,253
Self-closing or automatic closing doors on hazardous areas.	ASCs	1,047	1,763,148
Sprinklers in attics (used for living purposes, storage or fuel fired equipment).	ICF-IIDs	4,500	5,980,500
Heat detection systems in attics (not used for living purposes).	ICF-IIDs	1,000	212,333
Hazardous areas separated by smoke partitions	ICF-IIDs	1,000	4,624,000
Upgrade existing or install new fire alarm system	ICF-IIDs	1,000	384,000
Total .....	.....		18,447,017

TABLE 3—TOTAL ANNUAL COST OF IMPLEMENTATION FOR YEARS 2–3

Requirement	Provider type affected	Cost per affected provider	Cost for all providers
High-rise sprinkler installation	Hospitals, partially sprinklered	\$34,075	\$4,429,783
High-rise sprinkler installation	Hospitals, non-sprinklered	117,028	1,053,253
Upgrade existing or install new fire alarm system	ICF-IIDs	1,000	384,000
Sprinklers in attics (used for living purposes, storage or fuel fired equipment).	ICF-IIDs	4,500	5,980,500

TABLE 3—TOTAL ANNUAL COST OF IMPLEMENTATION FOR YEARS 2–3—Continued

Requirement	Provider type affected	Cost per affected provider	Cost for all providers
Heat detection systems in attics (not used for living purposes).	ICF—IIDs	1,000	212,333
Total Annually .....	.....		12,059,869
Overall Total Years 2–3 .....	.....		24,119,738

TABLE 4—TOTAL COST OF IMPLEMENTATION FOR YEARS 4–12

Requirement	Provider type affected	Cost per affected provider	Cost for all providers
High-rise sprinkler installation	Hospitals, partially sprinklered	\$34,075	\$4,429,783
High-rise sprinkler installation	Hospitals, non-sprinklered	117,028	1,053,253
Upgrade existing or install new fire alarm system	ICF—IIDs	1,000	384,000
Total Annually .....	.....		5,867,036
Overall Total Years 4–12 .....	.....		52,803,324

D. Detailed Economic Analysis

1. Burden Assessment

Sprinklers in High-Rise Buildings

Section 19.4.2 of the LSC requires that all existing high-rise buildings containing health care occupancies be protected throughout by an approved, supervised automatic sprinkler system. We feel that this requirement will only affect hospitals and any other provider type located in the same building as a hospital (for example, an ASC that is located in a hospital building). This provision was added to the LSC in 2012 and we anticipate that there would be a cost associated with installing the sprinklers. Since this is a new provision for the 2012 edition of the LSC, 14 states have adopted this requirement, accounting for an estimated 142 high-rise facilities.

To develop the most accurate estimate possible for this provision, we requested data from all 50 states regarding the sprinkler status of high-rise buildings containing health care occupancies, and the average square footage needing to be sprinklered. Of the 50 states, we received some data from 30 states.⁴ We calculated the average number of high-rise hospitals for all of the states that responded. Overall, 15.64 percent of

hospitals were located in high-rise buildings. We also used the data submitted to determine the average number of fully, partially and non-sprinklered high-rise buildings in each state for which we have data. First, we calculated the percentages of fully, partially, and non-sprinklered hospitals for each state. We then averaged the percentage of fully, partially and non-sprinklered buildings across all states for which there was data, with a result of 84.66 percent of hospitals in high-rise buildings being fully sprinklered, 14.6 percent being partially sprinklered and 0.74 percent being non-sprinklered.

Next, we applied these percentages to the states that did not respond to our data request or that provided a limited amount of data. For example, Alabama has a total of 125 hospitals. Based on the data from states that submitted information, we know that, on average, 15.64 percent of hospitals have high-rise buildings, for an estimated 20 high-rise hospitals in Alabama. We used this same methodology to estimate the average number of high-rise hospitals in all of the states that did not respond to our data request or that provided only a limited amount of data, for a total of 179 high-rise hospitals. Of the 179 estimated high-rise hospitals in states that did not respond, we estimate there are 151 fully sprinklered, 26 partially sprinklered, and 2 non-sprinklered. We note that these numbers do not directly match because there was limited actual data available for the state of Massachusetts. The number of high-rise hospitals in Massachusetts is included in the count of states for which we have

reported data. However, because we did not receive a breakdown of those high-rise hospitals by their current sprinkler status, we used the methodology described to estimate the distribution of fully sprinklered, partially sprinklered, and non-sprinklered high-rise hospitals in that state.

We combined this information with the information from the states that submitted data to develop an estimate of 515 high-rise facilities with health care occupancies throughout all 37 states and the District of Columbia that have not adopted the 2012 NFPA 101 (336 high-rise facilities in states that submitted data + 179 estimated high-rise facilities in states that did not submit data). We estimate that 376 of those high-rise facilities are fully sprinklered, 130 are partially sprinklered, and 9 are not sprinklered.

We also requested that the 50 states and the District of Columbia submit information regarding the area (measured in square feet) per partially sprinklered and non-sprinklered facility that does not currently have sprinklers. Only 8 states supplied data regarding the area to be sprinklered in partially sprinklered facilities.⁵ In addition, 3 states supplied data regarding the area to be sprinklered in non-sprinklered facilities.⁶ We did not specify size and

⁴ The following states submitted data regarding the sprinkler status of high-rise buildings containing health care facilities—Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Idaho, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington, and Wyoming.

⁵ The following states provided data regarding the average square footage for partially sprinklered high-rise facilities containing health care facilities—California, Hawaii, Iowa, Kansas, Nebraska, Pennsylvania, Virginia, and Washington.

⁶ The following states provided data regarding the average square footage for non-sprinklered high-rise facilities containing health care facilities—California, Hawaii, and Iowa.

age data. Of the states that responded with square footage data, we estimate that an average partially sprinklered facility would need to install sprinklers to protect 37,173 square feet, and an average non-sprinklered facility would need to install sprinklers to protect 127,667 square feet. Regardless of the square footage, any facility in a high-rise building 75' or over is required to be sprinklered. We applied all of the data submitted and averages calculated to figure out the total average area that will need to be sprinklered in all partially sprinklered facilities and non-sprinklered facilities, and the cost associated with that installation. Based on the information provided by the public in comments received on the hospital conditions of participation (76 FR 65891), the cost per square foot to install sprinklers is approximately \$11. We estimated that there are 130 partially sprinklered facilities that would install sprinklers to cover an average of 37,173 square feet per facility, for a total of 4,832,490 square feet. At an estimated cost of \$11 per square foot to install sprinklers, we estimate a total cost of \$53,157,390 for all partially sprinklered facilities (4,832,490 square feet $\times$ \$11 per square foot). We estimate that an average partially sprinklered facility would spend \$408,903 to complete the sprinkler installation (37,173 square feet per facility $\times$ \$11 per square foot).

We estimated that there are 9 non-sprinklered facilities nationwide, and that an average non-sprinklered facility would install sprinklers for, 127,667 square feet, for a total of 1,149,003 square feet (9 facilities $\times$ 127,667 square feet per facility). At an estimated cost of \$11 per square foot to install sprinklers, we estimate that it would cost \$12,639,033 for all non-sprinklered facilities to install sprinklers in their facilities. We estimate that an average non-sprinklered facility would spend \$1,404,337 per facility (127,667 square feet $\times$ \$11 per square foot).

Therefore, we estimate the total cost associated with the installation of sprinklers in partially sprinklered and non-sprinklered facilities to be \$65,796,423 (\$53,157,390 for all partially sprinklered facilities + \$12,639,033 for all non-sprinklered facilities). This cost would be distributed over a phase-in period of 12 years, per the phase-in period established within the LSC, or an average yearly cost of \$5.5 million.

Sprinklers Out of Service for More Than 10 Hours

We have removed the requirement for a fire watch or building evacuation if the sprinkler system is out of service for

more than 4 hours, and have adopted the LSC requirements of a fire watch or building evacuation if the sprinkler system is out for more than 10 hours in a 24-hour period. Based on comments received from stakeholders, associations and the public, sprinkler systems are generally only out of service for 8 hours in a 24-hour period. Therefore, we do not anticipate additional costs associated with this requirement. If there is an event where the sprinkler system would be out of service for more than 10 hours in a 24-hour period, we feel that it would be considered a standard business practice to implement a fire watch or building evacuation, as the previous requirement was more stringent and required a fire watch or building evacuation after the sprinkler system is out of service for more than 4 hours.

Doors to Hazardous Areas

Sections 20.3.2.1 and 21.3.2.1 of the LSC requires all doors to hazardous areas to be self-closing or automatic-closing. This requirement is only located in sections 20.3.2.1 and 21.3.2.1, which applies to Ambulatory health care. This provision was added to the LSC in 2003, and we anticipate that there would be a cost associated with installing the self-closing or automatic closing doors. Since 2003, 35 states have adopted this requirement, accounting for an estimated 3,684 ASCs. As of December 2013, there were 5,368 total Medicare and applicable Medicaid participating ASCs. The 1,684 remaining facilities would be required to upgrade their door closing mechanisms to meet this requirement. The estimated cost per door is \$349, and we would assume the average facility has 3 hazardous areas that would require a replacement door closing mechanism for a total cost of \$1,047 per facility. The anticipated cost is \$1,763,148.

Sprinklers or Heat Detection Systems in Attics

Sections 32.2.3.5.7 and 33.2.3.5.7 of the LSC requires attics of new and existing residential board and care occupancies, which, for our purposes, are ICF-IIDs to be sprinklered if the attic space is used for living purposes, including storage and fuel fired equipment. Facilities that do not use their attics for living purposes may choose to install a heat detection system in place of the sprinklers. This provision was added to the LSC in 2012. Since this is a new provision for the 2012 edition of the LSC, only 14 states have adopted this requirement, accounting for an estimated 1,750 ICF-

IIDs. We are not including those 1,750 facilities in our analysis. For purposes of this analysis only, we assume that about 10 percent (637) of facilities will install a heat detection system because they do not use the attic for living purposes. As of December 2013, there were 6,374 total Medicare participating ICF-IIDs. After excluding those facilities located in states that have already adopted this requirement and those that would install a heat detection system instead of sprinklers, the 3,987 remaining facilities would be required to install sprinklers in their attics to meet this requirement. Installing sprinklers into an unfinished attic is less complicated than installing sprinklers in a finished hospital, therefore the cost per square foot would be less to install in attics than hospitals. The estimated cost per square foot to install sprinklers in an attic is \$3.00, and the average estimated square footage per attic per facility is 1500 square feet, for a total of \$4,500 per ICF-IID. We estimate that all ICF-IIDs would spend \$17,941,500 to install sprinklers in their attic spaces. After soliciting public comment, we have decided to finalize a 3 year phase-in period, which would make the cost \$5,980,500 per year over 3 years.

Facilities that do not use their attics for living purposes may choose to install a heat detection system in the attic instead of sprinklers. As stated, for the purposes of this analysis only, we assume that about 10 percent (637) of facilities will install a heat detection system because they do not use the attic for living purposes. We estimate the cost to install a heat detection system to be \$1,000 per facility. The anticipated cost would be \$637,000 for all affected facilities to install heat detection systems. After soliciting public comment, we have decided to finalize a 3 year phase-in period, which would make the cost \$212,333 per year over 3 years.

Hazardous Area Separation

Section 33.3.3.2.3 of the LSC requires all hazardous areas in existing residential board and care occupancies (which, under our regulations, are ICF-IIDs) with impractical evacuation capabilities to be separated from other parts of the building by a smoke partition. This provision was added to the LSC in 2012 and we anticipate there being a cost associated with installing the smoke partition. Since this is a new provision for 2012, only 14 states have adopted this requirement, accounting for 1,750 ICF-IIDs. As of December 2013, there were 6,374 total Medicare and applicable Medicaid participating

ICF-IIDs. We do not collect data regarding the evacuation capability of each ICF-IID. Therefore, for purposes of this analysis only, we assume that the 4,624 remaining facilities will need to install a smoke partition around all hazardous areas to meet this requirement. The estimated cost per smoke partition is \$500, and we assume that an average ICF-IID would need to install 2 smoke partitions for a total of \$1,000 per facility. The anticipated cost is \$4,624,000.

Fire Alarm System Upgrade

Section 33.3.3.4.6.2 of the LSC requires that, when an existing residential board and care occupancy (that is, ICF-IIDs) installs a new fire alarm system, or the existing fire alarm system is replaced, notification of emergency forces should be handled in accordance with section 9.6.4. Section 9.6.4 states that notification of emergency forces should alert the municipal fire department and fire brigade (if provided) of fire or other emergency. This provision was added to the LSC in 2012, and we anticipate there being a cost associated with upgrading a new or existing fire alarm system. Since this is a new provision for 2012, only 14 states have adopted this requirement, accounting for 1,750 ICF-IIDs. As of December 2013, there were 6,374 total Medicare participating ICF-IIDs. The 4,624 remaining facilities would be required to add emergency notifications capabilities when they choose to update or install a new fire alarm system. The estimated cost per upgrade is \$1,000. For purposes of this analysis only, we assume that about 8.3 percent (384) of facilities will do this in any given year, for an annual cost of \$384,000 over a 12-year period.

$(\$1,000 \text{ per upgraded alarm system} \times 384 \text{ facilities in any given year} = \$384,000)$

2. Benefits to Patients/Residents

As a result of this rule, we believe that there would be a decreased risk of premature death. A decreased risk of premature death is valuable to people and that value is symbolized by their willingness to pay for such benefits. The Department of Transportation found in a recent literature review that willingness to pay for reductions in the risk of premature death equivalent to saving one life in expectation is typically over \$9 million (<http://www.dot.gov/sites/dot.dev/files/docs/VSL%20Guidance%202013.pdf>).

Although we are not quantifying the number of lives that would be saved upon implementation of this rule due to the lack of data that could provide a reliable point estimate, we believe that there is potential for such a result. In order to “break even” on the cost of this rule—in other words, in order for the total costs of implementing this rule to equal the total benefits of doing so—this rule would need to save 1.3 lives per year for 12 years at a 7 percent discount rate and a value of \$9 million per life saved would cause the rule to break even. It would take about 1.1 lives per year for 12 years at a 3 percent discount rate. Given our review of the current literature on fire safety in health care facilities, we are confident that implementing the 2012 LSC will save at least that number of lives.

E. Alternatives Considered

As a regulatory alternative, we could have chosen not to update our fire safety provisions. We believe that this is not an acceptable alternative because many health care facilities complete unnecessary work and incur unnecessary expense without any gain in fire safety by continuing to comply with the 2000 edition of the LSC. Many states have adopted subsequent editions of the LSC. This has caused confusion for, and imposed additional burdens on, health care facilities, that must request waivers or modify designs to meet the requirements of both the state- and federally-adopted editions of the LSC. Updating the LSC would not only relieve the regulatory burden on health care providers, but also assist in ensuring the health and safety of patients and staff.

We considered an alternative phase-in period for the requirement to install sprinklers in high rise health care occupancies. The LSC allows for a 12-year phase-in period, which would begin on the day a final rule is published. We considered shortening this period in order to accelerate compliance. However, based on our recent experience with requiring LTC facilities to install sprinklers within 5 years, and the difficulties that several facilities have faced in meeting this deadline, we have learned that a shorter phase-in period is not always feasible for facilities. We also considered a longer phase-in period, but believe that extending beyond 12 years set out in the LSC may not sufficiently convey the importance of this requirement to

improving patient and staff safety in these buildings.

We considered not including separate requirements for window sill heights. Although the NFPA has removed these requirements from the LSC, because the total concept approach of all health care facilities should be designed, constructed, maintained and operated to minimize the possibility of a fire emergency requiring the evacuation of occupants can be achieved without reliance on such window sill requirements, we felt that this was an important issue that still needed to be required for the safety of patients, visitors, and staff. Window sill height requirements were eliminated from the 2012 edition of the LSC. We believe that this requirement is essential to allow easier access for emergency personnel in the event of a fire or other emergency situation and it is important to quality of life and the healing process. This will, however, only be required in new facilities.

We considered not including the adoption of the NFPA 99 Health care Facilities code. However, many requirements of the LSC already cross-reference the NFPA 99, therefore we decided to adopt the NFPA 99 because it addresses additional building safety topics that are related to important fire safety issues specific to health care facilities. The requirements of NFPA 99, like those in NFPA 101, will be legally enforceable to the extent specified in this rule.

We also considered adoption of chapters 7, 8, 12, and 13 of the NFPA 99, related to information technology, plumbing, emergency management, and security management. We believe that information technology, plumbing and security management are not within the scope of the conditions of participation and conditions for coverage. In addition, emergency management topics are addressed in our December 27, 2013 proposed rule, “Medicare and Medicaid Programs: Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers” (78 FR 79081).

F. Accounting Statement

As required by OMB Circular A-4 (available at http://www.whitehouse.gov/omb/circulars_a004_a-4), we have prepared an accounting statement in Table X showing the classification of the transfers and costs associated with the provisions of this rule for CY 2015.

TABLE 5—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS BETWEEN 2016 AND 2027

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered
Costs *				
Annualized Monetized (\$million/year)	8.6	2015	7	2016–2027
	8.2	2015	3	2016–2027

* Costs are associated with the provisions of the life safety code.

G. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Individuals and states are not included in the definition of a small entity. For purposes of the RFA, most of the providers and suppliers that would be affected by this rule (hospitals, ASCs, and ICF–IIDs) are considered to be small entities, either by virtue of their nonprofit or government status or by having yearly revenues below industry threshold established by the Small Business Administration (for details, see the Small Business Administration's Web site at <http://www.sba.gov/content/small-business-size-standards>).

- We estimate that the following affected facilities are expected to spend less than \$3,500 in any given year on a per average facility basis; all LTC facilities, all hospices with inpatient care facilities, all PACE facilities, all RNHCs, all existing ASCs, all existing CAHs, and all existing fully sprinklered hospitals.

- We estimate that the average affected ICF–IID will spend \$5,400–\$8,900 in the first year, which requires the most significant investment and, by year four, that amount drops to \$3,400 per year.

- We estimate that the average affected partially sprinklered high-rise hospital and the average affected non-sprinklered high-rise hospitals will spend \$36,475–\$119,428 each year during the 12 year phase-in period to install sprinklers. After the installation of sprinklers, we estimate that the annual cost decreases to \$2,400 per year.

- We estimate that newly constructed hospitals will spend \$2,400, newly constructed CAHs will spend \$2,400 and newly constructed ASCs will spend \$2,400, respectively, in any given year.

The Department of Health and Human Services uses as its measure of significant economic impact on a

substantial number of small entities a change in revenues of more than 3 to 5 percent. Therefore, the Secretary proposes to certify that this rule will not have a significant impact on a substantial number of small entities, since the impact will be less than 3 percent of the revenue. The preceding economic analysis, together with the remainder of this preamble, constitutes that analysis.

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 604 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 believe that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

H. Unfunded Mandates Reform Act (UMRA)

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 threshold is approximately \$144 million. This rule will not have an impact on the expenditures of state, local, or tribal governments in the aggregate, or on the private sector of \$144 million in any one year.

I. 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 rule has no Federalism implications.

J. Congressional Review Act

This regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

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 403

Health insurance, Hospitals, Intergovernmental relations, Incorporation by reference, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 416

Health facilities, Kidney diseases, Incorporation by reference, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Incorporation by reference, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 460

Aged, Health, Incorporation by reference, Medicare, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs—health, Hospitals, Incorporation by reference, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Incorporation by reference, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs—health, Health facilities, Incorporation by reference,

Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 403—SPECIAL PROGRAMS AND PROJECTS

- 1. The authority citation for part 403 continues to read as follows:

Authority: 42 U.S.C. 1395b–3 and Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

- 2. Amend § 403.744 by—

- a. Revising paragraphs (a)(1)(i) and (ii).

- b. Revising paragraph (a)(4).

- c. Adding paragraphs (a)(5) and (6).

- d. Revising paragraphs (b)(1) and (c).

The revisions and additions read as follows:

§ 403.744 Condition of participation: Life safety from fire.

(a)

(1) * * *

(i) The RNHCI must meet the applicable provisions and must proceed in accordance with the Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12–1, TIA 12–2, TIA 12–3, and TIA 12–4).

(ii) Notwithstanding paragraph (a)(1)(i) of this section, corridor doors and doors to rooms containing flammable or combustible materials must be provided with positive latching hardware. Roller latches are prohibited on such doors.

* * * * *

(4) The RNHCI may place alcohol-based hand rub dispensers in its facility if the dispensers are installed in a manner that adequately protects against inappropriate access.

(5) When a sprinkler system is shut down for more than 10 hours the RNHCI must:

(i) Evacuate the building or portion of the building affected by the system outage until the system is back in service, or

(ii) Establish a fire watch until the system is back in service.

(6) Building must have an outside window or outside door in every sleeping room, and for any building constructed after July 5, 2016 the sill height must not exceed 36 inches above the floor. Windows in atrium walls are considered outside windows for the purposes of this requirement.

(b) * * *

(1) In consideration of a recommendation by the State survey agency or Accrediting Organization, or at the discretion of the Secretary, may

waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon a RNHCI facility, but only if the waiver will not adversely affect the health and safety of the patients.

* * * * *

(c) The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

(1) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, www.nfpa.org, 1.617.770.3000.

(i) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011;

(ii) TIA 12–1 to NFPA 101, issued August 11, 2011.

(iii) TIA 12–2 to NFPA 101, issued October 30, 2012.

(iv) TIA 12–3 to NFPA 101, issued October 22, 2013.

(v) TIA 12–4 to NFPA 101, issued October 22, 2013.

(2) [Reserved]

- 3. Add § 403.745 to read as follows:

§ 403.745 Condition of participation: Building Safety.

(a) *Standard: Building Safety.* Except as otherwise provided in this section the RNHCI must meet the applicable provisions and must proceed in accordance with the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12–2, TIA 12–3, TIA 12–4, TIA 12–5 and TIA 12–6).

(b) *Standard: Exceptions.* Chapters 7, 8, 12, and 13 of the adopted Health Care Facilities Code do not apply to a RNHCI.

(c) *Waiver.* If application of the Health Care Facilities Code required under paragraph (a) of this section would result in unreasonable hardship for the RNHCI, CMS may waive specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of individuals.

(d) *Incorporation by reference.* The standards incorporated by reference in

this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

(1) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, www.nfpa.org, 1.617.770.3000.

(i) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.

(ii) TIA 12–2 to NFPA 99, issued August 11, 2011.

(iii) TIA 12–3 to NFPA 99, issued August 9, 2012.

(iv) TIA 12–4 to NFPA 99, issued March 7, 2013.

(v) TIA 12–5 to NFPA 99, issued August 1, 2013.

(vi) TIA 12–6 to NFPA 99, issued March 3, 2014.

(2) [Reserved]

PART 416—AMBULATORY SURGICAL SERVICES

- 4. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

- 5. Amend § 416.44 by—

- a. Revising paragraphs (b)(1) and (2).

- b. Removing paragraph (b)(4).

- c. Redesignating paragraph (b)(5) as paragraph (b)(4).

- d. Revising newly redesignated paragraph (b)(4).

- e. Adding new paragraphs (b)(5), and (6).

- f. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e).

- g. Adding new paragraphs (c) and (f).

The revisions and additions read as follows:

§ 416.44 Condition for coverage—Environment.

* * * * *

(b) * * *

(1) Except as otherwise provided in this section, the ASC must meet the provisions applicable to Ambulatory

Health Care Occupancies and must proceed in accordance with the Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12–1, TIA 12–2, TIA 12–3, and TIA 12–4).

(2) In consideration of a recommendation by the State survey agency or Accrediting Organization or at the discretion of the Secretary, may waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon an ASC, but only if the waiver will not adversely affect the health and safety of the patients.

* * *

(4) An ASC may place alcohol-based hand rub dispensers in its facility if the dispensers are installed in a manner that adequately protects against inappropriate access.

(5) When a sprinkler system is shut down for more than 10 hours, the ASC must:

(i) Evacuate the building or portion of the building affected by the system outage until the system is back in service, or

(ii) Establish a fire watch until the system is back in service.

(6) Beginning July 5, 2017, an ASC must be in compliance with Chapter 21.3.2.1, Doors to hazardous areas.

(c) *Standard: Building Safety.* Except as otherwise provided in this section, the ASC must meet the applicable provisions and must proceed in accordance with the 2012 edition of the Health Care Facilities Code (NFPA 99, and Tentative Interim Amendments TIA 12–2, TIA 12–3, TIA 12–4, TIA 12–5 and TIA 12–6).

(1) Chapters 7, 8, 12, and 13 of the adopted Health Care Facilities Code do not apply to an ASC.

(2) If application of the Health Care Facilities Code required under paragraph (c) of this section would result in unreasonable hardship for the ASC, CMS may waive specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of patients.

* * * * *

(f) The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this

material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

(1) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, www.nfpa.org, 1.617.770.3000.

(i) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.

(ii) TIA 12–2 to NFPA 99, issued August 11, 2011.

(iii) TIA 12–3 to NFPA 99, issued August 9, 2012.

(iv) TIA 12–4 to NFPA 99, issued March 7, 2013.

(v) TIA 12–5 to NFPA 99, issued August 1, 2013.

(vi) TIA 12–6 to NFPA 99, issued March 3, 2014.

(vii) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011;

(viii) TIA 12–1 to NFPA 101, issued August 11, 2011.

(ix) TIA 12–2 to NFPA 101, issued October 30, 2012.

(x) TIA 12–3 to NFPA 101, issued October 22, 2013.

(xi) TIA 12–4 to NFPA 101, issued October 22, 2013.

(2) [Reserved]

PART 418—HOSPICE CARE

■ 6. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 418.108 [Amended]

■ 7. Amend § 418.108 by—

■ a. Amending paragraph (a)(2) by removing the reference “§ 418.110(b) and (e)” and by adding in its place the reference “§ 418.110(b) and (f)”.

■ b. Amending paragraph (b)(1)(ii) by removing the reference “§ 418.110(e)” and by adding in its place the reference “§ 418.110(f)”.

■ 8. Amend § 418.110 by—

■ a. Revising paragraphs (d)(1)(i) and (ii).

■ b. Revising paragraphs (d)(2) and (4).

■ c. Adding paragraphs (d)(5) and (6).

■ d. Redesignating paragraphs (e) through (o) as (f) through (p).

■ e. Adding new paragraph (e).

■ f. Amending newly redesignated paragraph (g)(4) introductory text by removing the reference “paragraph (f)(2)(iv) and (f)(2)(v) of this section” and adding in its place the reference

“paragraphs (g)(2)(iv) and (g)(2)(v) of this section”.

■ g. Amending newly redesignated paragraph (n)(9) by removing the reference “paragraph (n) of this section” and adding in its place the reference “paragraph (o) of this section”.

■ h. Amending newly redesignated paragraph (n)(13) by removing the reference “§ 418.110(m)(11)” and adding in its place the reference “paragraph (n)(11) of this section”.

■ i. Adding paragraph (q).

The revisions and additions read as follows:

§ 418.110 Condition of participation: Hospices that provide inpatient care directly.

* * * * *

(d) * * *

(1) * * *

(i) The hospice must meet the applicable provisions and must proceed in accordance with the Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12–1, TIA 12–2, TIA 12–3, and TIA 12–4.)

(ii) Notwithstanding paragraph (d)(1)(i) of this section, corridor doors and doors to rooms containing flammable or combustible materials must be provided with positive latching hardware. Roller latches are prohibited on such doors.

(2) In consideration of a recommendation by the State survey agency or Accrediting Organization or at the discretion of the Secretary, may waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon a hospice facility, but only if the waiver will not adversely affect the health and safety of the patients.

* * * * *

(4) A hospice may place alcohol-based hand rub dispensers in its facility if the dispensers are installed in a manner that adequately protects against access by vulnerable populations.

(5) When a sprinkler system is shut down for more than 10 hours, the hospice must:

(i) Evacuate the building or portion of the building affected by the system outage until the system is back in service, or

(ii) Establish a fire watch until the system is back in service.

(6) Buildings must have an outside window or outside door in every sleeping room, and for any building constructed after July 5, 2016 the sill height must not exceed 36 inches above the floor. Windows in atrium walls are considered outside windows for the purposes of this requirement.

(e) *Standard: Building Safety.* Except as otherwise provided in this section, the hospice must meet the applicable provisions and must proceed in accordance with the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12–2, TIA 12–3, TIA 12–4, TIA 12–5 and TIA 12–6).

(1) Chapters 7, 8, 12, and 13 of the adopted Health Care Facilities Code do not apply to a hospice.

(2) If application of the Health Care Facilities Code required under paragraph (e) of this section would result in unreasonable hardship for the hospice, CMS may waive specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of patients.

* * * * *

(q) The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

(1) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, www.nfpa.org, 1.617.770.3000.

(i) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.

(ii) TIA 12–2 to NFPA 99, issued August 11, 2011.

(iii) TIA 12–3 to NFPA 99, issued August 9, 2012.

(iv) TIA 12–4 to NFPA 99, issued March 7, 2013.

(v) TIA 12–5 to NFPA 99, issued August 1, 2013.

(vi) TIA 12–6 to NFPA 99, issued March 3, 2014.

(vii) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011;

(viii) TIA 12–1 to NFPA 101, issued August 11, 2011.

(ix) TIA 12–2 to NFPA 101, issued October 30, 2012.

(x) TIA 12–3 to NFPA 101, issued October 22, 2013.

(xi) TIA 12–4 to NFPA 101, issued October 22, 2013.

(2) [Reserved]

PART 460—PROGRAMS OF ALL INCLUSIVE CARE FOR THE ELDERLY (PACE)

■ 9. The authority citation for part 460 continues to read as follows:

Authority: Secs. 1102, 1871, 1894(f), and 1934(f) of the Social Security Act (42 U.S.C. 1302 and 1395, 1395eee(f), and 1396u–4(f)).

■ 10. Amend § 460.72 by—

■ a. Revising paragraphs (b)(1)(i) and (ii).

■ b. Revising paragraph (b)(2)(ii)

■ c. Removing paragraphs (b)(3) and (4).

■ d. Redesignating paragraph (b)(5) as paragraph (b)(3).

■ e. Revising newly redesignated paragraph (b)(3).

■ f. Adding new paragraphs (b)(4), (d), and (e).

The revisions and addition read as follows:

§ 460.72 Physical environment.

* * * * *

(b) * * *

(1) * * *

(i) A PACE center must meet the applicable provisions and must proceed in accordance with the Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12–1, TIA 12–2, TIA 12–3, and TIA 12–4.)

(ii) Notwithstanding paragraph (b)(1)(i) of this section, corridor doors and doors to rooms containing flammable or combustible materials must be provided with positive latching hardware. Roller latches are prohibited on such doors.

(2) * * *

(ii) In consideration of a recommendation by the State survey agency or Accrediting Organization or at the discretion of the Secretary, may waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon a PACE facility, but only if the waiver will not adversely affect the health and safety of the patients.

(3) A PACE center may install alcohol-based hand rub dispensers in its facility if the dispensers are installed in a manner that adequately protects against inappropriate access.

(4) When a sprinkler system is shut down for more than 10 hours in a 24-hour period, the PACE must:

(i) Evacuate the building or portion of the building affected by the system outage until the system is back in service, or

(ii) Establish a fire watch until the system is back in service.

* * * * *

(d) *Standard: Building Safety.* Except as otherwise provided in this section, a PACE center must meet the applicable provisions and must proceed in accordance with the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12–2, TIA 12–3, TIA 12–4, TIA 12–5 and TIA 12–6).

(1) Chapters 7, 8, 12, and 13 of the adopted Health Care Facilities Code do not apply to a PACE center.

(2) If application of the Health Care Facilities Code required under paragraph (d) of this section would result in unreasonable hardship for the PACE center, CMS may waive specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of patients.

(e) The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

(1) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, www.nfpa.org, 1.617.770.3000.

(i) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.

(ii) TIA 12–2 to NFPA 99, issued August 11, 2011.

(iii) TIA 12–3 to NFPA 99, issued August 9, 2012.

(iv) TIA 12–4 to NFPA 99, issued March 7, 2013.

(v) TIA 12–5 to NFPA 99, issued August 1, 2013.

(vi) TIA 12–6 to NFPA 99, issued March 3, 2014.

(vii) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011;

(viii) TIA 12–1 to NFPA 101, issued August 11, 2011.

(ix) TIA 12–2 to NFPA 101, issued October 30, 2012.

(x) TIA 12–3 to NFPA 101, issued October 22, 2013.

(xi) TIA 12–4 to NFPA 101, issued October 22, 2013.

(2) [Reserved]

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 11. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.

■ 12. Amend § 482.41 by—

■ a. Revising paragraphs (b)(1)(i) and (ii).

■ b. Revising paragraph (b)(2).

■ c. Removing paragraphs (b)(4) and (b)(5).

■ d. Redesignating paragraphs (b)(6) through (9) as paragraphs (b)(4) through (7), respectively.

■ e. Revising newly redesignated paragraph (b)(7).

■ f. Adding new paragraphs (b)(8), and (9).

■ g. Redesignating paragraph (c) as paragraph (d).

■ h. Adding new paragraphs (c) and (e).
The revisions and additions read as follows:

§ 482.41 Condition of participation: Physical environment.

* * * * *

(b) * * *

(1) * * *

(i) The hospital must meet the applicable provisions and must proceed in accordance with the Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12-1, TIA 12-2, TIA 12-3, and TIA 12-4.)

(ii) Notwithstanding paragraph (b)(1)(i) of this section, corridor doors and doors to rooms containing flammable or combustible materials must be provided with positive latching hardware. Roller latches are prohibited on such doors.

(2) In consideration of a recommendation by the State survey agency or Accrediting Organization or at the discretion of the Secretary, may waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon a hospital, but only if the waiver will not adversely affect the health and safety of the patients.

* * * * *

(7) A hospital may install alcohol-based hand rub dispensers in its facility if the dispensers are installed in a manner that adequately protects against inappropriate access;

(8) When a sprinkler system is shut down for more than 10 hours, the hospital must:

(i) Evacuate the building or portion of the building affected by the system outage until the system is back in service, or

(ii) Establish a fire watch until the system is back in service.

(9) Buildings must have an outside window or outside door in every sleeping room, and for any building constructed after July 5, 2016 the sill height must not exceed 36 inches above the floor. Windows in atrium walls are considered outside windows for the purposes of this requirement.

(i) The sill height requirement does not apply to newborn nurseries and rooms intended for occupancy for less than 24 hours.

(ii) The sill height in special nursing care areas of new occupancies must not exceed 60 inches.

(c) *Standard: Building safety.* Except as otherwise provided in this section, the hospital must meet the applicable provisions and must proceed in accordance with the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12-2, TIA 12-3, TIA 12-4, TIA 12-5 and TIA 12-6).

(1) Chapters 7, 8, 12, and 13 of the adopted Health Care Facilities Code do not apply to a hospital.

(2) If application of the Health Care Facilities Code required under paragraph (c) of this section would result in unreasonable hardship for the hospital, CMS may waive specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of patients.

* * * * *

(e) The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

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(i) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.

(ii) TIA 12-2 to NFPA 99, issued August 11, 2011.

(iii) TIA 12-3 to NFPA 99, issued August 9, 2012.

(iv) TIA 12-4 to NFPA 99, issued March 7, 2013.

(v) TIA 12-5 to NFPA 99, issued August 1, 2013.

(vi) TIA 12-6 to NFPA 99, issued March 3, 2014.

(vii) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011;

(viii) TIA 12-1 to NFPA 101, issued August 11, 2011.

(ix) TIA 12-2 to NFPA 101, issued October 30, 2012.

(x) TIA 12-3 to NFPA 101, issued October 22, 2013.

(xi) TIA 12-4 to NFPA 101, issued October 22, 2013.

(2) [Reserved]

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 13. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102, 1128I, 1819, 1871 and 1919 of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395i, 1395hh and 1396r).

§ 483.15 [Amended]

■ 14. In § 483.15, amend paragraph (h)(4) by removing the reference “§ 483.70(d)(2)(iv) of this part” and by adding in its place the reference “§ 483.70(e)(2)(iv)”.

■ 15. Amend § 483.70 by—

■ a. Revising paragraphs (a)(1)(i) and (ii).

■ b. Revising paragraph (a)(2).

■ c. Removing paragraphs (a)(4) and (5).

■ d. Redesignating paragraphs (a)(6) through (8) as paragraphs (a)(4) through (6), respectively.

■ e. Revising newly redesignated paragraph (a)(4).

■ f. Adding new paragraphs (a)(7) and (8).

■ g. Redesignating paragraphs (b) through (h) as paragraphs (c) through (i).

■ h. Adding new paragraphs (b) and (j).

The revisions read as follows:

§ 483.70 Physical environment.

* * * * *

(a) * * *

(1) * * *

(i) The LTC facility must meet the applicable provisions and must proceed in accordance with the Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12-1, TIA 12-2, TIA 12-3, and TIA 12-4.)

(ii) Notwithstanding paragraph (a)(1)(i) of this section, corridor doors and doors to rooms containing flammable or combustible materials must be provided with positive latching hardware. Roller latches are prohibited on such doors.

(2) In consideration of a recommendation by the State survey agency or Accrediting Organization or at the discretion of the Secretary, may waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon a long-term care facility, but only if the waiver will not adversely affect the health and safety of the patients.

* * * * *

(4) A long-term care facility may install alcohol-based hand rub dispensers in its facility if the dispensers are installed in a manner that adequately protects against inappropriate access.

* * * * *

(7) Buildings must have an outside window or outside door in every sleeping room, and for any building constructed after July 5, 2016 the sill height must not exceed 36 inches above the floor. Windows in atrium walls are considered outside windows for the purposes of this requirement.

(8) When a sprinkler system is shut down for more than 10 hours, the ASC must:

(i) Evacuate the building or portion of the building affected by the system outage until the system is back in service, or

(ii) Establish a fire watch until the system is back in service.

(b) *Standard: Building safety.* Except as otherwise provided in this section, the LTC facility must meet the applicable provisions and must proceed in accordance with the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12-2, TIA 12-3, TIA 12-4, TIA 12-5 and TIA 12-6).

(1) Chapters 7, 8, 12, and 13 of the adopted Health Care Facilities Code do not apply to a LTC facility.

(2) If application of the Health Care Facilities Code required under paragraph (b) of this section would result in unreasonable hardship for the LTC facility, CMS may waive specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of residents.

* * * * *

(j) The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For

information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal-register/code-of-federal-regulations/ibr_locations.html. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

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(i) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.

(ii) TIA 12-2 to NFPA 99, issued August 11, 2011.

(iii) TIA 12-3 to NFPA 99, issued August 9, 2012.

(iv) TIA 12-4 to NFPA 99, issued March 7, 2013.

(v) TIA 12-5 to NFPA 99, issued August 1, 2013.

(vi) TIA 12-6 to NFPA 99, issued March 3, 2014.

(vii) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011;

(viii) TIA 12-1 to NFPA 101, issued August 11, 2011.

(ix) TIA 12-2 to NFPA 101, issued October 30, 2012.

(x) TIA 12-3 to NFPA 101, issued October 22, 2013.

(xi) TIA 12-4 to NFPA 101, issued October 22, 2013.

(2) [Reserved]

■ 16. Amend § 483.470 by—

■ a. Revising paragraphs (j)(1)(i) and (ii).

■ b. Adding paragraphs (j)(1)(iii) and (iv).

■ c. Removing paragraphs (j)(5) and (6).

■ d. Redesignating paragraph (j)(7) as paragraph (j)(5).

■ e. Revising newly redesignated paragraph (j)(5).

■ f. Adding paragraph (m).

The revisions and additions read as follows:

§ 483.470 Condition of participation: Physical environment.

* * * * *

(j) * * *

(1) * * *

(i) The facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter and must proceed in accordance with the Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12-1, TIA 12-2, TIA 12-3, and TIA 12-4.)

(ii) Notwithstanding paragraph (j)(1)(i) of this section, corridor doors and doors to rooms containing flammable or combustible materials must be provided

with positive latching hardware. Roller latches are prohibited on such doors.

(iii) Chapters 32.3.2.11.2 and 33.3.2.11.2 of the adopted 2012 Life Safety Code do not apply to a facility.

(iv) Beginning July 5, 2019, an ICF-IID must be in compliance with Chapter 33.2.3.5.7.1, Sprinklers in attics, or Chapter 33.2.3.5.7.2, Heat detection systems in attics of the Life Safety Code.

* * * * *

(5) *Facilities that meet the Life Safety Code definition of a health care occupancy.* (i) In consideration of a

recommendation by the State survey agency or Accrediting Organization or at the discretion of the Secretary, may waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon a residential board and care facility, but only if the waiver will not adversely affect the health and safety of the patients.

(ii) A facility may install alcohol-based hand rub dispensers if the dispensers are installed in a manner that adequately protects against inappropriate access.

(iii) When a sprinkler system is shut down for more than 10 hours, the ICF-IID must:

(A) Evacuate the building or portion of the building affected by the system outage until the system is back in service, or

(B) Establish a fire watch until the system is back in service.

(iv) Beginning July 5, 2019, an ICF-IID must be in compliance with Chapter 33.2.3.5.7.1, sprinklers in attics, or Chapter 33.2.3.5.7.2, heat detection systems in attics of the Life Safety Code.

(v) Except as otherwise provided in this section, ICF-IIDs must meet the applicable provisions and must proceed in accordance with the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12-2, TIA 12-3, TIA 12-4, TIA 12-5 and TIA 12-6).

(A) Chapter 7, 8, 12 and 13 of the adopted Health Care Facilities Code does not apply to an ICF-IID.

(B) If application of the Health Care Facilities Code required under paragraph

(j)(5)(iv) of this section would result in unreasonable hardship for the ICF-IID, CMS may waive specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of clients.

* * * * *

(m) The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal

Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

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(i) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.

(ii) TIA 12-2 to NFPA 99, issued August 11, 2011.

(iii) TIA 12-3 to NFPA 99, issued August 9, 2012.

(iv) TIA 12-4 to NFPA 99, issued March 7, 2013.

(v) TIA 12-5 to NFPA 99, issued August 1, 2013.

(vi) TIA 12-6 to NFPA 99, issued March 3, 2014.

(vii) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011;

(viii) TIA 12-1 to NFPA 101, issued August 11, 2011.

(ix) TIA 12-2 to NFPA 101, issued October 30, 2012.

(x) TIA 12-3 to NFPA 101, issued October 22, 2013.

(xi) TIA 12-4 to NFPA 101, issued October 22, 2013.

(2) [Reserved]

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

■ 17. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

■ 18. Amend § 485.623 by—

■ a. Revising paragraphs (d)(1)(i) and (ii).

■ b. Revising paragraph (d)(2).

■ c. Removing paragraphs (d)(5) and (6).

■ d. Redesignating paragraph (d)(7) as paragraph (d)(5).

■ e. Revising newly redesignated paragraph (d)(5).

■ f. Adding paragraphs (d)(6), (7), (e), and (f).

The revisions and additions read as follows:

§ 485.623 Condition of participation: Physical plant and environment.

* * * * *

(d) * * *

(1) * * *

(i) The CAH must meet the applicable provisions and must proceed in accordance with the Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12-1, TIA 12-2, TIA 12-3, and TIA 12-4.)

(ii) Notwithstanding paragraph (d)(1)(i) of this section, corridor doors and doors to rooms containing flammable or combustible materials must be provided with positive latching hardware. Roller latches are prohibited on such doors.

(2) In consideration of a recommendation by the State survey agency or Accrediting Organization or at the discretion of the Secretary, may waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon a CAH, but only if the waiver will not adversely affect the health and safety of the patients.

* * * * *

(5) A CAH may install alcohol-based hand rub dispensers in its facility if the dispensers are installed in a manner that adequately protects against inappropriate access.

(6) When a sprinkler system is shut down for more than 10 hours, the CAH must:

(i) Evacuate the building or portion of the building affected by the system outage until the system is back in service, or

(ii) Establish a fire watch until the system is back in service.

(7) Buildings must have an outside window or outside door in every sleeping room, and for any building constructed after July 5, 2016 the sill height must not exceed 36 inches above the floor. Windows in atrium walls are considered outside windows for the purposes of this requirement.

(i) The sill height requirement does not apply to newborn nurseries and rooms intended for occupancy for less than 24 hours.

(ii) Special nursing care areas of new occupancies shall not exceed 60 inches.

(e) *Standard: Building safety.* Except as otherwise provided in this section, the CAH must meet the applicable provisions and must proceed in accordance with the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12-2, TIA 12-3, TIA 12-4, TIA 12-5 and TIA 12-6).

(1) Chapters 7, 8, 12, and 13 of the adopted Health Care Facilities Code do not apply to a CAH.

(2) If application of the Health Care Facilities Code required under paragraph (e) of this section would result in unreasonable hardship for the CAH, CMS may waive specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of patients.

(f) The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

(1) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, www.nfpa.org, 1.617.770.3000.

(i) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.

(ii) TIA 12-2 to NFPA 99, issued August 11, 2011.

(iii) TIA 12-3 to NFPA 99, issued August 9, 2012.

(iv) TIA 12-4 to NFPA 99, issued March 7, 2013.

(v) TIA 12-5 to NFPA 99, issued August 1, 2013.

(vi) TIA 12-6 to NFPA 99, issued March 3, 2014.

(vii) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011;

(viii) TIA 12-1 to NFPA 101, issued August 11, 2011.

(ix) TIA 12-2 to NFPA 101, issued October 30, 2012.

(x) TIA 12-3 to NFPA 101, issued October 22, 2013.

(xi) TIA 12-4 to NFPA 101, issued October 22, 2013.

(2) [Reserved]

Dated: March 11, 2016.

Andrew M. Slavitt,
Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: March 30, 2016.

Sylvia M. Burwell,
Secretary, Department of Health and Human Services.

[FR Doc. 2016-10043 Filed 5-3-16; 8:45 am]

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Part III

Department of Homeland Security

8 CFR Parts 103 and 204

U.S. Citizenship and Immigration Services Fee Schedule; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103 and 204

[CIS No. 2577–15; DHS Docket No. USCIS–2016–0001]

RIN 1615–AC09

U.S. Citizenship and Immigration Services Fee Schedule

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to adjust certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). USCIS conducted a comprehensive fee review, after refining its cost accounting process, and determined that current fees do not recover the full costs of the services it provides. Adjustment to the fee schedule is necessary to fully recover costs for USCIS services and to maintain adequate service. DHS proposes to increase USCIS fees by a weighted average of 21 percent and add one new fee. In addition, DHS proposes to clarify that persons filing a benefit request may be required to appear for biometrics services or an interview and pay the biometrics services fee, and make a number of other changes.

DATES: Written comments must be submitted on or before July 5, 2016.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2016–0001, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow this site's instructions for submitting comments.

- *Email:* You may email comments directly to USCIS at uscisfrcomment@dhs.gov. Include DHS Docket No. USCIS–2016–0001 in the subject line of the message.

- *Mail:* You may submit comments directly to USCIS by mailing them to Samantha Deshommes, Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. To ensure proper handling, please reference DHS Docket No. USCIS–2016–0001 on your correspondence. This mailing address may be used for paper or CD–ROM submissions.

- *Hand Delivery/Courier:* You may submit comments directly to USCIS by having them delivered to Samantha

Deshommes, Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. The contact telephone number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT:

Joseph D. Moore, Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2130, telephone (202) 272–1969.

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List of Acronyms and Abbreviations

- ABC Activity-Based Costing
 BLS Bureau of Labor Statistics
 CFO Chief Financial Officer
 CNMI Commonwealth of the Northern Mariana Islands
 CPI Consumer Price Index
 DACA Deferred Action for Childhood Arrivals
 DOD Department of Defense
 DHS Department of Homeland Security
 DOL Department of Labor
 DOS Department of State
 EB–5 Employment-Based Immigrant Visa, Fifth Preference
 EIN Employer Identification Number
 FASAB Federal Accounting Standards Advisory Board
 FBI Federal Bureau of Investigation
 FOIA Freedom of Information Act
 FY Fiscal Year
 GAO Government Accountability Office
 IEFA Immigration Examinations Fee Account
 INA Immigration and Nationality Act of 1952
 IPO Investor Program Office
 IOAA Independent Offices Appropriations Act
 NACARA Nicaraguan Adjustment and Central American Relief Act
 NAICS North American Industry Classification System
 OMB Office of Management and Budget
 RAIO Refugee, Asylum, and International Operations Directorate
 RFA Regulatory Flexibility Act
 SAVE Systematic Alien Verification for Entitlements
 SBA Small Business Administration
 TPS Temporary Protected Status
 UMRA Unfunded Mandates Reform Act
 USCIS U.S. Citizenship and Immigration Services
 USPHS U.S. Public Health Service
 VPC Volume Projection Committee

I. Public Participation

DHS invites you to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments providing

the most assistance to DHS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports the recommended change.

Instructions: All submissions should include the agency name and DHS Docket No. USCIS–2016–0001 for this rulemaking. Providing comments is entirely voluntary. Regardless of how you submit your comment to DHS, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov> and will include any personal information you provide. Because the information you submit will be publicly available, you should consider limiting the amount of personal information in your submission. DHS may withhold information provided in comments from public viewing if DHS determines that such information is offensive or may affect the privacy of an individual. For additional information, please read the Privacy Act notice available through the link in the footer of <http://www.regulations.gov>.

Docket: For access to the docket, go to <http://www.regulations.gov> and enter this rulemaking's eDocket number: USCIS–2016–0001. The docket includes additional documents that support the analysis contained in this proposed rule to determine the specific fees that are proposed. These documents include:

- Fiscal Year (FY) 2016/2017 Immigration Examinations Fee Account Fee Review Supporting Documentation; and
- Small Entity Analysis for Adjustment of the U.S. Citizenship and Immigration Services Fee Schedule notice of proposed rulemaking (NPRM).

You may review these documents on the electronic docket. The software¹ used in computing the immigration benefit request fees² and biometric fees³ is a commercial product licensed to USCIS that may be accessed on-site,

by appointment, by calling (202) 272–1969.⁴

II. Executive Summary

DHS proposes to adjust its fee schedule, which specifies the amount of the fee charged for each immigration and naturalization benefit request. The fee schedule was last adjusted on November 23, 2010. See 75 FR 58962 (Sept. 24, 2010) (final rule) (FY 2010/2011 Fee Rule).

U.S. Citizenship and Immigration Services (USCIS) is primarily funded by immigration and naturalization benefit request fees charged to applicants and petitioners. Fees collected from individuals and entities filing immigration benefit requests are deposited into the Immigration Examinations Fee Account (IEFA) and used to fund the cost of processing immigration benefit requests.

In accordance with the requirements and principles of the Chief Financial Officers Act of 1990, 31 U.S.C. 901–03, (CFO Act), and Office of Management and Budget (OMB) Circular A–25, USCIS reviews the fees deposited into the IEFA biennially and, if necessary, proposes adjustments to ensure recovery of costs necessary to meet national security, customer service, and adjudicative processing goals. USCIS completed a biennial fee review for FY 2016/2017 in 2015. The results indicate that current fee levels are insufficient to recover the full cost of activities funded by the IEFA.

USCIS calculates its fees to recover the full cost of USCIS operations, which do not include the limited appropriated funds provided by Congress. USCIS anticipates if it continues to operate at current fee levels, it will experience an average annual shortfall of \$560 million between IEFA revenues and costs. This projected shortfall poses a risk of degrading USCIS operations funded by IEFA revenue. The proposed rule would eliminate this risk by ensuring full cost recovery. DHS proposes to adjust fees by a weighted average increase of 21 percent. The weighted average increase is the percentage difference between the current and proposed fees by immigration benefit type.⁵ USCIS

discusses the overall increase proposed in this rule in terms of weighted average, as opposed to a straight average, because the figure represents a more accurate depiction of the overall effect that this proposed rule would have on fee revenue.

In addition to ensuring that fees for each specific benefit type are adequate to cover the USCIS costs associated with administering the benefit, the weighted average increase of 21 percent also accounts for USCIS costs for services that are not directly fee funded. For instance, DHS proposes certain changes to how USCIS funds the costs for fee-exempt benefit types through IEFA fee collections received from other fee-paying individuals seeking immigration benefits.⁶ DHS also proposes to fund the costs of the Systematic Alien Verification for Entitlements (SAVE) program (to the extent not recovered from users),⁷ and the Office of Citizenship⁸ through the use of fees. The proposed fee schedule also accounts for increased costs to administer refugee processing. Revenues under the proposed rule would accommodate an anticipated increase in the refugee admissions ceiling to 100,000 for FY 2017. This is an increase of 30,000, or 43 percent, over the FY 2015 refugee admissions ceiling.

In addition to the overall increase to existing fees, DHS proposes to establish a new fee of \$3,035 to recover the full cost of processing the Employment Based Immigrant Visa, Fifth Preference

that would have to be paid per form as proposed in this rule. The sum of the current fees multiplied by the projected FY 2016/2017 fee paying receipts by immigration benefit type, divided by the total fee paying receipts = \$332. The sum of the proposed fees multiplied by the projected FY 2016/2017 receipts by immigration benefit type, divided by the fee paying receipts = \$403. There is a \$71 difference between these two averages, or 21%.

⁶ USCIS does not charge a fee for military naturalizations, as the Department of Defense (DOD) currently reimburses USCIS for costs related to such naturalizations. Accordingly, USCIS does not propose to increase fees to cover the costs of military naturalizations.

⁷ The SAVE program was established in 1987 by the Immigration Reform and Control Act (IRCA), Pub. L. 99–603, § 121(c) (Nov. 6, 1986), which required the Commissioner of the Immigration and Naturalization Service (INS) to “implement a system for the verification of immigration status . . . so that the system is available to all States by not later than October 1, 1987.” SAVE uses an internet-based service to assist Federal, state and local benefit-issuing and licensing agencies, and other governmental entities, in determining the immigration status of benefit or license applicants, so that only those applicants entitled to benefits or licenses receive them.

⁸ The USCIS Office of Citizenship was established by section 451(f) of the Homeland Security Act of 2002. Pub. L. 107–296, § 451(f) (2002). The statute tasks the office with “promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens.”

¹ USCIS uses commercially available activity-based costing software, SAP Business Objects Profitability and Cost Management, to create financial models to implement activity-based costing (ABC), as described in the ABC Methodology section.

² Benefit request means any application, petition, motion, appeal, or other request relating to an immigration or naturalization benefit, whether such request is filed on a paper form or submitted in an electronic format, provided such request is submitted in a manner prescribed by DHS for such purpose. 8 CFR 1.2.

³ DHS uses the terms biometric fees, biometric services fees, and biometric fee synonymously in this rule to describe the process and fee for capturing, storing, or using biometrics.

⁴ This rule describes the ABC model and key inputs to that model (total budget, workload estimates, staffing, and completion rates), both here and in the supporting documentation in the docket.

⁵ USCIS uses weighted average as opposed to a straight average because of the difference in volume by immigration benefit type and the resulting effect on fee revenue. See the FY 2016/2017 Immigration Examinations Fee Account Fee Review Supporting Documentation for further information. The 21% weighted average increase is a change in the average fee that must be paid per filing for a form that currently requires a fee as compared to the average

(EB–5) Annual Certification of Regional Center, Form I–924A.⁹ While approved EB–5 Regional Centers are required to file Form I–924A annually, there is currently no filing fee and as a result, DHS does not fully recover the processing costs associated with such filings. DHS therefore proposes to establish a filing fee for this form.

DHS also proposes to establish a three-level fee for the Application for Naturalization (Form N–400). First, DHS would increase the standard fee for Form N–400 from \$595 to \$640. Second, DHS would continue to charge no fee to an applicant who meets the requirements of sections 328 or 329 of the Immigration and Nationality Act of 1952 (INA) with respect to military service and applicants with approved fee waivers. Third, DHS would charge a reduced fee of \$320 for naturalization applicants with family income greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines. DHS is proposing this change to increase access to United States citizenship.

DHS also proposes to remove regulatory provisions that prevent USCIS from rejecting an immigration or naturalization benefit request paid with a dishonored check or lacking the required biometric services fee until the remitter has been provided an opportunity to correct the deficient payment. Finally, DHS proposes to clarify that persons filing any benefit request may be required to appear for biometrics services or an interview and may be required to pay the biometrics services fee.

III. Background

A. Legal Authority and Guidance

DHS issues this proposed rule consistent with INA section 286(m), 8 U.S.C. 1356(m) (authorizing DHS to charge fees for adjudication and naturalization services at a level to “ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants”¹⁰), and the CFO Act, 31 U.S.C. 901–03 (requiring each agency’s Chief Financial Officer (CFO) to review, on a biennial basis, the fees imposed by the agency for services it

provides, and to recommend changes to the agency’s fees).

This proposed rule is also consistent with non-statutory guidance on fees, the budget process, and federal accounting principles. *See* OMB Circular A–25, available at http://www.whitehouse.gov/omb/circulars_a025/, 58 FR 38142 (July 15, 1993) (establishing federal policy guidance regarding fees assessed by federal agencies for government services); Federal Accounting Standards Advisory Board (FASAB) Handbook, Version 14 (06/15), SFFAS 4, No. 37, available at http://files.fasab.gov/pdf/files/handbook_sffas_4.pdf (generally describing cost accounting concepts and standards, and defining “full cost” to include “direct and indirect costs that contribute to the output, regardless of funding sources.”); *id.* at 33–42 (identifying various classifications of costs to be included and recommending various methods of cost assignment); *see also* OMB Circular A–11, Preparation, Submission, and Execution of the Budget, section 20.7(d), (g) (June 30, 2015), available at www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/a11_2015.pdf (providing guidance on the FY 2017 Budget and instructions on budget execution, offsetting collections, and user fees). DHS uses OMB Circular A–25 as general policy guidance for determining user fees for immigration benefit requests, with exceptions as outlined below. DHS also follows the annual guidance in OMB Circular A–11 if it requests appropriations to offset a portion of IEFA costs.¹¹

Finally, this rule accounts for and is consistent with congressional appropriations for specific USCIS programs. Appropriated funding for USCIS for FY 2016 provided funding only for the E-Verify employment eligibility verification program in the amount of \$119.7 million. *See* Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. IV (Dec. 18, 2015) (DHS Appropriations Act 2016).

B. Full Cost Recovery

Consistent with the aforementioned authorities and sources, this proposed rule would ensure that USCIS recovers the full costs for its services and maintains an adequate level of service.

The proposed rule would do this in two ways. First, where possible, the proposed rule would set fees at levels sufficient to cover the full cost of the corresponding services.¹² DHS works with OMB and generally follows OMB Circular A–25, which “establishes federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources.” *See* OMB Circular A–25, *User Charges* (Revised), para. 6, 58 FR 38142 (July 15, 1993). A primary objective of OMB Circular A–25 is to ensure that federal agencies recover the full cost of providing specific services to users and associated costs. *See id.*, para. 5. Full costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- Management and supervisory costs; and
- The costs of enforcement, collection, research, establishment of standards, and regulation. *Id.*

Second, this proposed rule would set fees at a level sufficient to fund overall requirements and general operations when no annual appropriations are received, fees are statutorily set at a level that does not recover costs, or DHS determines that a type of immigration benefit request should be exempt, in whole or in part, from payment of fees. As noted, Congress has provided that USCIS may set fees for providing

¹² INA section 286(m), 8 U.S.C. 1356(m), provides broader fee-setting authority and is an exception from the stricter costs-for-services-rendered requirements of the Independent Offices Appropriations Act, 1952, 31 U.S.C. 9701(c) (IOAA). *See Seafarers Int’l Union of N. Am. v. U.S. Coast Guard*, 81 F.3d 179 (D.C. Cir. 1996) (IOAA provides that expenses incurred by agency to serve some independent public interest cannot be included in cost basis for a user fee, although agency is not prohibited from charging applicant full cost of services rendered to applicant which also results in some incidental public benefits). Congress initially enacted immigration fee authority under the IOAA. *See Ayuda, Inc. v. Attorney General*, 848 F.2d 1297 (D.C. Cir. 1988). Congress thereafter amended the relevant provision of law to require deposit of the receipts into the separate Immigration Examinations Fee Account of the Treasury as offsetting receipts to fund operations, and broadened the fee-setting authority. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Public Law 101–515, sec. 210(d), 104 Stat. 2101, 2111 (Nov. 5, 1990). Additional values are considered in setting Immigration Examinations Fee Account fees that would not be considered in setting fees under the IOAA. *See* 72 FR at 29866–7.

⁹ This rule proposes to change the title of Form I–924A from “Supplement to Form I–924” to “Annual Certification of Regional Center.”

¹⁰ The longstanding interpretation of DHS is that the “including” clause in section 286(m) does not constrain DHS’s fee authority under the statute. The “including” clause offers only a non-exhaustive list of some of the costs that DHS may consider part of the full costs of providing adjudication and naturalization services.

¹¹ OMB Circulars A–25 and A–11 provide nonbinding internal Executive Branch direction for the development of fee schedules under the Independent Offices Appropriations Act (IOAA) and appropriations requests, respectively. *See* 5 CFR 1310.1. Although DHS is not required to strictly adhere to these OMB circulars in setting USCIS fees, DHS used the activity-based costing (ABC) methodology supported in Circulars A–25 and A–11 to develop the proposed fee schedule.

adjudication and naturalization services at a level that will ensure recovery of the full costs of providing *all* such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. See INA section 286(m), 8 U.S.C. 1356(m).¹³ DHS has interpreted this statutory fee-setting authority, including the authorization for DHS to collect “full costs” for providing “adjudication and naturalization services,” as granting DHS broad discretion to include costs other than OMB Circular A–25 generally provides. See *OMB Circular A–25*, para. 6d1; INA section 286(m), 8 U.S.C. 1356(m). In short, DHS may charge fees at a level that will ensure recovery of all direct and indirect costs associated with providing immigration adjudication and naturalization services.¹⁴

Consistent with this historical position, this proposed rule would set fees at a level that will ensure recovery of the full operating costs of USCIS, the entity within DHS that provides almost all immigration adjudication and naturalization services. See Homeland Security Act (HSA), Public Law 107–296, sec. 451, 116 Stat. 2142 (Nov. 26, 2002) (6 U.S.C. 271). The statute authorizes recovery of the full costs of providing immigration adjudication and naturalization services. Congress has historically relied on this authority to support the vast majority of USCIS programs and operations, which are conducted as part of adjudication and naturalization service delivery. This conclusion is supported by Congress’ historical appropriations to USCIS. USCIS receives only a small amount of appropriated funds annually, and the agency must use other means to fund, as

a matter of both discretion and necessity, all other USCIS operations.

Thus, for example, certain functions (such as SAVE¹⁵ and the Office of Citizenship¹⁶), that USCIS has administered since DHS’s inception as an integrated part of fulfilling USCIS’s statutory responsibility to provide immigration adjudication and naturalization services, are not associated with specific fees, but may be IEFA-funded. Similarly, when a filing fee for a benefit such as Temporary Protected Status (TPS), capped by statute at \$50, does not cover the cost of adjudicating these benefit requests, DHS may recover the difference with fees charged to other benefit requests. See INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B); 8 CFR 103.7(b)(1)(i)(MM); proposed 8 CFR 103.7(b)(1)(i)(NN). Finally, when DHS exempts certain foreign nationals from visa fees—for example, victims who assist law enforcement in the investigation or prosecution of acts of human trafficking (T nonimmigrant status) or certain other crimes (U nonimmigrant status)—the cost of processing those fee-exempt visas must be recovered by fees charged to other benefit requests. See, e.g., proposed 8 CFR 103.7(b)(1)(i)(UU)–(VV).

In short, the full costs of USCIS operations cannot be as directly correlated or connected to a specific fee as OMB Circular A–25 advises. Nonetheless, DHS follows OMB Circular A–25 to the extent appropriate, including its direction that fees should be set to recover the costs of an agency’s services in their entirety and that full costs are determined based upon the best available records of the agency. *Id.* DHS therefore applies the discretion provided in INA section 286(m), 8 U.S.C. 1356(m), to: (1) Use ABC to establish a model for assigning costs to specific benefit requests in a manner reasonably consistent with OMB

Circular A–25; (2) distribute costs that are not attributed to or driven by specific adjudication and naturalization services;¹⁷ and (3) make additional adjustments to effectuate specific policy objectives.¹⁸

By approving the DHS annual appropriations that provide very limited funds to USCIS, Congress has consistently recognized that the “full” cost of operating USCIS, including SAVE and the Office of Citizenship, less any appropriated funding, is the appropriate cost basis for establishing IEFA fees. Nevertheless, in each biennial review, DHS adds refinements to its determination of immigration benefit fees, including the level by which fees match directly assignable, associated, and indirect costs.

C. New Statutory Fees for Certain H–1B and L–1 Petitions

The James Zadroga 9/11 Victim Compensation Fund Reauthorization Act increased Fees For Certain H–1B¹⁹ And L–1²⁰ Visa Petitioners. See Consolidated Appropriations Act, 2016, Public Law 114–113, div. O, tit. IV, sec. 402 (Dec. 18, 2015). These petitioners must submit an additional fee of \$4,000 for certain H–1B petitions and \$4,500 for certain L–1A and L–1B petitions postmarked on or after December 18, 2015. Proposed 8 CFR 103.7(b)(1)(i)(III)–(JJJ).

The additional fees apply to petitioners who employ 50 or more employees in the United States, with more than 50 percent of those employees in H–1B or L–1 (including L–1A and L–1B) nonimmigrant status.

¹⁷ The ABC model distributes indirect costs. Costs that are not assigned to specific fee-paying immigration benefit requests are reallocated to other fee-paying immigration benefit requests outside the model. For example, the model determines the direct and indirect costs for refugee and asylum workload. The costs associated with processing the refugee and asylum workload are reallocated outside the model to other fee-paying immigration benefit requests.

¹⁸ DHS may reasonably adjust fees based on value judgments and public policy reasons where a rational basis for the methodology is propounded in the rulemaking. See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

¹⁹ The H–1B nonimmigrant classification allows U.S. employers to temporarily employ foreign workers in the United States to perform services in a specialty occupation, services of an exceptional nature relating to a Department of Defense cooperative research and development project, or services as a fashion model of distinguished merit or ability. INA section 101(a)(15)(H), 8 U.S.C. 1101(a)(15)(H).

²⁰ L–1 petitions are filed to transfer individuals who are employed outside the United States as executives or managers, or in positions that require specialized knowledge, to a position with the same or a related entity inside the United States. INA section 101(a)(15)(L), 8 U.S.C. 1101(a)(15)(L).

¹³ Congress has provided separate but similar authority for establishing USCIS genealogy program fees. See INA section 286(t), 8 U.S.C. 1356(t). The statute requires that genealogy program fees be deposited into the Examinations Fee Account and that the fees for such research and information services may be set at a level that will ensure the recovery of the full costs of providing all such services. *Id.* The methodology for calculating the genealogy program fees is discussed in a separate section later in this preamble.

¹⁴ Congress has not defined either term with any degree of specificity for purposes of subsections (m) and (n). See, e.g., *Barahona v. Napolitano*, No. 10–1574, 2011 WL 4840716, at **6–8 (S.D.N.Y. Oct. 11, 2011) (“While the term ‘full costs’ appears self-explanatory, section 286(m) contains both silence and ambiguity concerning the precise scope that ‘full costs’ entails in this context.”); see also *King v. Burwell*, 135 S. Ct. 2480, 2489 (2015) (“[O]ftentimes the ‘meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.’ So when deciding whether the language is plain, we must read the words ‘in their context and with a view to their place in the overall statutory scheme.’”) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132–33 (2000)).

¹⁵ SAVE has been funded almost exclusively by user fees and IEFA funds, as Congress has not provided any direct appropriated funds for the program since FY 2007. SAVE provides an “immigration adjudication . . . service” under sections 286(m) and (n) of the INA to Federal, state and local agencies who require immigration adjudication information in administering their benefits.

¹⁶ The Office of Citizenship was created in the HSA at the same time as several other mission essential USCIS offices, such as those for legal, budget and policy. Like those offices, the Office of Citizenship has always been considered an essential part of the “adjudication and naturalization services” USCIS provides under sections 286(m) and (n) of the INA. An integral part of providing such services, as Congress recognized in creating the Citizenship office in section 451(f) of the INA, includes providing information to potential applicants for naturalization regarding the process of naturalization and related activities.

These petitioners must submit the additional fees with an H-1B or L-1 petition filed:

- Initially to grant status to a nonimmigrant described in subparagraph (H)(i)(b) or (L) of section 101(a)(15) of the Immigration and Nationality Act; or
- To obtain authorization for a nonimmigrant in such status to change employers.

USCIS began rejecting petitions after February 11, 2016 that do not include the additional Public Law 114-113 fee, if applicable. This fee is in addition to the Petition for a Nonimmigrant Worker (Form I-129) fee, the Fraud Prevention and Detection Fee, and the American Competitiveness and Workforce Improvement Act of 1998 fee (when required), as well as the premium processing fee (if applicable). These fees, when applicable, may not be waived. Public Law 114-113 fees will remain effective through September 30, 2025.

USCIS collects this revenue, but does not spend it. One half of the revenue collected from such fees goes to the General Fund of the Treasury. The other half is deposited by DHS into the 9-11 Response and Biometric Exit Account to fund a biometric entry-exit data system to track the lawful entrance and departure of all noncitizens at U.S. airports and land border crossings. After a total of \$1,000,000,000 is deposited into the 9-11 Response and Biometric Exit Account, further revenue will be deposited in the general fund of the Treasury. The funds in the 9-11 Response and Biometric Exit Account

will remain available until expended to U.S. Customs and Border Protection and/or other DHS components to implement the biometric entry-exit data system.

USCIS is already collecting these new statutory fees and is in the process of revising the instructions for the Petition for a Nonimmigrant Worker, Form I-129, and the Nonimmigrant Petition Based on Blanket L Petition, Form I-129S, to include them. DHS is required to charge these fees and has no authority to change them. DHS is proposing to publish these new statutory fees in the interest of transparency, information and clarity.

IV. The Immigration Examinations Fee Account

A. General Background

In 1988, Congress established the IEFA in the Treasury of the United States. *See* Public Law 100-459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988) (codified as amended at INA sections 286(m) and (n), 8 U.S.C. 1356(m) and (n)). Fees deposited into the IEFA fund the provision of immigration adjudication and naturalization services. In subsequent legislation, Congress directed that the IEFA also fund the cost of asylum processing and other services provided to immigrants at no charge. *See* Public Law 101-515, sec. 210(d)(1) and (2), 104 Stat. 2101, 2121 (Nov. 5, 1990). Consequently, the immigration benefit fees were increased to recover these additional costs. *See* 59 FR 30520 (June 14, 1994).

B. Fee Review History

Most recently, DHS published a revised USCIS fee schedule in its 2010/2011 Fee Rule that amended many USCIS fees to more accurately reflect the costs of services provided by USCIS. 75 FR 58962 (Sept. 24, 2010).²¹ The rule was effective on November 23, 2010. The Department of Justice²² also adjusted fees incrementally in 1994, and DHS adjusted fees in 2002, 2004, and 2005. *See* 59 FR 30520 (June 14, 1994); 66 FR 65811 (Dec. 21, 2001); 69 FR 20528 (Apr. 15, 2004); 70 FR 56182 (Sept. 26, 2005). After a decade of incremental changes, DHS published a comprehensive Fee Rule in 2007. *See* 72 FR 29851 (May 30, 2007). The documentation accompanying this proposed rule in the rulemaking docket at www.regulations.gov contains a historical fee schedule that shows the immigration benefit fee history since FY 1985.

USCIS reviews the IEFA every 2 years as required by the CFO Act and consistent with guidance in OMB Circular A-25. 31 U.S.C. 902(a)(8); OMB Circular A-25, section 8e. The CFO Act and OMB Circular A-25 require that fees be reviewed biennially so that fee-funded agencies monitor and adjust their fees in light of actual and projected expenses. *Id.*

Table 1 sets out the IEFA and biometric services fee schedule that took effect on November 23, 2010. DHS is proposing to change the fee schedule as a result of the 2016/2017 Fee Review. The table excludes statutory fees that DHS cannot adjust.

TABLE 1—CURRENT NON-STATUTORY IEFA IMMIGRATION BENEFIT REQUEST FEES

Form No. ²³	Title	Fee
G-1041	Genealogy Index Search Request	\$20
G-1041A	Genealogy Records Request (Copy from Microfilm)	20
G-1041A	Genealogy Records Request (Copy from Textual Record)	35
I-90	Application to Replace Permanent Resident Card	365
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	330
I-129	Petition for a Nonimmigrant Worker	325
I-129F	Petition for Alien Fiancé(e)	340
I-130	Petition for Alien Relative	420
I-131	Application for Travel Document ²⁴	360
I-140	Immigrant Petition for Alien Worker	580
I-191	Application for Advance Permission to Return to Unrelinquished Domicile	585
I-192	Application for Advance Permission to Enter as Nonimmigrant	585
I-193	Application for Waiver of Passport and/or Visa	585
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	585
I-290B	Notice of Appeal or Motion	630
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	405
I-485	Application to Register Permanent Residence or Adjust Status	985
I-485	Application to Register Permanent Residence or Adjust Status ²⁵	635

²¹ The phrase “FY 2010/2011 Fee Rule,” as used in this proposed rule, encompasses the proposed rule, final rule, fee study, and all supporting documentation associated with the regulations effective as of November 23, 2010.

²² The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service (INS) and transferred the INS’s immigration administration and enforcement responsibilities from the Department of Justice to DHS. The INS’s immigration and citizenship services functions

were specifically transferred to the Bureau of Citizenship and Immigration Services, later renamed U.S. Citizenship and Immigration Services. *See* Public Law 107-296, § 451; 6 U.S.C. 271.

TABLE 1—CURRENT NON-STATUTORY IEFA IMMIGRATION BENEFIT REQUEST FEES—Continued

Form No. ²³	Title	Fee
I-526	Immigrant Petition by Alien Entrepreneur	1,500
I-539	Application to Extend/Change Nonimmigrant Status	290
I-600	Petition to Classify Orphan as an Immediate Relative	720
I-600A	Application for Advance Processing of Orphan Petition	720
I-601	Application for Waiver of Ground of Excludability	585
I-601A	Application for Provisional Unlawful Presence Waiver	585
I-612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended).	585
I-687	Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act	1,130
I-690	Application for Waiver of Grounds of Inadmissibility	200
I-694	Notice of Appeal of Decision under Section 210 or 245A	755
I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Pub. L. 99–603).	1,020
I-751	Petition to Remove the Conditions of Residence	505
I-765	Application for Employment Authorization	380
I-800	Petition to Classify Convention Adoptee as an Immediate Relative	720
I-800A	Application for Determination of Suitability to Adopt a Child from a Convention Country	720
I-817	Application for Family Unity Benefits	435
I-824	Application for Action on an Approved Application or Petition	405
I-829	Petition by Entrepreneur to Remove Conditions	3,750
I-910	Application for Civil Surgeon Designation	615
I-924	Application for Regional Center Designation Under the Immigrant Investor Program ²⁶	6,230
I-929	Petition for Qualifying Family Member of a U–1 Nonimmigrant	215
N-300	Application to File Declaration of Intention	250
N-336	Request for Hearing on a Decision in Naturalization Proceedings	650
N-400	Application for Naturalization	595
N-470	Application to Preserve Residence for Naturalization Purposes	330
N-565	Application for Replacement Naturalization/Citizenship Document	345
N-600/600K	Application for Certification of Citizenship/Application for Citizenship and Issuance of Certificate under Section 322.	600
	Immigrant visa DHS domestic processing fee ²⁷	165
Biometrics Fee	Biometric services	85

C. USCIS Initiatives Funded Under the 2010 Fee Adjustment

In the FY 2010/2011 fee rule, USCIS committed to a set of goals and

²³ Form when used in connection with a benefit or other request to be filed with DHS to request an immigration benefit, means a device for the collection of information in a standard format that may be submitted in a paper format or an electronic format as prescribed by USCIS on its official Internet Web site. The term “Form” followed by an immigration form number includes an approved electronic equivalent of such form as made available by USCIS on its official Internet Web site. See 8 CFR 1.2 and 299.1. Therefore, the word “form” is used in this rule in both the specific and general sense.

²⁴ As described more fully below, the fees for an Application for Travel Document to request a Refugee Travel Document are guided by the United States’ obligations under the 1967 Protocol relating to the Status of Refugees (incorporating by reference Article 28 of the 1951 U.N. Convention relating to the Status of Refugees) and not calculated by the USCIS fee model. 8 CFR 103.7(b)(1)(i)(M)(2) and (3).

²⁵ This reduced fee is applied to “an applicant under the age of 14 years when [the application] is (i) submitted concurrently with the Form I-485 of a parent, (ii) the applicant is seeking to adjust status as a derivative of his or her parent, and (iii) the child’s application is based on a relationship to the same individual who is the basis for the child’s parent’s adjustment of status, or under the same legal authority as the parent.” 8 CFR 103.7(b)(1)(i)(U)(2).

²⁶ DHS proposes to remove the word “Pilot” from the form title.

performance improvements that were aimed at increasing accountability, providing better customer service, and increasing efficiency. See 75 FR 33457–8. These performance enhancements were:

- *Deployment of Transformed Processes and System.* USCIS deployed the first release of its new electronic case management system, the Electronic Immigration System (ELIS), in the third quarter of FY 2012. ELIS was subsequently rebuilt using an agile software development methodology and simplified technology architecture. As a result of this effort, USCIS is able to deploy increased electronic processing capability to the system more quickly than the traditional software development approach. USCIS processed approximately 17 percent of agency intake of benefit requests in ELIS in fiscal year 2015. USCIS anticipates that approximately 30 percent of agency intake will be processed through ELIS by the end of fiscal year 2016; additional increased processing through ELIS is likely in fiscal year 2017.

- *Expanding the Use of Systems Qualified Adjudication to a Larger*

²⁷ DHS proposes to change the fee name to “USCIS Immigrant Fee.” See proposed 8 CFR 103.7(b)(1)(i)(D).

Share of USCIS Workload. The term Systems Qualified Adjudication is now referred to as System Assisted Processing. This is a form of electronic pre-adjudication that improves the efficiency of processing benefit requests and affords immigration service officers more time to focus on complex adjudications. USCIS will continue to expand this approach where it is determined feasible as part of its business transformation initiative.

- *Integration of Productivity Measures in Future Fee Review Methodology.* DHS has stated in past fee rules that USCIS would integrate productivity measures into the underlying methodology it uses to conduct fee reviews. See, e.g., 72 FR 29857 (“Future productivity enhancements will produce lower costs per unit that will be reflected in future price adjustments.”). USCIS has done this and plans to continue to identify efficiency gains resulting from information technology investments and process improvements, including the cost savings that occur due to these changes, and ensure that those savings are incorporated into new fee amounts derived from future fee reviews.

D. Processing Time Outlook

USCIS acknowledges that since it last adjusted fees in FY 2010, the agency has experienced elevated processing times compared to the goals established in FY 2007. These processing delays have contributed to case processing backlogs. This can partially be attributed to having removed the surcharge previously applied to the IEFA fee schedule to recover costs related to the USCIS Refugee, Asylum, and International Operations Directorate (RAIO), SAVE, and the Office of Citizenship. This was done in anticipation of Congress granting the request for annual discretionary appropriations to fund these programs that was in the President's Budget. Those resources did not fully materialize and since FY 2012 USCIS has used other fee revenue to support these programs. DHS is proposing to adjust fees by a total weighted average increase of 21 percent; the total 21 percent weighted average increase would be allocated as follows:

- Reinstatement of a surcharge in the fee schedule to fully fund RAIO, SAVE, and the Office of Citizenship (approximately 8 percent);
- Account for reduced revenue stemming from an increase in fee waivers granted since FY 2010 (approximately 9 percent); and
- Recover the costs needed to sustain current operating levels while allowing for limited, strategic investments necessary to ensure the agency's information technology infrastructure is strengthened to protect against potential cyber intrusions, and to build the necessary disaster recovery and back-up capabilities required to effectively deliver the USCIS mission (approximately 4 percent).

Through this rule, USCIS expects to collect sufficient fee revenue to fully support RAIO, SAVE and the Office of Citizenship. This would allow USCIS to discontinue diverting fee revenue to fund these programs, thereby increasing resources to fund the personnel needed to improve case processing, reduce backlogs, and achieve processing times that are in line with the commitments in the FY 2007 Fee Rule, which USCIS is still committed to achieving.

In addition, to make current published processing time information more transparent and easier for customers to interpret, USCIS is evaluating the feasibility of calculating processing times using data generated directly from case management systems, rather than with self-reported performance data provided by Service Centers and Field Offices. Preliminary

findings suggest that USCIS will be able to publish processing times sooner and with greater transparency by showing different processing times for each office and form type. USCIS is also considering publishing processing times using a range rather than using one number or date. This approach would show that, for example, half of cases are decided in between X and Y number of months.

USCIS also expects to improve the customer experience as we continue to transition to online filing and electronic processing of immigration applications and petitions. With the new person-centric electronic case processing environment, USCIS will possess the data needed to provide near-real-time processing updates to the customer that will identify the case status and time period lapsed between actions for each individual case. This will allow greater transparency to the public on how long it will take to process each case as it moves from stage to stage (e.g., from biometrics collection, to interview, to decision).

USCIS is committed to giving stakeholders and customers the information they need, when they need it. To that end, it is transforming how it calculates and posts processing time information to improve the timeliness of such postings, but more importantly, to achieve greater transparency of USCIS case processing.

V. FY 2016/2017 Immigration Examinations Fee Account Fee Review

A. Overall Approach

USCIS manages three fee accounts:

1. The IEFA (which includes premium processing revenues),²⁸
2. The Fraud Prevention and Detection Account,²⁹ and
3. The H-1B Nonimmigrant Petitioner Account.³⁰

The Fraud Prevention and Detection Account and the H-1B Nonimmigrant Petitioner Account are both funded by statutorily set fees. The proceeds of these fees are divided among USCIS to use for fraud detection and prevention activities and for the National Science Foundation and the Department of Labor. DHS has no authority to adjust fees for these accounts.

The IEFA comprised approximately 94 percent of total funding for USCIS in FY 2015 and is the focus of this proposed rule. The FY 2016/2017 Fee

²⁸ INA secs. 286(m), (n) & (u), 8 U.S.C. 1356(m), (n) & (u).

²⁹ INA secs. 214(c)(12)–(13), 286(v), 8 U.S.C. 1184(c)(12)–(13) 1356(v).

³⁰ INA secs. 214(c)(9), (11), 286(s), 8 U.S.C. 1184(c)(9), (11), 1356(s).

Review encompasses three core elements:

- *Cost Projections*—The cost baseline is the estimated level of funding necessary to maintain an adequate level of operations and does not include program increases for new development, modernization, or acquisition. Proposed program increases are considered outside of the baseline. Cost projections for FY 2016/2017 are derived from the USCIS annual operating plan for FY 2015.

- *Revenue Status and Projections*—Actual revenue collections for a set 12-month period (June 2013–May 2014) are used to derive projections for the 2-year period of the fee review based on current and anticipated trends.

- *Cost and Revenue Differential*—The difference between anticipated costs and revenue, assuming no change in fees, is identified.

The primary objective of this fee review was to ensure that fee revenue provides sufficient funding to meet ongoing operating costs, including national security, customer service, and adjudicative processing needs.

B. Basis for Fee Schedule

When conducting the comprehensive fee review, USCIS reviewed its recent cost history, operating environment, and current service levels to determine the appropriate method to assign costs to particular form types. Overall, USCIS kept costs as low as possible and minimized non-critical program changes that would have increased costs.

1. Costs

The cost baseline is comprised of the resources (including both personnel and non-personnel expenses) necessary for each USCIS office to sustain operations. The baseline excludes new or expanded programs and significant policy changes. A detailed annual operating plan is the starting point for baseline estimates.

In developing estimates for program needs in FY 2016/2017, USCIS used the FY 2015 annual operating plan as the starting point and made necessary adjustments, including:

- *Pay inflation* (\$11.3 million in FY 2016 and \$23.1 million in FY 2017). The assumed government-wide pay inflation rate is 1 percent for FY 2016 and 2 percent for FY 2017;
- *Additional staff* (\$166.7 million in FY 2016 and \$171.6 million in FY 2017). Based on the results of the FY 2015 Staffing Allocation Model³¹ and

³¹ The Staffing Allocation Model is a workforce planning model used to calculate estimates of staffing types and levels necessary to undertake

enhancement staffing requests submitted by program offices, USCIS projects that an additional 1,171 positions are needed to meet adjudicative processing goals and other USCIS mission objectives.

- *Additional resource requirements (\$24.9 million in FY 2016 and \$16.7 million in FY 2017).* These additional resources will sustain current operations to support the USCIS strategic goals.

- *Premium processing costs (\$264.3 million in FY 2016 and \$266.7 million in FY 2017).* In addition to continuing to cover costs associated with the Office of Transformation, USCIS plans to use premium processing fees to pay an annual average of \$79.3 million in costs associated with administering premium-processing services and infrastructure improvements in the adjudications and customer services processes.³² These costs pertain to the Service Center Operations staff adjudicating cases that requested premium processing service, transformation-related expenses (including the Office of Transformation Coordination personnel), and infrastructure investments being made to enhance the adjudication process and customer service.

- *FY 2016/2017 total projected costs for the Refugee, Asylum, and International Operations Directorate (RAIO) (including an increase in the*

refugee admissions ceiling to 100,000 for FY 2017), SAVE,³³ and the Office of Citizenship (including the Citizenship and Integration Grant Program) (\$303.1 million). This is an increase of \$158 million, or 108 percent, over FY 2010 actual costs of \$145.4 million. The costs for these programs were removed from the FY 2010/2011 model used to calculate the USCIS fee schedule in the 2010 Fee Rule, consistent with FY 2010 appropriations and consistent with the Administration's FY 2011 budget request. That budget request was not fulfilled, and USCIS was left to pay the costs of these programs after having removed the surcharge. *See* 75 FR 58963.

Table 2 summarizes adjustments to the FY 2015 cost baseline to reach the FY 2016 and FY 2017 cost baselines. After accounting for reductions, additional staff, and additional resource requirements, FY 2016 costs are 5 percent higher than the FY 2015 adjusted IEFA budget. FY 2017 costs are 2 percent higher than FY 2016 costs.

TABLE 2—BASELINE ADJUSTMENTS
[Dollars in thousands]

Total FY 2015 Adjusted IEFA Budget	\$2,863,889
Plus: Pay Inflation and Promotions/Within Grade Increases	130,092

TABLE 3—IEFA COST BASELINE AND REVENUE COMPARISON
[Dollars in thousands]

Fiscal year	FY 2016	FY 2017	FY 2016/2017 Average
Non-Premium Revenue	\$2,507,683	\$2,448,596	\$2,478,139
IEFA Cost Baseline	\$3,009,024	\$3,066,548	\$3,037,786
Difference	(\$501,341)	(\$617,952)	(\$559,647)

Historically, and for the purpose of the fee review, USCIS has reported costs and revenue using an average over the biennial time period. In Table 3, FY 2016 and 2017 costs and revenue are averaged to determine the projected Fee Rule amounts. Based on current immigration benefit and biometric services fees and projected volumes, fees are expected to generate \$2.478 billion in average annual revenue in FY 2016 and FY 2017. For the same period, the average cost of processing those benefit requests is \$3.038 billion. This

calculation results in an average annual deficit of \$560 million.

3. No Discretionary Appropriations for RAIO, SAVE, Office of Citizenship, or Military Naturalization Costs

The current fee schedule is inadequate partly because it was established assuming that funds requested in the President's FY 2010 and FY 2011 budgets would be appropriated from Congress, yet those requests were not fulfilled. The FY 2010 and FY 2011 budgets requested \$55 million and \$259 million, respectively,

specific workload (e.g., applications and petitions) levels at target processing times.

³² Premium processing fees are a subset of IEFA fees separately designated by Congress. *See* INA section 286(u), 8 U.S.C. 1186(u).

³³ SAVE is partially funded by reimbursable revenue from Federal, state, and local governments. The proposed fees only fund the remaining SAVE costs that are not funded by reimbursable revenue.

TABLE 2—BASELINE ADJUSTMENTS—
Continued
[Dollars in thousands]

Plus: Net Additional Costs	137,381
Less: Spending Adjustments	– 122,338
Total FY 2016 Adjusted IEFA Budget	\$3,009,024
Plus: Pay Inflation and Promotions/Within Grade Increases	38,072
Plus: Net Additional Costs	19,452
Total FY 2017 Adjusted IEFA Budget	\$3,066,548

The projected annual budget for the FY 2016/2017 biennial fee review period is \$3.038 billion. This is a \$767 million, or 34 percent, increase over the FY 2010/2011 adjusted annual budget of \$2.271 billion. The main drivers of this increase are described in detail throughout this rule and the supporting documentation.

2. Revenue

The FY 2016/2017 Fee Review assumes that baseline revenue under the current fee schedule will increase from the FY 2010/2011 Fee Rule projection of \$2.056 billion to \$2.478 billion, an increase of approximately 9 percent. This results from a fee-paying volume increase of 13 percent despite a workload volume increase of 23 percent. *See* 75 FR 33456. Table 3 summarizes the projected cost differential.

to enable USCIS to remove the surcharge associated with refugee and asylum workload and military naturalization processing from immigration benefit request fees and to fund the cost of the SAVE program and the Office of Citizenship.³⁴ Before 2010, the USCIS fee schedule included a surcharge that could be used to recover the cost of adjudicating asylum, refugee, and military naturalization requests. *See* 72 FR 29867. The 2010 Fee Rule removed those costs and the surcharge from the fee structure. *See* 75 FR 58961, 58966. Congress, in its FY 2011

³⁴ *See* Office of Management and Budget, Budget of the United States Government, Fiscal Year 2010, at 510–1 (2009), available at <http://www.gpo.gov/fdsys/pkg/BUDGET-2010-SUMMARY/pdf/BUDGET-2010-SUMMARY.pdf>.

continuing resolution, provided USCIS with only \$29.95 million³⁵ of the requested \$259 million to fund the refugee and asylum processing administered under the RAIO Directorate and military naturalization processing. See Public Law 112–10, sec. 1639 (Apr. 15, 2011). USCIS has not received any substantial appropriations for these programs since FY 2011. Similarly, USCIS received no FY 2016 discretionary appropriations for the SAVE program or for the Office of Citizenship. See DHS Appropriations Act 2016, Public Law 114–113, div. F. (Dec. 18, 2015).³⁶ To avoid ongoing funding shortfalls for these programs, USCIS assumes in its fee model that no appropriations will be received for workload related to RAIO, SAVE, or Office of Citizenship operations and related expense items for the FY 2016/2017 biennial period.

Therefore, DHS proposes to fund the USCIS costs for RAIO, SAVE, and the Office of Citizenship through IEFA fee collections received from other fee-paying individuals seeking immigration benefits. DHS proposes to set the fees at a level sufficient to recover full costs.

USCIS is, however, requesting reimbursement from DOD for costs related to military naturalizations. DOD has reimbursed USCIS for the cost of naturalization processing for eligible military service members since FY 2012. See 10 U.S.C. 1790 (providing that the Secretary of Defense may reimburse the Secretary of Homeland Security (Secretary) for actual costs incurred by USCIS for processing applications for naturalization, not to exceed \$7,500,000 per fiscal year). The fee model presumes these reimbursements will continue in FY 2016/2017 and therefore does not seek to recover these costs through IEFA fee collections.

4. New Fee for Annual Certification of Regional Center, Form I–924A

DHS proposes to establish a new fee in this rule for Annual Certification of Regional Center, Form I–924A, to recover the full cost of processing this EB–5 benefit type. See proposed 8 CFR 103.7(b)(1)(i)(WW). Form I–924A is used by regional centers to demonstrate continued eligibility for their

designation. See 8 CFR 204.6(m)(6). Regional centers must submit the form to USCIS annually or upon request. *Id.* Upon failure to file Form I–924A or to demonstrate continued promotion of economic growth, USCIS will issue a Notice of Intent to Terminate. *Id.* If the regional center fails to overcome the grounds alleged in the Notice of Intent to Terminate, USCIS will terminate the designation of the regional center. *Id.* The form helps USCIS ensure that regional centers are continuing to promote economic growth and are otherwise in compliance with all applicable program requirements. Further, the form assists investors seeking to invest in a regional center, as it provides the regional center and USCIS with a process for recording data regarding the regional center's activities and job creation that can be shared with potential investors on a case-by-case basis.³⁷ Although approved regional centers are required to file the Form I–924A annually, there is currently no filing fee and the processing cost is borne by other individuals paying fees for immigration benefits.

USCIS is proposing to establish a fee for the Form I–924A because USCIS incurs significant costs to review the Form I–924A and to administer the regional center program. In addition, the regional center program is continuing to grow rapidly.³⁸ With approximately 800 currently approved regional centers, USCIS must expend adjudicative resources to handle Form I–924A filings for which no fee is currently collected. Regional centers are often complex partnerships, limited liability companies, or other business entities involved in multiple commercial enterprises that may overlap or intertwine. These complex relationships must be described on the Form I–924A and the filing must be reviewed by USCIS to determine if the regional center continues to comply with program requirements. 8 CFR 204.6(m)(6) (requiring a regional center to provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, including improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area). In

addition, USCIS conducts site visits to some regional centers to verify the information provided in connection with its original application. USCIS also conducts onsite audits of a select number of regional centers each year to validate the information the center has provided and ensure that the objectives of the Immigrant Investor Program are being met. DHS is proposing to establish and collect a fee for Form I–924A to recoup the costs of carrying out these activities.

DHS proposes to establish the fee for the Form I–924A at \$3,035. Proposed 8 CFR 103.7(b)(1)(i)(WW)(1). USCIS calculated this fee using the same ABC model used to calculate the other fees that DHS proposes in this rule. As with other proposed fees, projected adjudication hours determine part of the fee.

In addition to establishing the fee, DHS is clarifying the related regulations that provide for the annual regional center review related to the Form I–924A. In addition, a change is proposed to accommodate regional centers that seek to withdraw their designation. Proposed 8 CFR 204.6(m)(6)(vi). USCIS has received requests recently from regional centers seeking to withdraw their designation and discontinue their participation in the program. We currently have no procedure for this request and instead must proceed with the formal termination process of issuing a Notice of Intent to Terminate followed by a termination notice. Providing a withdrawal procedure will simplify the ability to terminate a regional center when the entity seeks to withdraw its designation. In conjunction with the fee, DHS wants to ensure that the requirements for continued participation for regional centers and the procedures to follow to meet the requirements are clear. Proposed 8 CFR 204.6(m)(6).

5. Summary

USCIS' projected FY 2016/2017 total operating costs are expected to exceed projected total revenue; this differential would be addressed with increased revenue. Under this proposed rule, increased revenue would be derived from a weighted average fee increase on existing immigration benefits and a new fee for Annual Certification of Regional Center, Form I–924A. The level of fee increase necessary to align costs and revenue is a weighted average of 21 percent. As noted earlier in this preamble, of the 21 percent weighted average increase, approximately four percent is directly attributable to cost increases for services included in the FY 2010/2011 Fee Rule. The remaining 17

³⁵ USCIS received \$29.95 million and also reprogrammed \$25 million from the prior year bringing the total spending authority to \$54.95 million.

³⁶ USCIS did not receive appropriations for refugee and asylum processing or SAVE after FY 2011. USCIS received \$2.5 million for the immigrant integration grants program in FY 2014 (Pub. L. 113–76) and FY 2013 (Pub. L. 113–6). USCIS did not receive appropriations for the immigrant integration grants program in FY 2015 or FY 2016.

³⁷ USCIS will provide the information to prospective investors in response to written requests for government records through the Freedom of Information Act, consistent with applicable laws and policies regarding the disclosure of information.

³⁸ There were 340 designated regional centers required to file Form I–924A at the end of FY 2013, and 580 such centers at the end of FY 2014, representing a 70 percent increase in 1 year.

percent is attributable to services that the FY 2010/2011 Fee Rule did not take into consideration, either because DHS assumed that these services would be funded through appropriations, or because the incidence of fee waivers has increased following the publication of the FY 2010/2011 Fee Rule.

VI. Fee Review Methodology

When conducting a fee review, USCIS reviews its recent cost history, operating environment, and current service levels to determine the appropriate method to assign costs to particular benefit requests. The methodology used in the review reflects a robust capability to calculate, analyze, and project costs and revenues.

USCIS uses commercially available ABC software to create financial models to calculate the costs for processing immigration benefit requests, including the costs for biometric services. Following the FY 2010/2011 Fee Rule, USCIS identified several key methodology changes to improve the accuracy of its ABC model, as discussed in the “Methodology for the 2016/2017 Fee Review” section in the Supporting Documentation. USCIS continues to update the ABC model with the most current information for fee review and cost management purposes.

A. Background

ABC is a business management tool that assigns resource costs to operational activities and then to products and services. These assignments provide an accurate cost assessment of each work stream involved in producing the individual outputs of an agency or organization. The Federal Accounting Standards Advisory Board (FASAB) notes that ABC helps improve product costing by avoiding arbitrary indirect cost allocation and enables USCIS to conform to Managerial Cost Accounting Concepts and Standards for the Federal Government.³⁹

1. ABC Methodology

DHS has included FY 2016/2017 Fee Review Supporting Documentation, including a detailed report on how it calculated the fee schedule proposed in the docket for this rulemaking. Comments are welcome on the supporting documentation and all aspects of this proposal. A summary of the fee study, calculations, methodology and conclusions follows.

a. Resources

Resources equal the projected FY 2016/2017 annual cost baseline of \$3.0 billion. USCIS designed the ABC model structure for FY 2016/2017 to resemble the structure of the FY 2015 annual operating plan. That plan is the detailed budget execution plan USCIS establishes at the beginning of the fiscal year consistent with the approved fiscal year spending authority and forecasted fee revenue.

b. Resource Drivers and Resource Assignment

ABC uses resource drivers to assign resources to activities. (See Section VI.A.1.c. of this preamble for more information.) All resource costs are assigned to activities, so the total resources in the model equal the total cost of activities.

A common resource driver in ABC is the number of employees in an organization and the percentage of time they spend performing various activities. The FY 2016/2017 ABC model uses employee counts and activity information to assign resources to activities. USCIS refers to this process as the payroll title analysis. The payroll title analysis determines how employees contribute to the eleven activities in the fee review. When an office engages in more than one activity, USCIS uses operational information to prorate that office's time to multiple activities. Historical activity information is applied to projected staffing levels in FY 2016/2017. The ABC model assigns resources to activities using anticipated staffing levels and historical activity information from the payroll title analysis for each office.

USCIS assigns some costs directly to activities. For example, the contract awarded to support USCIS Application Support Center operations only pertains to the “Perform Biometric Services” activity. Therefore, the costs of this contract are assigned directly to this activity. Other overhead costs, including costs for the Office of Information Technology, service-level agreements, and USCIS contributions to the DHS working capital fund are prorated to each office based on the number of authorized positions in those offices, so that each office pays a proportionate share.

The allocation methods in the FY 2016/2017 review are in line with FASAB's Standard 4 on managerial cost accounting concepts. This fulfills the guideline for agencies to directly trace costs when feasible and to either assign costs on a cause-and-effect basis or allocate them in a reasonable and

consistent way. Statement of Federal Financial Accounting Standards (SFFAS) 4, No. 126.

c. Activities

In ABC, activities are the critical link between resources and cost objects. Activities represent work performed by an organization. USCIS allocates projected FY 2016/2017 operating costs (resources) to the following eleven activities:

- Inform the Public involves receiving and responding to customer inquiries through telephone calls, written correspondence, and walk-in inquiries. It also involves public engagement and stakeholder outreach activities.
- *Perform Biometric Services involves the management of electronic biometric information, background checks performed by the Federal Bureau of Investigation (FBI), and the collection, use, and reuse of collected biometric information to verify the identity of individuals seeking immigration benefits.*
- Intake involves mailroom operations, data entry and collection, file assembly, fee receipting, adjudication of fee waiver requests, and file room operations.
- Conduct TECS⁴⁰ Check involves the process of comparing information on applicants, petitioners, requestors, beneficiaries, derivatives, and household members who apply for an immigration benefit against various Federal Government lookup systems.
- Records Management involves searching for and requesting files; creating temporary and/or permanent individual files; consolidating files; appending evidence submitted by applicants, petitioners, and requestors to existing immigration files; retrieving, storing, and moving files upon request; auditing and updating systems that track the location of files; and archiving inactive files.
- Make Determination involves adjudicating immigration benefit requests; making and recording adjudicative decisions; requesting and reviewing additional evidence; interviewing applicants, petitioners, or requestors; consulting with supervisors or legal counsel; and researching applicable laws and decisions on non-routine adjudications.

⁴⁰ In previous reviews, USCIS called the “Conduct TECS Check” activity by different names, such as “Conduct Interagency Border Inspection System Checks (IBIS)” or “Conduct Treasury Enforcement Communication System (TECS) Check.” The system has changed names, and now “TECS” is the actual system name and is no longer an acronym.

³⁹ See Federal Accounting Standards Advisory Board Handbook, Version 14 (06/15), SFFAS 4, No. 152.

- Fraud Detection and Prevention involves activities performed by the Fraud Detection and National Security Directorate in detecting, combating, and deterring immigration benefit fraud and addressing national security and intelligence concerns.

- Issue Document involves producing and distributing secure cards that identify the holder as a foreign national and also identifies his or her immigration status and/or employment authorization.

- Management and Oversight involves activities in all offices that provide broad, high-level operational support and leadership necessary to deliver on the USCIS mission and achieve its strategic goals.

Since the 2010 Fee Rule, USCIS added two activities to the fee review.

- Direct Costs directly support a specific immigration benefit type. For instance, USCIS applies costs specific to naturalization, including conducting naturalization ceremonies and naturalization benefit requests.

- Systematic Alien Verification for Entitlements (SAVE) represents the cost of this program.⁴¹ SAVE is an intergovernmental information-sharing program that helps Federal, state, and local benefit-issuing agencies, institutions, and licensing agencies (such as an individual state's department of motor vehicles) determine the immigration status of benefit applicants to help these agencies ensure that only those entitled to benefits or licenses receive them. Through the SAVE program, USCIS enters into reimbursable agreements with Federal, state, and local government agencies under the authority of the Economy Act and the Intergovernmental Cooperation Act of 1968 for those costs that can be directly assigned to SAVE. *See generally* 31 U.S.C. 1535; 31 U.S.C. 6501–6508, Public Law 97–258. These reimbursable agreements recover only a portion of the total program cost. Previously, USCIS treated SAVE as an overhead cost and did not consider the amounts recovered in the reimbursable agreements in calculating the costs of SAVE to be recovered by USCIS fees. USCIS has improved its model by distinguishing SAVE from other overheads. This may

⁴¹ USCIS is required to offer an automated or other system to verify the immigration status of applicants. Certain agencies determining eligibility for a number of specified Federal public benefits are required to use an automated or other such system to verify the immigration status of applicants. ⁴² U.S.C. 1320b–7. The automated verification system is entitled the Systematic Alien Verification for Entitlements (SAVE) program. INS and USCIS have refined and operated the SAVE program on a large scale for over 16 years.

enable USCIS to examine SAVE reimbursable fees paid by federal, state and local governments in the future.

d. Activity Drivers and Activity Assignment

The fourth stage in the ABC process assigns activity costs to specific immigration benefit requests (cost objects) using activity drivers. For most activities, USCIS assigns activity costs to cost objects based on the percentage of total projected volume because, for these activities, similar time and effort are involved for each benefit request. Unique activity drivers are used for two activities: Make Determination and Perform Biometric Services.

USCIS allocates the Make Determination activity across immigration benefit requests by projected adjudication hours. USCIS calculates projected adjudication hours by multiplying projected volumes by completion rates for most benefit types. Completion rates are the average amount of time that employees take to adjudicate immigration benefit requests.⁴² Generally, the more time spent adjudicating a request, the more cost that gets assigned, and therefore, the higher the fee. Please see Section VIII: Completion Rates for additional information.

The Perform Biometric Services activity uses a direct activity driver. All costs associated with this activity are assigned directly to the biometric services fee.

Activity costs are allocated to immigration benefit requests by the locations (service centers, field offices, etc.) that process them. USCIS uses data from the USCIS Performance Reporting Tool that, among other data points, include workload volumes, adjudication hours, and the number of completed requests by field office location and immigration benefit type. The Performance Reporting Tool also captures and records information on biometrics, records management, and customer service. For the FY 2016/2017 Fee Review, USCIS aligned its fee review metrics with the Performance Reporting Tool metrics used in the FY 2015 Staffing Allocation Model to ensure organizational alignment and consistency.

e. Cost Objects

Cost objects are the immigration benefit requests that USCIS processes. USCIS calculates a separate fee for

⁴² Time here means the amount of time a USCIS immigration service officer spends on an adjudication. This is different than cycle time, the amount of time an applicant, petitioner, or requestor spends waiting for an output.

biometric services. The costs for the biometric services fee are derived from the costs of the Perform Biometric Services activity and a small amount of direct costs.⁴³ USCIS determines costs for most immigration benefit requests, including those for asylum and refugee protection. The IEFA costs of immigration benefit requests for which no revenue is recovered are redistributed to other benefit requests in a prorated manner.

f. Exclusion of Temporary or Uncertain Costs Items and Programs

USCIS excludes from the fee calculation model the costs and revenue associated with programs that are temporary by definition or where the program may diminish or cease to exist because the program is predicated on guidance only (and not preserved in regulations or statute). This exclusion applies to: The Application for TPS, Form I–821, proposed 8 CFR 103.7(b)(1)(i)(NN); Consideration of Deferred Action for Childhood Arrivals, (DACA), Form I–821D; and Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100) (Nicaraguan Adjustment and Central American Relief Act (NACARA)), Form I–881, proposed 8 CFR 103.7(b)(1)(i)(QQ). These programs are excluded from the FY 2016/2017 Fee Rule Supporting Documentation and this rule.⁴⁴

DHS excludes projected revenue from expiring or temporary programs in setting the fees required to support baseline operations due to the uncertainty associated with such programs. For example, the Secretary may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. TPS, however, is a temporary benefit, and

⁴³ For a quick reference of the immigration benefits that currently require biometric services with the initial submission, see Form G–1055, Fee Schedule, at <http://www.uscis.gov/sites/default/files/files/form/g-1055.pdf>.

⁴⁴ For the purposes of this rule, DHS is including all requests funded from the IEFA in the term “benefit request” or “immigration benefit request” although the form or request may not be to request a benefit. For example, DACA is solely an exercise of prosecutorial discretion by DHS and not an immigration benefit, but would fit under the definition of “benefit request” solely for purposes of this rule. For historic receipts and completion information, see USCIS immigration and citizenship data available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data>.

TPS designations may be terminated.⁴⁵ INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B). Likewise, DACA allows certain individuals who meet specific guidelines to request consideration of deferred action from USCIS to not be placed into removal proceedings or removed from the United States for a specified period unless terminated.⁴⁶ The DACA policy is an administrative exercise of prosecutorial discretion and it is implemented at the discretion of the agency. For NACARA, the eligible population will eventually be exhausted due to relevant eligibility requirements, including the date by which an applicant was required to have entered the United States. USCIS analyzes the distinct costs associated with processing these benefit types and excludes these costs from the ABC model. All fee revenue deposited into the IEFA is pooled and collectively used to finance USCIS operations. USCIS also responds to surges in customer demand for services by realigning resources to cover the cost of processing. Consequently, USCIS is capable of funding these programs even though their costs are not included in the fee model.

DHS excludes the costs and revenue associated with these programs because program eligibility is subject to the discretion of the Department. Given this discretion, USCIS has excluded the cost and workload of these programs from the fee review and does not propose to allocate overhead and other fixed costs to these workload volumes. This mitigates an unnecessary revenue risk, *i.e.*, that USCIS will not have enough revenue to recover full cost if the eligible populations diminish or cease to exist. As in prior fee reviews, USCIS has excluded both the cost and revenue associated with these programs from the fee review. By excluding programs that are temporary by definition, for which the population may diminish or cease to exist, DHS maintains the integrity of the ABC model, better ensures recovery of full costs, and mitigates revenue risk from unreliable sources.

2. Continuing Low Volume Reallocation From FY 2010/2011 Fee Rule

DHS uses its fee setting discretion to adjust certain immigration request fees that would be overly burdensome on applicants, petitioners, and requestors if set at recommended ABC model levels.

⁴⁵ Even though some TPS designations have been in place for a number of years, the Secretary could terminate them if the Secretary determines that the designation criteria are no longer met.

⁴⁶ See USCIS, Consideration of Deferred Action for Childhood Arrivals (DACA), <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

Historically, as a matter of policy, DHS has chosen to limit USCIS fee adjustments for certain benefit requests to the weighted average fee increase represented by the model output costs for fee-paying benefit types. See 75 FR 33461.⁴⁷ Any additional costs from these benefit request types beyond this calculated weighted average increase figure would be reallocated to other benefit types. In addition, as noted above, fees for the other benefit types would also be calculated to cover costs that are not directly supported by fees. This process is known as “Low Volume Reallocation.”

In the fee review for this proposed rule, the model output costs identified a weighted average 8 percent cost increase across all fee-paying benefit types. Accordingly, consistent with prior practice, DHS proposes to limit the fee adjustments for certain benefit types to this 8 percent weighted average increase. These immigration benefit requests do not receive any additional cost reallocation for fee waivers, refugee, asylum or other programs. DHS does not believe that using the calculated 8 percent weighted average increase figure as a basis for fee increases for these benefit types would result in fees for other benefit types that would be overly burdensome to the applicants, petitioners or requestors.

DHS proposes to subject specific benefit types to the 8 percent weighted average increase because the combined effect of cost, fee-paying volume, and methodology changes since the last Fee Rule would otherwise place an inordinate fee burden on individuals requesting these types of benefits. For example, without Low Volume Reallocation, the Petition to Classify Orphan as an Immediate Relative, Form I-600, would have a fee of at least \$2,258. DHS believes it would be contrary to the public interest to impose a fee of this amount on an estimated 15,000 potential adoptive parents each year. Similar reasoning led to the other forms chosen to be adjusted using Low Volume Reallocation. For this reason, DHS proposes to subject these benefit types to the calculated 8 percent weighted average increase. In other words, *consistent with past USCIS fee rules, DHS is proposing an 8 percent increase for each of these benefit types, based on the calculated 8 percent weighted average increase across all fee-paying benefit types as identified by the model.*

DHS recognizes that charging less than the full cost of adjudicating an

⁴⁷ This same methodology was used in the FY 2008/2009 Fee Rule. 72 FR 4910.

immigration benefit request requires USCIS to increase fees for other immigration benefit requests to ensure full cost recovery. This complies with INA section 286(m), which permits fees to cover those costs of providing applicants, petitioners, or requestors a service or part of a service “without charge.”

DHS proposes to apply the Low Volume Reallocation methodology to the following USCIS forms:

- Notice of Appeal or Motion, Form I-290B
- Petition for Amerasian, Widow(er) or Special Immigrant, Form I-360
- Petition to Classify Orphan as an Immediate Relative, Form I-600
- Application for Advance Processing of an Orphan Petition, Form I-600A
- Petition to Classify Convention Adoptee as an Immediate Relative, Form I-800
- Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I-800A
- Request for Action on Approved Form I-800A, Form I-800A, Supplement 3
- Petition for Qualifying Family Member of a U-1 Nonimmigrant Form I-929
- Application to File Declaration of Intention, Form N-300
- Request for Hearing on a Decision in Naturalization Proceedings, Form N-336
- Application to Preserve Residence for Naturalization Purposes, Form N-470.

3. Applying Cost Reallocation to Other Form Types

As described below, DHS also proposes to limit fee increases for additional benefit types at the calculated 8 percent weighted average increase, even though the potential fee increases for these benefit types would not have imposed the same level of burden on affected requestors as the benefit types described in the preceding section.

First, DHS proposes to increase the Application for Naturalization, Form N-400, fee by the 8 percent weighted average increase described above.⁴⁸ As DHS stated in 2010, “DHS has determined that the act of requesting and obtaining U.S. citizenship deserves special consideration given the unique nature of this benefit to the individual applicant, the significant public benefit to the Nation, and the Nation’s proud tradition of welcoming new citizens.” 75 FR 33461. This rationale still holds

⁴⁸ See the 2016/2017 Fee Rule Supporting Documentation in the rulemaking docket for an explanation of how the weighted average is calculated.

true. DHS believes that by limiting the adjustment of the naturalization fee to the 8 percent weighted average increase, it would reinforce these principles by encouraging more immigrants to naturalize and fully participate in civic life. This proposal is also consistent with other DHS efforts to promote citizenship and immigrant integration.⁴⁹

DHS also proposes to limit the adjustment of the fee for Application for Provisional Unlawful Presence Waiver, Form I-601A, and the Application for Employment Authorization, Form I-765. The current Form I-601A fee was not established by the 2010/2011 Fee Rule because it did not exist at that time. USCIS unfortunately has insufficient data on Form I-601A volumes and completion rates with which to use its fee calculation model to identify an appropriate fee with a sufficient level of confidence. Therefore, DHS has decided that proposing a weighted average increase at 8 percent of the current fee amount is appropriate until sufficient data becomes available. DHS will consider setting the fee for Form I-601A at the amount the model calculates if sufficient data are collected before the final rule is published.

DHS also proposes to apply the same 8 percent weighted average increase to the Form I-765 for humanitarian and practical reasons. Many individuals seeking immigration benefits face financial obstacles and cannot earn money through lawful employment in the United States until they receive an Employment Authorization Document (EAD).

Finally, as noted above, in the 2010 fee rule, DHS held fee increases for a number of benefit requests to the weighted average fee increase for all fee-paying immigration benefits. 75 FR 33461. In this rule, DHS proposes to not apply the 8 percent weighted average increase to a subset of those benefit requests, both because DHS has better data upon which to base proposed fees for those benefit requests, and because DHS believes the calculated fee is appropriate. Therefore, DHS no longer believes it is necessary to limit fee increases to the weighted average for the following USCIS forms:

- Application for Waiver of Grounds of Inadmissibility, Form I-690
 - Waiver Forms, Forms I-191, I-192, I-193, I-212, I-601, I-602, I-612.
- Proposed 8 CFR 103.7(b)(1)(i)(O), (P), (Q), (R), (AA), (BB), (CC) & (EE).

⁴⁹ As noted later in this preamble, this rule proposes an option for naturalization applicants with family incomes greater than 150% and not more than 200% of the Federal Poverty Guidelines to pay a fee of \$320 plus an additional \$85 for biometric services, for a total of \$405.

Accordingly, the fees for these USCIS forms are proposed to be set at the level calculated in the ABC model, with adjustments.

4. Reduced Fee for Application for Naturalization

DHS proposes to establish a three-level fee for the Application for Naturalization, Form N-400. See 8 CFR 103.7(b)(1)(i)(AAA). First, as explained earlier in this preamble, DHS is proposing a fee for Form N-400 of \$640, plus \$85 for biometrics, for a total of \$725. *Id.* Second, no fee is charged to an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, or to an applicant who applies for and receives a full fee waiver. *Id.* at 103.7(b)(1)(i)(AAA)(2)-(c)(2).⁵⁰ Third, DHS proposes to permit naturalization applicants with household incomes greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines⁵¹ to pay a fee of \$320 plus an additional \$85 for biometrics, for a total of \$405. DHS has created a proposed new form, USCIS Form I-942, Request for Reduced Fee, that would be filed with the N-400. The form would provide a convenient guide for applicants to demonstrate that their income meets the level required to pay the reduced fee. The Paperwork Reduction Act section of this preamble provides information on how to comment on the proposed form.

DHS proposes the new reduced fee option to limit potential economic disincentives some eligible applicants may face when deciding whether or not to apply for naturalization. The proposed reduced fee option for low-income applicants supports the Administration's immigration integration policies⁵² and the USCIS mission to support aspiring citizens. Nevertheless, USCIS is funded mainly from fees and we must collect a fee to recover at least some of the costs

⁵⁰ As described elsewhere in this preamble, an applicant with a household income at or below 150 percent of the Federal Poverty Guidelines qualifies for a waiver of their entire fee under current USCIS policy.

⁵¹ The guidelines are issued each year by the Department of Health and Human Services and updated periodically in the **Federal Register** under 42 U.S.C. 9902(2). The poverty guidelines are used as an eligibility criterion for a number of Federal programs. For further information on how the guidelines are used or how income is defined, see "Annual Update of the HHS Poverty Guidelines" at 81 FR 4036 (Jan. 25, 2016).

⁵² See The White House Task Force on New Americans, Strengthening Communities by Welcoming All Residents, at 28-29 (2015), available at https://www.whitehouse.gov/sites/default/files/docs/final_tf_newamericans_report_4-14-15_clean.pdf.

associated with naturalization. DHS believes the reduced fee would help ensure that those immigrants whose goal it is to apply for naturalization are not unnecessarily limited by their economic means. DHS realizes that other fee payers would be required to bear the cost of the reduced fee, but believes the importance of naturalization justifies this slight shift of burden.⁵³

USCIS is uncertain exactly how many new N-400 applicants would be eligible and apply for naturalization as a result of the reduced fee. In addition, DHS has no reliable data indicating how demand for filing an N-400 may change due to adjustments in the fee amount. Nonetheless, research on barriers to naturalization indicates a correlation between the N-400 filing fee and the number of applications submitted to USCIS. As the Center for the Study of Immigrant Integration stated:

Some evidence of price sensitivity was shown when USCIS increased the cost to naturalize from \$400 to \$595 (plus the costs of biometrics) in the middle of 2007: the result was a surge of applications just prior to the fee increase. As a result, there were nearly 1.4 million naturalization applications filed in 2007 but just over 500,000 in 2008.⁵⁴

In addition, USCIS analyzed the 2012 American Community Survey and determined that 10 percent of new citizens who naturalized since 2000 reported incomes between 150 percent and 200 percent of the Federal Poverty Guidelines.⁵⁵ Independent university

⁵³ DHS previously stated that adjusting fee levels based on income would be administratively complex and would require higher costs to administer. See 75 FR 58971. Specifically, in 2010, DHS stated that a tiered fee system would impose an unreasonable cost and administrative burden, because it would require staff dedicated to income verification and necessitate significant information system changes to accommodate multiple fee scenarios. See *id.* DHS will need to reprogram intake operations for Form N-400 to recognize the new fee and documentation. Staff must be added to review the income documentation provided to determine if the applicant qualifies for the new fee. DHS has determined that the change proposed here, because it applies only to Form N-400 and the act of acquiring citizenship, is of sufficient value from a public policy standpoint to justify USCIS incurring the additional administrative and adjudicative burden.

⁵⁴ Manuel Pastor & Justin Scoggins, Center for the Study of Immigrant Integration, *Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy* 20 (Dec. 2012), available at http://dornsife.usc.edu/assets/sites/731/docs/citizen_gain_web.pdf.

⁵⁵ USCIS analyzed immigrants who reported naturalization since the year 2000. These represent people who recently became U.S. citizens. Approximately 24.7% were eligible for a fee waiver based on current criteria (2.2 million out of 8.9 million) because their household income is below 150% of the federal poverty guidelines. A further 10.3% (923,901 out of 8.9 million) would have been eligible for a partial fee waiver, since their income

research⁵⁶ estimated that about 12 percent of adult lawful permanent residents eligible to naturalize fell within the 150 to 200 percent of the Federal Poverty Guidelines. By averaging the 10 percent and the 12 percent from the two data sources, USCIS estimates 11 percent of average annual Form N-400 filings would be likely to qualify for the lower fee. The average FY 2016/2017 Application for Naturalization volume estimate is 821,500, excluding military naturalizations. USCIS expects that an average of 90,365 filers, 11 percent of the 821,500, would be eligible for the reduced fee of \$405 (including the biometrics fee).⁵⁷ Assuming that all 90,365 would have paid the full fee of \$725 for their Form N-400 and biometrics, this new N-400 fee would result in approximately \$28.9 million in foregone fee revenue associated with adjudication of Form N-400. That amount of USCIS operating expenses would be funded using fee revenue from other fee increases proposed in this rule.

5. Holding the Biometric Services Fee at Its Current Level

DHS proposes to hold the biometric services fee at its current level of \$85. Proposed and current 8 CFR 103.7(b)(1)(i)(C). While the model calculated a biometric services fee of \$75, DHS believes that the importance of and uncertainty in the biometric services area justifies holding that fee at \$85.

DHS has broad statutory authority to collect biometric information when such information is “necessary,” or “material and relevant” to the administration and enforcement of the INA. *See, e.g.*, INA secs. 103(a), 235(d)(3), 264(a); 8 U.S.C. 1103(a), 1225(d)(3), 1304(a). The collection, use, and reuse of biometric data are integral to identity management, excluding people with criminal backgrounds, minimizing national security concerns, and maintaining program integrity. Over

the next few fiscal years the volume of requests for biometrics services, as well as the costs associated with those services, such as fees paid to the FBI for fingerprints and name checks, are uncertain. Therefore, a moderate amount above current full cost recovery calculation is justified to shield USCIS from that uncertainty.

In addition, DHS proposes to use its discretion in setting this fee to hedge against potential rising programmatic costs which USCIS cannot foresee or control. For example, new regulatory or statutory background check requirements may be borne out of increased national security concerns dictated by events or changing circumstances. For the same reasons, DHS is also proposing to clarify regulations pertaining to biometrics and the biometric services fee.

Current regulations provide both general authority for the collection of biometrics in connection with immigration and naturalization benefits as well as requirements specific to certain benefit types.⁵⁸ *See* 8 CFR 103.16(a). A related provision provides that an applicant, petitioner, sponsor, beneficiary, or other individual residing in the United States at the time of filing may be required to appear for fingerprinting. *See* 8 CFR 103.2(b)(9). The wording of the latter provision has resulted in questions and confusion about DHS authority to require biometrics and the associated biometric services fee beyond a case-by-case basis. While DHS believes its current biometrics and biometrics fee collections are fully authorized, DHS proposes changes to the latter provision to clarify its regulatory authority to require and conduct biometrics-based identity and background checks, and to collect the associated fees. In addition, DHS is clarifying this section with regard to the use of the term biometrics in place of the term fingerprints. DHS has been using the term biometrics for several years in multiple contexts. *See, e.g.*, 72 FR 4906 (Feb. 1, 2007) (discussing the proposed fee for immigration and naturalization benefit application and petition and biometric service processing activities and describing biometrics as fingerprints, photographs, and signatures). The term “biometrics” is also used throughout title 8 of the CFR. *See, e.g.*, 8 CFR 103.7(b)(1)(i)(C), 103.16, 103.17,

204.310(a)(3)(ii), 204.312(e)(3)(ii), 209.1(b), 212.7(e)(1)(i), 204.312(e)(3)(ii), 214.2(w)(15), 245.21(b). Therefore, DHS proposes to revise 8 CFR 103.2(b)(9) to clarify that any applicant, petitioner, sponsor, beneficiary, or requestor, or individual filing a request may be required to appear for biometrics collection or for an interview. This requirement may be imposed upon individual notice or as established in the applicable regulations or form instructions. *See* proposed 8 CFR 103.2(b)(9). DHS is also making conforming edits in 8 CFR 103.16(a) to provide that an individual may be required to submit biometric information by law, regulation, **Federal Register** notice or the form instructions applicable to the request type or if required in accordance with 8 CFR 103.2(b)(9). *See* proposed 8 CFR 103.16(a).

6. Continuing To Hold Refugee Travel Document Fee to the Department of State Passport Fee

Consistent with U.S. obligations under Article 28 of the 1951 Convention Relating to the Status of Refugees,⁵⁹ USCIS proposes to continue to charge a fee for Refugee Travel Documents similar to the charge for a U.S. passport book. *See* 75 FR at 58972 (discussing Article 28 standards for assessing charges for a Refugee Travel Document). Under this proposal, the fee for an Application for Travel Document, Form I-131, would be \$575 for advance parole and any other travel document, as calculated by the fee model. *See* proposed 8 CFR 103.7(b)(1)(i)(M)(3). However, the current fees for Form I-131 for a Refugee Travel Document would be maintained at \$135 for adults and \$105 for children under the age of 16 years. These fees are the same as the Department of State (DOS) passport book fees,⁶⁰ plus biometrics if the applicant is between 14 and 79 years of age. *See* proposed 8 CFR 103.7(b)(1)(i)(M)(1)–(2).

falls between 150% and 200% of the federal poverty guidelines. Among immigrants who reported naturalizing in 2011 (737,618), 10.4% or 77,003 immigrants would have been eligible for a partial fee waiver.

⁵⁶ *See* Manuel Pastor, University of Southern California, Reducing Barriers to Citizenship: New Research and the Need for a Partial Fee Waiver (Jan. 8, 2015), available at <http://newamericascampaign.org/wp-content/uploads/New-Research-on-Reducing-Barriers-to-Citizenship-1-8-15-Webinar-Powerpoint.pdf>.

⁵⁷ This is an estimate of the net impacts. Some who would have filed and paid the full fee would now opt to pay the reduced fee. Others who are eligible to seek a fee reduction based on income level may also qualify for a Federal means tested benefit in their state and thus qualify for a full fee waiver.

⁵⁸ *See, e.g.*, 8 CFR 103.16(a), 204.2(a)(2) (requiring evidence of the claimed relationship), 204.3(c)(3) (requiring fingerprinting), 204.2(d)(2)(vi) (authorizing blood testing), 245a.2(d) (requiring photographs and a completed fingerprint card), 316.4(a) (requiring three photographs and fingerprinting).

⁵⁹ The United States is party to the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6224, 606 U.N.T.S. 267 (1968), which incorporates articles 2 through 34 of the 1951 Convention. The United States is not party to the 1951 Convention. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 169 n.19 (1993) (“Although the United States is not a signatory to the Convention itself, in 1968 it acceded to the United Nations Protocol Relating to the Status of Refugees, which bound the parties to comply with Articles 2 through 34 of the Convention as to persons who had become refugees because of events taking place after January 1, 1951.”).

⁶⁰ The Refugee Travel Document fees are the same as the sum of the United States passport book application fee plus the additional execution fee that DOS charges for first time applicants.

7. Holding the Fee for a Petition by Entrepreneur To Remove Conditions (Form I-829) at Its Current Level

DHS proposes to hold the fee for the Petition by Entrepreneur to Remove Conditions, Form I-829, at its current level of \$3,750. While the fee model calculated a fee of \$2,353, DHS proposes to maintain the current fee for such petitions. Because of the recent and continued growth and maturation of the EB-5 Program, the costs over the next few fiscal years are uncertain because the final parameters of the program are still evolving, such as the number of employees and facilities necessary to carry out the enhanced review of EB-5 filings and site visits. This makes it uncertain whether EB-5 related fees will fully fund EB-5 program activities.

The EB-5 program was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The EB-5 “regional center program” was later added in 1992 by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993. Public Law 102-395, sec. 610, 106 Stat 1828 (Oct. 6, 1992). The EB-5 immigrant classification allows qualifying individuals, and any accompanying or following to join spouses and children, to obtain lawful permanent resident (LPR) status if the qualifying individuals have invested, or are actively in the process of investing, \$1 million in a new commercial enterprise. See INA section 203(b)(5)(A) and (C), 8 U.S.C. 1153(b)(5)(A) and (C). To qualify, the individual’s investment must benefit the U.S. economy and create full-time jobs for 10 or more qualifying employees. INA section 203(b)(5)(A)(ii), 8 U.S.C.

1153(B)(5)(A)(ii). If the investment is in a Targeted Employment Area (TEA) (*i.e.*, a rural area or an area that has unemployment of at least 150% of the national average), the required capital investment amount is \$500,000 rather than \$1 million. INA section 203(b)(5)(C)(ii), 8 U.S.C. 1153(b)(5)(C)(ii); 8 CFR 204.6(f)(2). Entrepreneurs may meet the job creation requirements through the creation of indirect jobs by making qualifying investments within a new commercial enterprise associated with a regional center approved by USCIS for participation in the regional center program. INA section 203(b)(5), 8 U.S.C. 1153(b)(5); 8 CFR 204.6(e) and (m)(7).

To increase its support of Congress’s objective in establishing the program, USCIS has recently implemented several changes to refine and improve

the delivery, security and integrity of the EB-5 Program.⁶¹ USCIS established the Immigrant Investor Program Office (IPO) in Washington, DC at USCIS headquarters in 2012. Since that time, IPO has regularly added staff positions to focus both on managing the program and ensuring identification of fraud, national security, or public safety concerns within the program. In addition, USCIS plans to conduct more site visits to regional centers and associated commercial enterprises to verify information provided in regional center applications and investor petitions and to clarify its EB-5 regulations. DHS proposes to keep the Form I-829 at the current fee, above the full cost recovery calculation,⁶² to shield USCIS against potential but likely rising costs. DHS believes the fee would still be set at an appropriate level and that it would not be overly burdensome to the Form I-829 filers, particularly considering the size of the investment required to participate in the program.

B. Changes in the FY 2016/2017 Fee Review

1. Interim Benefits

The FY 2016/2017 Fee Review isolates the workload volume and fee-paying percentage of Applications for Employment Authorization, Forms I-765, and Applications for Travel Document, Forms I-131, that are not associated with Applications to Register Permanent Residence or Adjust Status, Forms I-485. This change helps DHS to more accurately calculate the fees necessary for cost recovery for all three benefit types.

Usually, the favorable adjudication of an immigration benefit request is necessary before the beneficiary will

receive ancillary benefits such as work and travel authorization. That is, USCIS only grants those ancillary benefits after, or at the same time as, it grants the underlying immigration status or benefit. In some situations, however, an individual may become entitled to a benefit because a case is pending adjudication. For example, a person who applies for adjustment of status would, in certain instances, be able to obtain work and/or travel authorization based on the pending immigration benefit request. 8 CFR 274a.12(c)(9). When this occurs, these ancillary benefits are referred to generally as “interim benefits.”⁶³

DHS currently permits applicants who file and pay the required fee for an Application to Register Permanent Residence or Adjust Status, Form I-485, to submit an Application for Employment Authorization, Form I-765, and/or an Application for Travel Document, Form I-131, without paying an additional fee. See 8 CFR 103.7(b)(1)(i)(M)(4) & (HH). Applicants may file Form I-765 and/or Form I-131 concurrently with Form I-485. Alternatively, they may also file these forms after USCIS accepts their Form I-485, but while the Form I-485 is still pending.

In the FY 2016/2017 Fee Review, USCIS determined the workload volume and fee-paying percentage of Forms I-765 and Forms I-131 that are not associated with Forms I-485. This methodology change enables USCIS to derive a fee-paying percentage for standalone Forms I-765 and Forms I-131, meaning those forms not filed concurrently with a Form I-485. By isolating stand-alone interim benefit customers from those concurrently filing Form I-485, USCIS can more accurately assess fee-paying percentages, fee-paying volumes, and fees for all three benefit types. As a result, DHS is confident that the fees for these three benefit types proposed in this rule are consistent with the ABC methodology for full cost recovery.

⁶¹ USCIS is committed to strengthening and improving the overall administration of the EB-5 Program. The EB-5 Program encompasses Forms I-526, I-829, and I-924A. The cost baseline includes \$16.0 million in FY 2016 and \$15.9 million in FY 2017 for additional staff that would comprise a specialized team of forensic auditors, compliance officers, and other staff, whose primary focus would be to ensure regulatory compliance. This would directly contribute to the integrity of the program by providing the USCIS Investor Program Office with employees who have specialized knowledge required to adjudicate these benefits. In addition to enhanced staffing, USCIS would make additional IT systems investments to make case processing more efficient. USCIS would add \$1.7 million in FY 2016 and \$1.8 million in FY 2017 to improve the case management system and further develop its risk management strategy to ensure program compliance.

⁶² If DHS had decided to adjust the fee consistent with the adjustment that DHS made to most other fees, the proposed fee would have decreased to \$3,280. The proposed fee would have been higher than the model output because of Cost Reallocation. Other fees would also have been adjusted accordingly.

⁶³ The following case types are subject to appeal and frequently have an associated application for adjustment of status, thereby possibly warranting interim benefits: Immigrant Petition for Alien Workers, Form I-140; Petition for Amerasian, Widow(er) or Special Immigrant, Form I-360; Application for Permission to Reapply for Admission into the United States after Deportation or Removal, Form I-212; and Application for Waiver of Ground of Inadmissibility, Form I-601. Interim benefits may also be derived from an Application for Temporary Protected Status, Form I-821. DHS proposes free interim benefits in this rule only associated with a pending Application to Register Permanent Residence or Adjust Status, Form I-485.

2. Form I-485 Fee for Child Under 14, Filing With Parent

USCIS proposes a fee of \$750 for a child under the age of 14 years when filing Form I-485 concurrently with the application of a parent seeking classification as an immediate relative of a U.S. citizen, a family-sponsored preference immigrant, or a family member accompanying or following to join a spouse or parent under sections 201(b)(2)(A)(i), 203(a)(2)(A), or 203(d) of the INA, 8 U.S.C. 1151(b)(2)(A)(i), 1153(a)(2)(A), or 1153(d). Proposed 8 CFR 103.7(b)(1)(i)(U)(2). For this review, the proposed fee of \$750 is the model output cost for a Form I-485 filed with Form I-131. Children under the age of 14 cannot work in the United States. These children, however, can travel. This is \$390 less than the proposed fee of \$1,140 for adults. Proposed 8 CFR 103.7(b)(1)(i)(U)(1).

Currently, the fee is \$985 for an adult and \$635 for a child under the age of 14 filing with a parent (\$350 less than the fee for adults). 8 CFR 103.7(b)(1)(i)(U). In the 2010 Fee Rule, USCIS calculated the \$635 fee outside of the model due to a lack of available data. The FY 2016/2017 Fee Review calculated the proposed \$750 fee using actual data for each of the elements of the model. Therefore, the proposed fee for Form I-485 for a child under the age of 14 filing with a parent complies more closely with the ABC methodology for full cost recovery at a level that tracks its relative burden.

USCIS proposes to remove the provision at 8 CFR 103.7(b)(1)(i)(U)(iii) that states, “The child’s application is based on a relationship to the same individual who is the basis for the child’s parent’s adjustment of status, or under the same legal authority as the parent.” See proposed 8 CFR 103.7(b)(1)(i)(U). This sentence is unnecessary because 8 CFR 103.7(b)(1)(i)(U)(ii) already requires that a child must adjust as a derivative to pay the lesser fee. See INA section 203(d), 8 U.S.C. 1153(d). This proposed revision is a clarifying change to remove a redundancy in the regulatory language; it would have no substantive effect.

3. One Fee for a Genealogy Records Request

USCIS has included the genealogy fees in the FY 2016/2017 IEFA fee review. The USCIS genealogy program processes requests for historical records of deceased individuals. See Final Rule, Establishment of a Genealogy Program, 73 FR 28026 (May 15, 2008). Before creating a genealogy program, USCIS

processed the requests as Freedom of Information Act (FOIA) request workload, which resulted in delays. See Proposed Rule, Establishment of a Genealogy Program, 71 FR 20357–8 (Apr. 20, 2006). DHS created the genealogy program to reduce delays for these requests. At the time, USCIS averaged 10,000 such requests over four years, *see id.*, and USCIS expected the workload to increase to 26,000 a year with the new program, *see* 71 FR 20361. USCIS determined that genealogy fees would range between \$16 and \$55. See 71 FR 20362. These proposed fees were based on projected volume and full cost of the program. *Id.* After considering the comments received on the proposed genealogy rule, the costs of providing this service, OMB Circular A-25 guidelines, and the fees charged for similar services, DHS set the fees for Forms G-1041 at \$20 and G-1041A at \$20 or \$35 (depending on the format requested) in the final rule. 73 FR 28028; 8 CFR 103.7(b)(1)(i)(E)–(F). Requestors use the Genealogy Records Request, Form G-1041A, to obtain copies of USCIS historical records that may assist them in conducting genealogical research. Requestors use the Genealogy Index Search Request, Form G-1041, to request an index search of USCIS historical records.

The current genealogy program fees were not established based on the projected full cost of operating the genealogy research and information services of USCIS, although that was permitted by the authorizing law. See INA section 286(t)(1), 8 U.S.C. 1356(t)(1).⁶⁴ At the time, USCIS did not have clearly segregated records of the full cost of operating its genealogy research and information services, and DHS has not since adjusted the genealogy program fees. But after seven years of operating the program, DHS now has reliable data to determine the new fees. USCIS has thus incorporated the genealogy records requests fees in the comprehensive costs recovery fee model with the aim to simplify the genealogy fee structure.

Current regulations state that the Form G-1041A fee is \$20 for each file copy from microfilm and \$35 for each hard copy. In some cases, the requestor may be unable to determine the fee, because the requestor will have a file number obtained from a source other than USCIS and therefore not know whether the format of the file is

microfilm or paper. In such cases, individuals may provide the lesser \$20 amount and if USCIS discovers the relevant file is a paper file, USCIS will notify the requestor to remit an additional \$15. In addition, USCIS will refund the records request fee only when the agency is unable to locate the file previously identified in response to the index search request. See 8 CFR 103.7(b)(1)(i)(F).

DHS proposes to charge a single \$65 fee for Form G-1041A. See proposed 8 CFR 103.7(b)(1)(i)(F). Under the ABC model, USCIS projected the cost of the forms G-1041 and G-1041A to be \$46 each. The cost is based on the projected volumes and costs of the genealogy program. The projected costs include a portion of Lockbox costs, genealogy contracts, and a portion of costs related to the division that handles genealogy, FOIA and similar USCIS workloads. The proposed \$65 fee is based on the ABC model output, plus an additional \$19 to recover the applicable administrative costs associated with funding these services, such as the USCIS Librarian and other genealogy research and information services.⁶⁵ Because the INA contains a separate fee setting authorization for the genealogy program to recover the full costs of providing all genealogy research and information services, DHS does not propose to adjust the ABC model output for genealogy fees using the cost reallocation methodology that was used to adjust the other fees for which the model output was not used. See INA section 286(t), 8 U.S.C. 1356(t). Administrative costs, such as the Management and Oversight activity cost, range from \$33 to \$426 for other immigration benefit fees. Had USCIS included all such costs in the proposed genealogy fees, it would have added at least \$141 to the proposed genealogy fees. DHS proposes to add only \$19 to the model output for estimated applicable costs for a total proposed fee of \$65.

4. Dishonored Payments and Failure To Pay the Biometrics Services Fee

DHS proposes to amend the regulations regarding how USCIS will treat a benefit request accompanied by fee payment (in the form of check or other financial instrument) that is subsequently returned as not payable. Proposed 8 CFR 103.2(a)(7)(ii). DHS also proposes changes to provisions governing non-payment of the biometric service fee. Proposed 8 CFR 103.17(b).

⁶⁴ The statute requires genealogy program fees to be deposited as offsetting collections into the IEFA and that the fees for “such research and information services” may be set at a level that will ensure the recovery of the full costs of providing all such services. INA sec. 286(t)(1), 8 U.S.C. 1356(t)(1).

⁶⁵ The Cost Reallocation amount is \$18. The additional \$1 results from rounding the proposed fee to the nearest \$5 increment.

Each of these proposed changes is described below.

Current regulations provide that when a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter will be notified and requested to pay the filing fee and associated service charge within 14 calendar days, without extension. If the benefit request is pending and these charges are not paid within 14 days, the benefit request will be rejected as improperly filed.⁶⁶ See 8 CFR 103.2(a)(7)(ii). In addition, a receipt issued by a DHS officer for any remittance will not be binding upon DHS if the remittance is found uncollectible, and legal and statutory deadlines will not be deemed to have been met if payment is not made within 10 business days after notification by DHS of the dishonored form of payment. See 8 CFR 103.7(a)(2). Finally, if a benefit request is received by DHS without the correct biometric service fee, DHS will notify the applicant of the deficiency and take no further action until payment is received. 8 CFR 103.17(b)(1). Failure to submit the correct biometric service fee within the time allotted in the notice will result in denial of the benefit request. *Id.* In accordance with these provisions, when a payment is returned as non-payable, USCIS places the immigration benefit request on hold and suspends adjudication. If a check is dishonored or payment otherwise fails, USCIS assesses a \$30 charge and pursues the unpaid fee and penalty using administrative debt collection procedures. If the biometrics services fee was required and is missing, USCIS generally provides the filer 30 days to correct the payment. If payment is made within the allotted time, USCIS resumes processing the benefit request. If the filer does not correct the payment, USCIS rejects the filing. If the biometric fee is not paid, USCIS considers the benefit request as abandoned.

DHS proposes to eliminate the three rules requiring that cases be held while deficient payments are corrected. See proposed 8 CFR 103.2(a)(7)(ii), 103.7(a)(2), 103.17(b). As a practical matter, USCIS clears payment checks through the Automated Clearing House (ACH) by converting checks to

electronic payments. Because USCIS converts checks into ACH payments, there is currently no or very little delay before USCIS knows whether the check is valueless. DHS is proposing that USCIS will not begin processing the benefit request until the payment has cleared. DHS anticipates that the proposed change would reduce the USCIS administrative costs for holding and tracking immigration benefit requests with rejected payments. This change would streamline USCIS' process for handling immigration benefit requests when payments are returned as not payable or do not include the required biometric services fee.

This proposal further recognizes that a fee is a fundamental aspect of the benefit request filing. For example, under current 8 CFR 103.2(a)(7)(ii), an H-1B cap-subject petition⁶⁷ that was submitted with a check that was dishonored would be able to preserve its place in the lottery as long as the petitioner paid the fee and the aforementioned \$30 charge within 14 days.⁶⁸ Under proposed 8 CFR 103.2(a)(7)(ii), an H-1B cap-subject petition that is submitted with a check that is dishonored would be rejected and the receipt date would not be retained. By providing a 14-day correction window for dishonored checks, current regulations permit a benefit request paid with a dishonored payment instrument to secure a place in line ahead of a benefit request that was accompanied by a proper payment. DHS believes that this result is unfair, particularly because a rejected applicant, petitioner, or requestor may complete a new application and refile it immediately with proper payment.

DHS is also proposing minor changes to this same provision to clarify when USCIS would consider a benefit request received and when USCIS would reject a benefit request. Proposed 8 CFR 103.2(a)(7)(i)–(ii). Currently, numerous regulations address filing requirements for different benefits, including rejection

criteria.⁶⁹ To ensure clarity among these numerous regulations, DHS proposes to delete the reference to parts 204, 245, and 245a, and insert in its place a corresponding revision to 8 CFR 103.2(a)(7)(ii)(C) providing that a benefit request would be rejected if it is not, among other things, filed in compliance with the regulations governing the filing of the specific application, petition, form, or request. Finally, DHS proposes to address the possibility that special rules may apply for paying fees at a Department of Homeland Security office located outside of the United States. We propose to clarify fees paid in person overseas must be made payable in accordance with the guidance specific to the applicable U.S. Government office when submitting it. Proposed 8 CFR 103.7(a)(2).

5. Refunds

DHS proposes a minor change in the provision regarding USCIS fee refunds. See 8 CFR 103.2(a)(1) (providing that filing fees and biometric service fees are non-refundable).⁷⁰ In general, and except for a premium processing fee under 8 CFR 103.7(e)(2)(i),⁷¹ USCIS does not refund a fee regardless of the decision on the immigration benefit

⁶⁹ Current 8 CFR 103.2(a)(7)(i) states, in part, “[e]xcept as provided in 8 CFR parts 204, 245, or 245a, a benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format.” 8 CFR 245.2(a)(2) requires a current priority date for proper filing, 8 CFR 245a.2(e) permits receipt at a Qualified Designated Entity as opposed to a USCIS office, and 8 CFR 204.5(a) provides that a petition is considered properly filed only if it is accompanied by any required individual labor certification. In addition, regulations specific to a given benefit request produce filing requirements beyond those required under 8 CFR 103.2. See, e.g., 8 CFR 212.7(e)(5)(ii) (providing additional filing requirements for an application for a provisional unlawful presence waiver).

⁷⁰ USCIS is proposing no changes with regard to the prohibitions on refunds of a Notice of Appeal or Motion (Form I-290B) in 8 CFR 103.3(a)(2), which provide that the fee paid with an appeal filed too late or by a person or entity not entitled to file it will not be refunded regardless of the action taken. See also 8 CFR 103.5(a)(iii)(B) (requiring a motion to reopen to be accompanied by a nonrefundable fee as set forth in 8 CFR 103.7) (emphasis added). Likewise, no changes are proposed to the prohibition on refunds for a Genealogy Index Search Request (Form G-1041), proposed 8 CFR 103.7(b)(1)(i)(E), the limited refunds for a Genealogy Records Request (Form G-1041A), proposed 8 CFR 103.7(b)(1)(i)(F), or no refund of the DCL System Costs Fee. 8 CFR 103.7(b)(ii)(A).

⁷¹ USCIS automatically refunds the fee for a Request for Premium Processing (Form I-907) if USCIS has not reached a final decision (approval, denial, notice of intent to deny, or request for evidence) or opened an investigation relating to the benefit request for which premium processing was requested within 15 days of its receipt. 8 CFR 103.7(e)(2). No changes are proposed to that provision.

⁶⁶ By contrast, DHS immediately rejects any application or petition submitted without a fee payment instrument. See 8 CFR 103.2(a)(1) (“Each benefit request or other document must be filed with fee(s) as required by regulation. Benefit requests which require a person to submit biometric information must also be filed with the biometric service fee in 8 CFR 103.7(b)(1), for each individual who is required to provide biometrics.”); 8 CFR 103.2(a)(7)(i) (“A benefit request which is not signed and submitted with the correct fee(s) will be rejected.”).

⁶⁷ Congress has established limits on the number of temporary workers who may be granted H-1B nonimmigrant status each fiscal year (commonly known as the “H-1B cap”). See INA section 214(g), 8 U.S.C. 1184(g). Due to the historically high demand for cap-subject H-1B workers, the H-1B cap usually is reached within days of the opening of the H-1B filing period for a new fiscal year.

⁶⁸ USCIS employs a random selection process after announcing a final date on which it will receive H-1B petitions. USCIS refers to this day as the “final receipt date.” See 8 CFR 214.2(h)(8)(ii)(B). All petitions submitted properly prior to or on the “final receipt date” undergo a random selection process to determine which petitions can be processed to completion and, if otherwise eligible, which beneficiaries are able to receive a new H-1B visa number.

request. USCIS will refund a fee if the agency determines that an administrative error occurred resulting in the incorrect collection of a fee. Examples of USCIS errors include:

- *Unnecessary filings.* Cases in which USCIS (or DOS in the case of an immigration benefit request filed overseas) erroneously requests that an individual file an unnecessary form along with the associated fee; and
- *Accidental payments.* Cases in which an individual pays a required fee more than once or otherwise pays a fee in excess of the amount due and USCIS (or the DOS in the case of an immigration benefit request filed overseas) erroneously accepts the erroneous fee.

DHS is proposing that 8 CFR 103.2(a)(1) be revised to provide that fees are “generally” not refunded. *See* proposed 8 CFR 103.2(a)(1). This would address concern that the current regulatory text does not explicitly permit refunds at DHS discretion. DHS currently grants such refunds because as electronic filings and associated electronic payments have increased, there has been an increase in the number of erroneous payments where refunds are appropriate. For example, an applicant may be charged twice in error due to technical issues related to the specific device, software, or internet connection used to pay the fee. In such a case, if the request is not rejected for an erroneous payment, a refund may be appropriate. DHS is proposing to continue the practice of providing these refunds in limited circumstances where refunds are justified. Applicants would continue to request refunds by calling the USCIS customer service line or submitting written requests to the office having jurisdiction over the relevant filing.

C. Fee-Related Issues Noted for Consideration

DHS has identified a number of issues that do not affect the 2016/2017 Fee Review but which, for a variety of reasons, merit some discussion. No changes are proposed related to the issues discussed in this section. USCIS may discuss these issues in future biennial fee reviews or in conjunction with other USCIS Fee Rules. DHS welcomes comments on all facets of the 2016/2017 Fee Review, this proposed rule, and USCIS fees in general, regardless of whether changes have been proposed here.

1. Premium Processing

USCIS is proposing no change to premium processing fees or regulations but notes it here for consideration due

to stakeholder interest, past comments, and correspondence on the subject. Section 286(u) of the INA, 8 U.S.C. 1356(u), authorizes DHS to establish and collect a fee for a premium processing service for employment-based petitions and applications. Revenue from premium processing fees fund the costs associated with providing the premium processing service, as well as infrastructure improvements in the adjudications and customer service processes.⁷²

Congress set the premium processing fee at \$1,000 and authorized USCIS to adjust the fee for inflation, as determined by the Consumer Price Index (CPI). USCIS adjusted the premium processing fee by using the CPI in the 2010 Fee Rule to \$1,225. *See* 75 FR 58979; 8 CFR 103.7(b)(1)(i)(RR). Because projected premium processing revenue is sufficient to cover the projected costs of providing the premium service and other permissible infrastructure investments, USCIS is proposing no change to the premium processing fee. DHS is not barred from increasing the premium processing fee outside of rulemaking should circumstances require it.

DHS also notes that commenters regularly request that DHS: Extend premium processing beyond the limits of section 286(u) to other immigration benefit requests. *See* 75 FR 58978. The FY 2016/2017 Fee Review did not analyze the potential effect of premium processing for other forms. Congress established the premium processing fee at an amount it determined to be appropriate and permitted USCIS to increase it based on inflation. *Id.* USCIS has not incurred any operating deficits as a result of the amount of that fee. These fees more than cover the costs of providing premium processing for the associated benefits. Nevertheless, USCIS has many years’ experience in processing certain employment-based cases using premium processing. It would be very difficult to estimate the staff, resources, and costs necessary to ensure the processing of additional benefit types within a certain time frame, especially when those cases may require other types of background checks, interviews and additional steps that USCIS does not generally control. Expanding the premium processing

⁷² Premium processing fees are paid in addition to the regular form fee. For example, individuals would pay the proposed \$700 fee for a Form I-140 under this rule, plus \$1,225 for premium processing. Premium processing prioritizes the applicable application or petition for adjudication. The additional fee permits the devotion of specific resources to resolving that immigration benefit request.

program would require USCIS to estimate the costs of a service that does not currently exist with sufficient confidence that it can deliver the service promised and not impair service in other product lines. To study a potential new premium processing program would require the devotion of considerable resources. Thus, DHS proposes no extension of premium processing beyond its current usage. Comments, however, are welcome on that subject.

USCIS currently offers premium processing to business customers filing: A Petition for Nonimmigrant Worker, Form I-129, and an Immigrant Petition for Alien Worker, Form I-140, in certain visa classifications. In the 2007 and 2010 Fee Rules, USCIS indicated that it would dedicate premium processing fee revenue for transformation activities.⁷³ At that time, projected annual premium processing revenues and annual transformation investment costs were roughly equal. Since that time, the projected lifecycle costs of the transformation investment, which now includes USCIS’ electronic immigration system, have decreased, whereas demand for USCIS premium processing services has grown, resulting in an imbalance between revenue and spending.

In the FY 2016/2017 Fee Review, USCIS identified \$79.3 million in additional costs to be funded through premium processing fee revenue, thereby reducing the costs that USCIS must recover through its standard (non-premium) immigration benefit request fees. Consistent with INA section 286(u), 8 U.S.C. 1186(u), DHS intends to use premium processing revenue to pay for the salaries of immigration services officers that process this workload, associated supervisory and support staff, and associated non-personnel costs. Premium processing revenue will also be used to fund the salaries and benefits costs for Office of Transformation Coordination staff that manage USCIS’ electronic immigration system and transformation investment.

⁷³ Transformation is an agency-wide effort to transition the agency from a fragmented, paper-based operational environment to a centralized environment facilitating electronic processing of requests for immigration benefits through the USCIS electronic immigration system (ELIS). This investment is a large-scale, complex undertaking to modernize USCIS business processes using information technology-enabled re-engineering. ELIS will employ the types of online customer accounts used in the private sector to manage transactions and track activities while helping USCIS enforce and administer the immigration laws. The revised processes, enabled by ELIS, will help USCIS meet customer expectations for on-demand information and immediate real-time electronic service over the Internet.

USCIS also identified additional costs for staff adjudicating requests for premium processing service, transformation-related expenses, and infrastructure investments being made to enhance the adjudication process and customer service, that the agency intends to fund with premium processing fee collections instead of continuing to use general filing fees.

2. Accommodating E-Filing and Form Flexibility

DHS has endeavored, as it did in the 2010 fee rule, to propose fees based on form titles instead of form numbers to avoid prescribing fees in a manner that could undermine the transformation process. *See* proposed 8 CFR 103.7(b)(1). Form numbers are included for informational purposes but are not intended to restrict the ability of USCIS to collect a fee for a benefit request that falls within the parameters of the adjudication for which the fee is promulgated. As USCIS modernizes its processes and systems to allow more people to file applications online, the agency may collect fees for requests that do not have a form number or do not have the same form number as described in regulations. This could occur, for example, if USCIS developed an online version of a request that individuals often submit with applications for employment authorization. In this situation, USCIS may find it best to consolidate the two requests without separately labelling the different sections pursuant to the relevant form numbers. DHS would still collect the required fee for the underlying benefit request as well as the request for employment authorization, but the actual online request would not necessarily contain form numbers corresponding to each separate request.

Likewise, if USCIS determines that efficiency and customer service would be improved by breaking paper Form I-131 into separate paper forms (for instance, USCIS could institute a separate form and form number for advance parole, humanitarian parole, parole in place, refugee travel documents, reentry permits, or boarding documents), USCIS could do so and continue to charge the Form I-131 fee that is included in this rule. This structure permits USCIS to change forms more easily without having to perform a new fee study each time the agency chooses to do so.

3. Fee Waivers

USCIS may waive the fee for certain immigration benefit requests when the individual requesting the benefit is unable to pay the fee. *See* 8 CFR

103.7(c). To request a fee waiver, the individual must submit a written waiver request for permission to have their benefit request processed without payment. The waiver request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated. *See* 8 CFR 103.7(c)(2). There is no appeal of the denial of a fee waiver request. *See id.* Before 2007, USCIS could waive any fee, even where the fee waiver would be inconsistent with the underlying benefit request. For example, prior to 2007, USCIS could waive fees for companies seeking to sponsor foreign workers; individuals seeking status based on substantial business investments; or individuals seeking to sponsor foreign relatives to whom the sponsors must provide a financial safety net. *See* 72 FR 4912. Since 2007, however, DHS has limited the USCIS fees that may be waived in 8 CFR 103.7(c)(3) based on the general premise that fee waivers must be consistent with any financial considerations that apply to the status or benefit sought. *See* 8 CFR 103.7(c)(1)(ii).

Following the 2010 Fee Rule, USCIS also issued guidance to the field to streamline fee waiver adjudications and make them more consistent among offices and form types nationwide. *See* Policy Memorandum, PM-602-0011.1, Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11-26 (Mar. 13, 2011) ("Fee Waiver Policy"). This guidance clarifies what measures of income can be used and the types of documentation that are acceptable for individuals to present as demonstration that they are unable to pay a fee when requesting a fee waiver. In June 2011, USCIS issued the Request for Fee Waiver, Form I-912, which is an optional standardized form with instructions that can be used to request a fee waiver in accordance with the fee waiver guidance.⁷⁴ USCIS previously engaged in a holistic analysis of the individual's finances to determine inability to pay. *See, e.g.,* William R. Yates, Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c), dated March 4, 2004. Under the fee waiver guidance, USCIS established a streamlined process under which it will usually waive the entire fee and the biometric services fee for forms listed in 8 CFR 103.7(c)(3) for applicants who:

- Are currently receiving a means-tested benefit;
- Have household income at or below 150 percent of the Federal poverty level; or
- Are experiencing extreme financial hardship such as unexpected medical bills or emergencies. *AFM* Chapter 10.9(b).

The 2010 Fee Rule also authorized the USCIS Director to approve and suspend exemptions from fees or provide that the fee may be waived for a case or class of cases that is not otherwise provided in 8 CFR 103.7(c). *See* 75 FR 58990; 8 CFR 103.7(d).

As noted in the Fiscal Year (FY) 2016/2017 Immigration Examinations Fee Account Fee Review Supporting Documentation, the projected annual impact of fee waivers and exemptions has increased markedly since the 2010 Fee Rule from \$191 million to \$613 million. Applicants, petitioners, and requestors that pay a fee cover the cost of processing requests that are fee-waived or fee-exempt. Although DHS does not currently plan to do so, it may in the future revisit the USCIS fee waiver guidance with respect to what constitutes inability to pay under 8 CFR 103.7(c). DHS welcomes comment on this issue.

VII. Volume

USCIS uses two types of volume data in the fee review. Workload volume is a projection of the total number of immigration benefit requests that will be received in a fiscal year. Fee-paying volume is a projection of the number of applicants, petitioners, and requestors that will pay a fee when filing requests for immigration benefits. Not all applicants, petitioners, or requestors pay a fee. Those applicants, petitioners, and requestors for whom USCIS grants a fee waiver or to whom an exemption applies are represented in the workload volume but not the fee-paying volume. Applicants, petitioners, and requestors that pay a fee fund the cost of processing requests for fee-waived or fee-exempt immigration benefit requests.

A. Workload Volume and Volume Projection Committee

USCIS uses statistical time series modeling and immigration receipt data from the last 15 years, as well as the best available internal assessment of future developments (such as annualized data prepared by the USCIS Office of Performance and Quality) to develop workload volume projections. All relevant USCIS directorates and program offices are represented on the USCIS Volume Projection Committee

⁷⁴ The form and its instructions may be viewed at <http://www.uscis.gov/i-912>.

(VPC). The VPC forecasts USCIS workload volume with subject-matter-expert input from USCIS Service Centers, the National Benefits Center, the RAO Directorate, and Regional, District, and Field Offices. Input from these offices helps refine projected volume estimates. The VPC reviews short- and long-term volume trends. In most cases, time series models provide

volume projections by form type. The time series models use historical receipts data to determine patterns (such as level, trend, and seasonality) or correlations with historical events, which in turn are used to derive the projected receipts. Where possible, the models are also used to determine relationships between different benefit request types. Workload volumes are a

key element used when determining the USCIS resources needed to process benefit requests within established adjudicative processing goals. They are also the primary cost driver for assigning activity costs to immigration benefits and biometric services in the USCIS ABC model.

TABLE 4—WORKLOAD VOLUME COMPARISON

Immigration benefit request	Average annual FY 2010/2011 projected workload receipts	Average annual FY 2016/2017 projected workload receipts	Difference
I-90 Application to Replace Permanent Resident Card	540,000	810,707	270,707
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	17,165	10,143	-7,022
I-129 Petition for a Nonimmigrant Worker	395,000	432,156	37,156
I-129F Petition for Alien Fiancé(e)	54,000	45,351	-8,649
I-130 Petition for Alien Relative	690,520	911,349	220,829
I-131/I-131A Application for Travel Document	256,255	256,622	367
I-140 Immigrant Petition for Alien Worker	75,000	88,602	13,602
I-290B Notice of Appeal or Motion	28,734	24,706	-4,028
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	17,669	26,428	8,759
I-485 Application to Register Permanent Residence or Adjust Status	526,000	593,717	67,717
I-526 Immigrant Petition by Alien Entrepreneur	1,399	14,673	13,274
I-539 Application to Extend/Change Nonimmigrant Status	195,000	172,001	-22,999
I-600/I-600A; I-800/I-800A Orphan Petitions	25,241	15,781	-9,460
I-601A Provisional Unlawful Presence Waiver	N/A	42,724	42,724
I-687 Application for Status as a Temporary Resident	48	18	-30
I-690 Application for Waiver on Grounds of Inadmissibility	74	21	-53
I-694 Notice of Appeal of Decision	50	39	-11
I-698 Application to Adjust Status From Temporary to Permanent Resident	704	91	-613
I-751 Petition to Remove the Conditions of Residence	183,000	173,000	-10,000
I-765 Application for Employment Authorization	720,000	747,825	27,825
I-800A Supp. 3 Request for Action on Approved Form I-800A	N/A	1,585	1,585
I-817 Application for Family Unity Benefits	1,750	2,069	319
I-824 Application for Action on an Approved Application or Petition	20,961	10,921	-10,040
I-829 Petition by Entrepreneur to Remove Conditions	441	3,562	3,121
I-910 Application for Civil Surgeon Designation	3,410	609	-2,801
I-924 Application for Regional Center Designation Under the Immigrant Investor Program ..	132	400	268
I-924A Annual Certification of Regional Center	N/A	882	882
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	N/A	575	575
N-300 Application to File Declaration of Intention	45	41	-4
N-336 Request for Hearing on a Decision in Naturalization Proceedings	4,145	4,666	521
N-400 Application for Naturalization	693,890	830,673	136,783
N-470 Application to Preserve Residence for Naturalization Purposes	621	362	-259
N-565 Application for Replacement Naturalization/Citizenship Document	29,298	28,914	-384
N-600/600K Naturalization Certificate Applications	45,347	69,723	24,376
I-191, I-192, I-193, I-212, I-601, I-612 Waiver Forms	31,432	71,527	40,095
USCIS Immigrant Fee	215,000	472,511	257,511
G-1041 Genealogy Index Search Request	N/A	3,605	3,605
G-1041A Genealogy Records Request	N/A	2,410	2,410
Subtotal	4,772,331	5,870,989	1,101,459
Biometrics	2,048,177	3,028,254	980,077
Grand Totals	6,820,508	8,899,243	2,081,536

B. Fee-Paying Volume and Methodology

USCIS uses historical revenue and receipt data to determine the number of individuals that paid the fee for each immigration benefit type. Total revenue for an immigration benefit request is

divided by its fee to determine the number of fee-paying immigration benefit requests. Fee-paying receipts are compared to the total number of receipts (workload volume) to determine a fee-paying percentage for each immigration

benefit request. When appropriate, projected fee-paying volumes are adjusted to reflect filing trends and anticipated changes.

TABLE 5—FEE-PAYING VOLUME COMPARISON

Immigration benefit request	Average annual FY 2010/2011 fee paying projection	Average annual FY 2016/2017 fee paying projection	Difference
I-90 Application to Replace Permanent Resident Card	518,400	718,163	199,763
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	17,165	9,499	-7,666
I-129 Petition for a Nonimmigrant Worker	395,000	427,778	32,778
I-129F Petition for Alien Fiancé(e)	39,960	39,277	-683
I-130 Petition for Alien Relative	690,520	907,512	216,992
I-131/I-131A Application for Travel Document	192,255	194,461	2,206
I-140 Immigrant Petition for Alien Worker	75,000	88,602	13,602
I-290B Notice of Appeal or Motion	28,734	20,955	-7,779
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	6,957	8,961	2,004
I-485 Application to Register Permanent Residence or Adjust Status	480,000	473,336	-6,664
I-526 Immigrant Petition by Alien Entrepreneur	1,343	14,673	13,330
I-539 Application to Extend/Change Nonimmigrant Status	195,000	171,616	-23,384
I-600/600A; I-800/800A Orphan Petitions	16,211	5,811	-10,400
I-601A Provisional Unlawful Presence Waiver	N/A	42,724	42,724
I-687 Application for Status as a Temporary Resident	43	0	-43
I-690 Application for Waiver on Grounds of Inadmissibility	74	17	-57
I-694 Notice of Appeal of Decision	50	39	-11
I-698 Application to Adjust Status From Temporary to Permanent Resident	605	91	-514
I-751 Petition to Remove the Conditions of Residence	177,510	162,533	-14,977
I-765 Application for Employment Authorization	511,200	397,954	-113,247
I-800A Supp. 3 Request for Action on Approved Form I-800A	N/A	746	746
I-817 Application for Family Unity Benefits	1,750	1,988	238
I-824 Application for Action on an Approved Application or Petition	20,961	10,828	-10,134
I-829 Petition by Entrepreneur to Remove Conditions	256	3,562	3,306
I-910 Application for Civil Surgeon Designation	1,160	609	-551
I-924 Application for Regional Center Designation Under the Immigrant Investor Program ..	132	400	268
I-924A Annual Certification of Regional Center	N/A	882	882
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	N/A	257	257
N-300 Application to File Declaration of Intention	45	36	-9
N-336 Request for Hearing on a Decision in Naturalization Proceedings	4,145	3,593	-553
N-400 Application for Naturalization	684,390	631,655	-52,736
N-470 Application to Preserve Residence for Naturalization purposes	621	360	-261
N-565 Application for Replacement Naturalization/Citizenship Document	24,903	23,491	-1,413
N-600/600K Naturalization Certificate Applications	45,347	46,870	1,523
I-191, I-192, I-193, I-212, I-601, I-612 Waiver Forms	31,432	41,902	10,470
USCIS Immigrant Fee	215,000	472,511	257,511
G-1041 Genealogy Index Search Request	N/A	3,605	3,605
G-1041A Genealogy Records Request	N/A	2,410	2,410
Subtotal	4,376,169	4,929,707	553,538
Biometrics	1,950,603	2,598,639	648,036
Grand Totals	6,326,772	7,528,346	1,201,569

VIII. Completion Rates

USCIS completion rates are the average hours per adjudication of an immigration benefit request. They identify the adjudicative time required to complete (render a decision on) specific immigration benefit request types. The completion rate for each benefit type represents an average. Completion rates reflect what is termed “touch time” or the time an employee with adjudicative responsibilities actually handles the case. It does not reflect “queue time” or time spent waiting, for example, for additional

evidence or supervisory approval. It does not reflect the total processing time customers can expect to wait for a decision on their case after USCIS accepts it.

USCIS requires the employees who adjudicate immigration benefit requests to report adjudication hours and case completions by benefit type. Adjudication hours are divided by the number of completions for the same time period to determine an average completion rate. In addition to using this data to determine fees, completion rates help determine staffing allocations appropriate to handle the projected

workload. The Office of Performance and Quality, field offices, and regional management scrutinize the data to ensure accuracy. When the data is inconsistent and anomalies are identified, the Office of Performance and Quality contacts the reporting office and makes necessary adjustments. USCIS has confidence in the data, given the consistency of reporting over the last several years. The continual availability of the information makes it easier for USCIS to update cost information more frequently for fee review and cost management purposes.

TABLE 6—COMPLETION RATES PER BENEFIT REQUEST
[Projected adjudication hours/completion]

Immigration benefit request	Service-wide
I-90 Application to Replace Permanent Resident Card	0.21
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	0.48
I-129 Petition for a Nonimmigrant Worker	0.83
I-129F Petition for Alien Fiancé(e)	0.65
I-130 Petition for Alien Relative	0.75
I-131/I-131A Application for Travel Document	0.21
I-140 Immigrant Petition for Alien Worker	1.68
I-290B Notice of Appeal or Motion	1.22
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	1.97
I-485 Application to Register Permanent Residence or Adjust Status	1.63
I-526 Immigrant Petition by Alien Entrepreneur	6.50
I-539 Application to Extend/Change Nonimmigrant Status	0.40
I-600/600A; I-800/800A Orphan Petitions	2.14
I-601A Application for Provisional Unlawful Presence Waiver	2.84
I-687 Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act	4.12
I-690 Application for Waiver on Grounds of Inadmissibility	0.89
I-694 Notice of Appeal of Decision under Section 210 or 245A	2.10
I-698 Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)	3.80
I-751 Petition to Remove the Conditions of Residence	0.99
I-765 Application for Employment Authorization	0.20
I-800A Supplement 3 Request for Action on Approved Form I-800A	1.10
I-817 Application for Family Unity Benefits	0.92
I-824 Application for Action on an Approved Application or Petition	0.59
I-829 Petition by Entrepreneur to Remove Conditions	5.50
I-910 Application for Civil Surgeon Designation	1.81
I-924 Application for Regional Center Designation Under the Immigrant Investor Program	40.00
I-924A Annual Certification of Regional Center	5.00
N-300 Application to File Declaration of Intention	1.64
N-336 Request for Hearing on a Decision in Naturalization Proceedings	2.60
N-400 Application for Naturalization	1.25
N-470 Application to Preserve Residence for Naturalization Purposes	1.83
N-565 Application for Replacement Naturalization/Citizenship Document	0.59
N-600/N-600K Naturalization Certificate Applications	1.00
I-191, I-192, I-193, I-212, I-601, I-612 Waiver Forms	1.18

USCIS does not calculate completion rates for the following immigration benefit requests, forms, or other services, due to the special nature of their processing as explained below:

- **Biometric Services.** Application Support Centers and the Biometrics Division incur certain costs, which are assigned to this fee. Completion rates are not necessary to assign processing activity costs to this product. *See* proposed 8 CFR 103.7(b)(1)(i)(C).
- **USCIS Immigrant Fees.** USCIS does not adjudicate immigrant visa benefit requests. Rather, individuals located outside of the United States apply with a Department of State overseas consular officer for an immigrant visa. If DOS issues the immigrant visa, the individual may apply with a U.S. Customs and Border Protection officer for admission to the United States as an immigrant at a port of entry. This fee represents USCIS costs to create and maintain files and to issue permanent resident cards to individuals who go through this process. *See* proposed 8 CFR 103.7(b)(1)(i)(D) (changing the fee's title to "USCIS Immigrant Fee").

- **Refugee and Asylee Processing.** Refugee Division and Asylum Division costs are not directly assigned to any fee and are covered by immigration benefit requests that pay fees. USCIS does not charge a fee for the following:
 - Application for Asylum and Withholding of Removal, Form I-589;
 - Registration for Classification as a Refugee, Form I-590;
 - Application By Refugee For Waiver of Grounds of Excludability, Form I-602; and
 - Refugee/Asylee Relative Petition, Form I-730.
- **Other Forms Exempt from Fees.** The following forms are also not discussed in this rule as applicants for these form types are exempt from paying a fee:
 - Application for Posthumous Citizenship, Form N-644;
 - Application for T Nonimmigrant Status, Form I-914; and
 - Petition for U Nonimmigrant Status, Form I-918.
- **Forms with Uncertain Fee Revenue.** These form types may be terminated under current law, or may cease due to a reduction in the eligible population, and DHS proposes to not rely on their uncertain fee revenue streams for

recovering USCIS operational expenses. The following forms are excluded from discussion in this rule because, as discussed earlier in this preamble, this proposed rule does not propose to change or establish a special fee for those programs:

- Application for Temporary Protected Status, Form I-821;⁷⁵
- Consideration of Deferred Action for Childhood Arrivals, Form I-821D; and
- Application for Suspension of Deportation or Special Rule Cancellation of Removal, Form I-881.⁷⁶

IX. Proposed Fee Adjustments to IEFA Immigration Benefits

Because projected USCIS costs for FY 2016 and 2017 exceed projected revenue by an average of \$569 million each year, USCIS must adjust the fee schedule to recover the full cost of processing immigration benefits, and to continue to

⁷⁵ The proposed rule would, however, change the location of the reference to the fee in the Code of Federal Regulations (CFR). *See* proposed 8 CFR 103.7(b)(1)(i)(NN).

⁷⁶ The proposed rule would change the location of the reference to the fee in the CFR. *See* proposed 8 CFR 103.7(b)(1)(i)(QQ).

maintain or improve current service delivery standards.

After resource costs are identified, they are distributed to USCIS' primary processing activities in the ABC model.

Table 7 outlines total IEFA costs by activity.

TABLE 7—PROJECTED IEFA COSTS BY ACTIVITY

[Dollars in thousands]

Activity	FY 2016	FY 2017	FY 2016/2017 average
Perform Biometrics Services	\$194,670	\$197,837	\$196,254
Make Determination	1,268,309	1,302,756	1,285,533
Management and Oversight	588,262	592,151	590,206
Inform the Public	281,668	288,187	284,927
Records Management	238,271	240,777	239,524
Fraud Detection and Prevention	176,530	180,544	178,537
Intake	94,736	93,120	93,928
Direct Costs	56,444	58,476	57,460
Conduct TECS Check	52,829	53,994	53,412
Issue Document	31,975	32,632	32,304
Systematic Alien Verification for Entitlements	25,330	26,074	25,702
Total IEFA Costs	3,009,024	3,066,548	3,037,786

The activity costs are then distributed to the immigration benefit requests. Table 8 summarizes total revenue by

immigration benefit request based on the proposed fee schedule.

TABLE 8—PROJECTED FY 2016/2017 AVERAGE ANNUAL REVENUE PER IMMIGRATION BENEFIT

[Dollars in thousands]

Immigration benefit request	Revenue
G-1041 Genealogy Index Search Request	\$234
G-1041A Genealogy Records Request	157
I-90 Application to Replace Permanent Resident Card	326,764
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	4,227
I-129 Petition for a Nonimmigrant worker	196,778
I-129F Petition for Alien Fiancé(e)	21,013
I-130 Petition for Alien Relative	485,519
I-131/I-131A Application for Travel Document	111,815
I-140 Immigrant Petition for Alien Worker	62,021
I-290B Notice of Appeal or Motion	14,145
I-360 Petition for Amerasian Widow(er) or Special Immigrant	3,898
I-485 Application to Register Permanent Residence or Adjust Status	539,603
I-526 Immigrant Petition by Alien Entrepreneur	53,923
I-539 Application to Extend/Change Nonimmigrant Status	63,498
I-600/600A/800/800A Orphan Petitions	4,504
I-601A Provisional Unlawful Presence Waiver	26,916
I-690 Application for Waiver of Grounds of Inadmissibility	12
I-694 Notice of Appeal of Decision	35
I-698 Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)	152
I-751 Petition to Remove Conditions on Residence	96,707
I-765 Application for Employment Authorization	163,161
I-800A Supplement 3 Request for Action on Approved Form I-800A	287
I-817 Application for Family Unity Benefits	1,193
I-824 Application for Action on an Approved Application or Petition	5,035
I-829 Petition by Entrepreneur to Remove Conditions	13,356
I-910 Application for Civil Surgeon Designation	478
I-924 Application for Regional Center Designation Under the Immigrant Investor Program	7,109
I-924A Annual Certification of Regional Center	2,677
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	59
N-300 Application to File Declaration of Intention	10
N-336 Request for Hearing on a Decision in Naturalization Proceedings	2,515
N-400 Application for Naturalization	404,259
N-470 Application to Preserve Residence for Naturalization Purposes	128
N-565 Application for Replacement Naturalization/Citizenship Document	13,037
N-600/N-600K Application for Certificate of Citizenship	54,838
I-191, I-192, I-193, I-212, I-601, I-602, I-612 Waiver Forms	38,968
USCIS Immigrant Fee	103,952
Biometric Services	220,884
Grand Totals	3,043,866

Table 9 depicts the current and proposed USCIS fees for immigration benefits and biometric services. For a

more detailed description of the basis for the changes described in this table, see Appendix Table 4 in the FY 2016/

2017 Fee Review Supporting Documentation accompanying this proposed rule.

TABLE 9—PROPOSED FEES BY IMMIGRATION BENEFIT

Immigration benefit request	Current fee (\$)	Proposed fee (\$)	Delta (\$)	Percent change
G-1041 Genealogy Index Search Request	\$20	\$65	\$45	225
G-1041A Genealogy Records Request (Copy from Microfilm)	20	65	45	225
G-1041A Genealogy Records Request (Copy from Textual Record)	35	65	30	86
I-90 Application to Replace Permanent Resident Card	365	455	90	25
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	330	445	115	35
I-129 Petition for a Nonimmigrant worker	325	460	135	42
I-129F Petition for Alien Fiancé(e)	340	535	195	57
I-130 Petition for Alien Relative	420	535	115	27
I-131/I-131A Application for Travel Document	360	575	215	60
I-140 Immigrant Petition for Alien Worker	580	700	120	21
I-290B Notice of Appeal or Motion	630	675	45	7
I-360 Petition for Amerasian Widow(er) or Special Immigrant	405	435	30	7
I-485 Application to Register Permanent Residence or Adjust Status	985	1,140	155	16
I-526 Immigrant Petition by Alien Entrepreneur	1,500	3,675	2,175	145
I-539 Application to Extend/Change Nonimmigrant Status	290	370	80	28
I-600/600A/800/800A Orphan Petitions	720	775	55	8
I-601A Application for Provisional Unlawful Presence Waiver	585	630	45	8
I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act	1,130	1,130	0	0
I-690 Application for Waiver of Grounds of Inadmissibility	200	715	515	258
I-694 Notice of Appeal of Decision	755	890	135	18
I-698 Application to Adjust Status From Temporary to Permanent Resident (Under Section 245A of the INA)	1,020	1,670	650	64
I-751 Petition to Remove Conditions on Residence	505	595	90	18
I-765 Application for Employment Authorization	380	410	30	8
I-800A Supp. 3 Request for Action on Approved Form I-800A	360	385	25	7
I-817 Application for Family Unity Benefits	435	600	165	38
I-824 Application for Action on an Approved Application or Petition	405	465	60	15
I-829 Petition by Entrepreneur to Remove Conditions	3,750	3,750	0	0
I-910 Application for Civil Surgeon Designation	615	785	170	28
I-924 Application for Regional Center Designation Under the Immigrant Investor Program	6,230	17,795	11,565	186
I-924A Annual Certification of Regional Center	0	3,035	3,035	N/A
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	215	230	15	7
N-300 Application to File Declaration of Intention	250	270	20	8
N-336 Request for Hearing on a Decision in Naturalization Proceedings	650	700	50	8
N-400 Application for Naturalization	595	640	45	8
N-470 Application to Preserve Residence for Naturalization Purposes	330	355	25	8
N-565 Application for Replacement Naturalization/Citizenship Document	345	555	210	61
N-600/N-600K Application for Certificate of Citizenship	600	1,170	570	95
I-191, I-192, I-193, I-212, I-601, I-602, I-612 Waiver Forms	585	930	345	59
USCIS Immigrant Fee	165	220	55	33
Biometric Services	85	85	0	0

X. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act

In accordance with the RFA, 5 U.S.C. 601(6), USCIS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than 50,000 people). Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket at <http://www.regulations.gov>.

Individuals rather than entities submit the majority of immigration and naturalization benefit applications and petitions. Entities that would be affected by this rule are those that file and pay the fees for certain immigration benefit applications and petitions. There are four categories of USCIS benefits that are subject to a RFA analysis for this rule: Petition for a Nonimmigrant Worker, Form I-129; Immigrant Petition for an Alien Worker, Form I-140; Application for Civil Surgeon Designation, Form I-910; and the Application for Regional Center

Designation Under the Immigrant Investor Program, Form I-924.⁷⁷

DHS does not believe that the increase in fees proposed in this rule will have a significant economic impact on a substantial number of small entities that are filing Form I-129, Form I-140, or Form I-910. However, DHS does not have sufficient data on the revenue collected through administrative fees by regional centers to definitively determine the economic impact on small entities that may file Form I-924.

⁷⁷ Also captured in the dataset for Form I-924 is the Supplement Form I-924A, which regional centers must file annually to certify their continued eligibility for regional center designation.

DHS requests any data that would help to further assess the impact on small entities in the regional centers. DHS is publishing the initial regulatory flexibility analysis to aid the public in commenting on the small entity impact of its proposed adjustment to the USCIS Fee Schedule.

1. A Description of the Reasons Why the Action by the Agency Is Being Considered

DHS proposes to adjust certain immigration and naturalization benefit request fees charged by USCIS. USCIS has determined that current fees do not recover the full costs of services provided. As USCIS is nearly fully funded by fees, adjustment to the fee schedule is necessary to recover costs and maintain adequate service.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

DHS's objectives and legal authority for this proposed rule are discussed in Section III of this preamble.

3. A Description and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

Entities affected by this rule are those that file and pay fees for certain immigration benefit applications and petitions on behalf of a foreign national. These applications include Petition for Nonimmigrant Worker, Form I-129; Immigrant Petition for Alien Worker, Form I-140; Civil Surgeon Designation, Form I-910; and Application for Regional Center Designation Under the Immigrant Investor Program, Form I-924. Annual numeric estimates of small entities affected by this fee increase total (in parentheses): Form I-129 (70,211), Form I-140 (17,812), Form I-910 (589), and Form I-924 (412).

This rule applies to small entities including businesses, non-profit organizations, and governmental jurisdictions filing for the above benefits. Form I-129 and Form I-140 will see a number of industry clusters affected by this rule (see Appendix A of the Small Entity Analysis for a list of industry codes). The fee for civil surgeon designation will apply to physicians requesting such designation. Finally, the Form I-924 will apply to any entity requesting approval and designation as a regional center under the Immigrant Investor Program or filing an amendment to an approved regional center application. Also captured in the dataset for Form I-924 is the Supplement Form I-924A, which regional centers must file annually to

certify their continued eligibility for regional center designation.

a. Petition for a Nonimmigrant Worker, Form I-129

USCIS proposes to increase the fee for the Petition for a Nonimmigrant Worker, Form I-129, from \$325 to \$460, a \$135 (42 percent) increase. Using a 12-month period of data on filings of Form I-129 from September 1, 2014 to August 31, 2015, USCIS collected internal data for each filing organization including the name, Employer Identification Number, city, state, ZIP code, and number/type of filings. Each entity may make multiple filings; for instance, there were 482,190 Form I-129 petitions, but only 84,490 unique entities that filed those petitions. Since the filing statistics do not contain information such as the revenue of the business, USCIS looked for this information by researching databases from third-party sources. USCIS used the subscription-based online database from Hoover's, as well as three open-access databases from Manta, Cortera, and Guidestar, to help determine an organization's small entity status and apply Small Business Administration size standards.

USCIS devised a methodology to conduct the small entity analysis based on a representative sample of the affected population for each form. To achieve a 95 percent confidence level and a 5 percent confidence interval on a population of 84,490 unique entities for Form I-129, USCIS used the standard statistical formula to determine a minimum sample size of 382 entities was necessary. Based on past experience, USCIS expected to find about 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, USCIS selected a sample size approximately 40 percent larger than the minimum necessary in order to allow for non-matches (filing organizations that could not be found in any of the four databases). Therefore, USCIS conducted searches on 534 randomly selected entities from the population of 84,490 unique entities for Form I-129.

The 534 searches for Form I-129 resulted in 404 instances where the name of the filing organization was successfully matched in the databases and 130 instances where the name of the filing organization was not found in the databases. Based on previous experience conducting regulatory flexibility analyses, USCIS assumes filing organizations not found in the online database are likely to be small entities. Thus, in order not to underestimate the number of small

entities affected by this rule, USCIS makes the conservative assumption to consider all of the non-matched entities as small entities for the purpose of this analysis. Among the 404 matches for Form I-129, 287 were determined to be small entities based on their reported revenue or employee count and their North American Industry Classification System (NAICS) code. Combining non-matches (130), matches missing data (27), and small entity matches (287), enables us to classify 444 of the 534 entities as small for Form I-129.

With an aggregated total of 444 out of a sample size of 534, DHS inferred that a majority, or 83.1 percent, of the entities filing Form I-129 petitions during the period were small entities. Furthermore, 284 of the 534 searched were small entities with the sales revenue data needed to estimate the economic impact of the proposed rule. Because these 284 small entities were a subset of the random sample of 534 searches, they were statistically significant in the context of this research. In order to calculate the economic impact of this rule, USCIS estimated the total costs associated with the proposed fee increase for each entity, divided by the sales revenue of that entity.⁷⁸ Based on the proposed fee increase of \$135 for Form I-129, this would amount to an average impact of 0.08 percent on all 284 small entities with reported revenue data.

In terms of range, among the 284 small entities with reported revenue data, all experienced an economic impact of considerably less than 1.0 percent in the analysis, with the exception of one entity. Using the above methodology, the greatest economic impact imposed by this fee change totaled 2.55 percent on that one entity and the smallest totaled 0.0001 percent.

The evidence suggests that the additional fee imposed by this rule does not represent a significant economic impact on these entities.

b. Immigrant Petition for an Alien Worker, Form I-140

USCIS proposes to increase the fee for the Immigrant Petition for an Alien Worker, Form I-140, from \$580 to \$700, a \$120 (21 percent) increase. Using a 12-month period of data on filings of Form I-140 petitions from September 1, 2014 to August 31, 2015, USCIS collected internal data similar to that of Form I-129. There were 101,245 Form I-140 petitions, but only 23,284 unique entities that filed those petitions. Again, USCIS used the third party sources of

⁷⁸ Total Cost to Entity = (Number of Petitions × \$135)/Entity Sales Revenue.

data mentioned previously to search for revenue and employee count information.

USCIS used the same methodology as with Form I-129 to conduct the small entity analysis based on a representative sample of the affected population. To achieve a 95 percent confidence level and a 5 percent confidence interval on a population of 23,284 unique entities for Form I-140, USCIS used the standard statistical formula to determine that a minimum sample size of 378 entities was necessary. Again, based on past experience, USCIS expected to find about 40 to 50 percent of the filing organizations in the online subscription and public databases. Accordingly, USCIS oversampled in order to allow for non-matches (filing organizations that could not be found in any of the four databases).

USCIS conducted searches on 514 randomly selected entities from the population of 23,284 unique entities for Form I-140. The 514 searches resulted in 430 instances where the name of the filing organization was successfully matched in the databases and 84 instances where the name of the filing organization was not found in the databases. Based on previous experience conducting regulatory flexibility analyses, USCIS assumes filing organizations not found in the online databases are likely to be small entities. In order not to underestimate the number of small entities affected by this rule, USCIS makes the conservative assumption to consider all of the non-matched entities as small entities for the purpose of this analysis. Among the 430 matches for Form I-140, 290 were determined to be small entities based on their reported revenue or employee count and their NAICS code. Combining non-matches (84), matches missing data (19), and small entity matches (290), enables us to classify 393 of 514 entities as small for Form I-140.

With an aggregated total of 393 out of a sample size of 514, USCIS inferred that a majority, or 76.5 percent, of the entities filing Form I-140 petitions during the period were small entities. Furthermore, 287 of the 514 searched were small entities with the sales revenue data needed in order to estimate the economic impact of the proposed rule. Because these 287 small entities were a subset of the random sample of 514 searches, they were statistically significant in the context of this research. Similar to Form I-129, DHS estimated the total costs associated with the proposed fee increase for each entity, divided by the sales revenue of that entity in order to calculate the economic impact of this rule.

Among the 287 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0 percent in the analysis. Using the above methodology, the greatest economic impact imposed by this fee change totaled 0.68 percent and the smallest totaled 0.000002 percent. The average impact on all 287 small entities with revenue data was 0.04 percent.

The evidence suggests that the additional fee imposed by this rule does not represent a significant economic impact on these entities.

Additionally, USCIS analyzed any cumulative impacts to Form I-129 and Form I-140, as well the individual analyses. USCIS wanted to determine if there were cumulative impacts when the forms were analyzed together. USCIS isolated those entities that overlapped in both samples of Forms I-129 and I-140 by EIN. Only 3 entities had EINs that overlapped in both samples. Of these 3 entities, 2 of them were small entities and 1 was not a small entity. Only 1 entity submitted multiple Form I-129 petitions, while all 3 entities submitted multiple Form I-140 petitions. Due to little overlap in entities in the samples and the relatively minor impacts on revenue of fee increases of Forms I-129 and I-140, USCIS does not expect the combined impact of these two forms to be an economically significant burden on a substantial number of small entities.

c. Application for Civil Surgeon Designation, Form I-910

USCIS proposes to increase the fee for the Application for Civil Surgeon Designations, Form I-910, from \$615 to \$785, a \$170 (28 percent) increase. Using a 12-month period of August 1, 2014 to July 31, 2015, USCIS collected internal data on the applicants. There were 719 Form I-910 applications, but only 602 unique entities that filed such applications. Again, USCIS used third party sources of data mentioned previously to search for revenue and employee count information.

Using the same methodology as with Form I-129 and Form I-140, USCIS conducted the small entity analysis based on a representative sample, with a 95 percent confidence level and a 5 percent confidence interval, of the population of 602 unique entities for Form I-910. USCIS determined that a minimum sample size of 235 entities was necessary. USCIS oversampled and conducted searches on 329 randomly selected entities for Form I-910.

The 329 searches for Form I-910 resulted in 252 instances where the name of the filing organization was successfully matched in the databases

and 77 instances where the name of the filing organization was not found in the databases. USCIS assumed again that filing organizations not found in the online databases are likely to be small entities, so USCIS considered all of the non-matched entities as small entities for the purpose of this analysis. Among the 252 matches for Form I-910, 240 were determined to be small entities based on their reported revenue or employee count and their NAICS code. Combining non-matches (77), matches missing data (5), and small entity matches (240), USCIS classified 322 of 329 entities as small for Form I-910.

With an aggregated total of 322 out of a sample size of 329, USCIS inferred that a majority, or 97.9 percent, of the entities filing Form I-910 applications were small entities. Furthermore, 238 of the 329 entities searched were small entities with the sales revenue data needed in order to estimate the economic impact of the proposed rule. Because these 238 small entities were a subset of the random sample of 329 searches, they were statistically significant in the context of this research.

Similar to Form I-129 and Form I-140, USCIS estimated the total costs associated with the proposed fee increase for each entity. Among the 238 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0 percent in the analysis. The greatest economic impact imposed by this fee change totaled 0.61 percent and the smallest totaled 0.000002 percent. The average impact on all 238 small entities with revenue data was 0.09 percent.

The evidence suggests that the additional fee imposed by this rule does not represent a significant economic impact on these entities.

d. Regional Center Designation Under the Immigrant Investor Program, Form I-924 and I-924A

Congress created the EB-5 Program in 1990 under section 203(b)(5) of the INA to stimulate the U.S. economy through job creation and capital investment by foreign investors. Foreign investors have the opportunity to obtain lawful permanent residence in the United States for themselves, their spouses, and their minor unmarried children through a certain level of capital investment and associated job creation or preservation. There are two distinct EB-5 pathways for a foreign investor to gain lawful permanent residence: the Basic Program and the Regional Center Program. Both options require a capital investment from the foreign investor in a new commercial enterprise located within

the United States. The capital investment amount is generally set at \$1,000,000, but may be reduced to \$500,000 if the investment is made in a “Targeted Employment Area.”

A regional center is an economic entity, public or private, that promotes economic growth, regional productivity, job creation, and increased domestic capital investment. Regional centers pool funds into development loans or equity for commercial space and real estate development projects. As of January 4, 2016, there were 790 USCIS-approved regional centers.⁷⁹ Entities seeking designation as regional centers file Form I-924 along with supporting materials. Approved regional centers are currently required to file the Supplement to Form I-924, Form I-924A, annually to demonstrate continued eligibility for regional center designation. DHS is proposing to change the name of the Form I-924A annual filing to “Annual Certification of Regional Center”.

DHS proposes to increase the fee for the Application for Regional Center Designation Under the Immigrant Investor Program, Form I-924, from \$6,230 to \$17,795, an \$11,565 (186 percent) increase. Additionally, DHS proposes to introduce a filing fee of \$3,035 for Form I-924A. In proposing to establish this fee, DHS would also clarify the related regulations that provide for the annual regional center review related to Form I-924A. Currently, there is no procedure for regional centers seeking to withdraw their designation and discontinue their participation in the program. Formal termination is currently processed by USCIS issuing a Notice of Intent to Terminate and a subsequent termination notice. The proposed withdrawal procedure would allow a regional center to proactively request withdrawal without the need for the more formal notices sent out by USCIS. This proposed procedure would reduce administrative costs and time for the Department, while timely clarifying status to the requesting regional center. Over a 13-month period of August 1, 2014 through August 31, 2015, USCIS received a total of 412 Form I-924 applications.⁸⁰ These applications include the request for newly designated regional centers, as well as

requests for continued designation for existing regional centers.

DHS was not able to determine the numbers of regional centers that would be considered small entities. Regional centers are difficult to assess because there is a lack of official data on employment, income, and industry classification for these entities. Regional centers also pose a challenge for analysis as their structure is often complex and can involve many related business and financial activities not directly involved with EB-5 activities. Regional centers can be made up of several layers of business and financial activities that focus on matching foreign investor funds to development projects to capture above market return differentials. While USCIS attempted to treat the regional centers similar to the other entities in this analysis, we were not able to identify most of the entities in any of the online databases. Furthermore, while regional centers are an integral component of the EB-5 program, DHS does not collect data on the administrative fees the regional centers charge to the foreign investors who are investing in one of their projects. DHS did not focus on the bundled capital investment amounts (either \$1 million or \$500,000 per investor) that the regional center invests into a new commercial enterprise. Such investment amounts are not necessarily indicative of whether the regional center is appropriately characterized as a small entity for purposes of the RFA.

Due to the lack of regional center revenue data, DHS assumes regional centers collect revenue through the administrative fees charged to investors. Searching through several public Web sites, DHS gathers that administrative fees charged to investors could range between \$30,000 and \$100,000 per investor.⁸¹ DHS does not know the extent to which these regional centers can pass along the fee increases to the individual investors. Passing along the costs from this rule could reduce or eliminate the economic impacts to the regional centers. While DHS cannot definitively claim there is no significant economic impact to these small entities based on existing information, DHS would assume existing regional centers that have revenues equal to or less than

\$303,500 per year⁸² (some of which we assume would be derived from administrative fees charged to individual investors) could experience a significant economic impact if we assume a fee increase that represents 1% of annual revenue is a “significant” economic burden under the RFA. DHS also assumes newly designated regional centers that have revenues equal to or less than \$1,779,500 per year⁸³ could also experience a significant impact. DHS was able to obtain some sample data on 440 regional centers operating 5,886 projects. These 5,886 projects had a total of 54,506 investors, averaging 124 investors per regional center.⁸⁴ Assuming an average of 124 investors is a representative proxy of the regional centers, and that \$30,000 is the minimum administrative fee charged by regional centers, then such fees would represent approximately \$3,720,000 in revenue. In that case, the proposed filing fee increase for Form I-924 and the creation of a new fee for Form I-924A would not cause a significant economic impact to these entities. DHS requests information from the public on data sources on the average revenues collected by regional centers in the form of administrative fees and the extent to which regional centers may pass along the fee increases to the individual investors.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule does not directly impose any new or additional “reporting” or “recordkeeping” requirements on filers of Forms I-129, I-140, I-910, or I-924 other than the fee adjustments. The proposed rule does not require any new professional skills for reporting.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

DHS is unaware of any duplicative, overlapping, or conflicting federal rules, but invites any comment and information regarding any such rules.

⁷⁹ USCIS Immigrant Investor Regional Centers: <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers#table>.

⁸⁰ Supplemental Form I-924A (Supplement to Form I-924) is captured in this dataset.

⁸¹ Yen, Christine et al., “A Report on Source of Funds: Perils of the Administrative Fee.” EB5 Investors Magazine (Aug. 20, 2015), available at: <http://www.eb5investors.com/magazine/article/A-Report-on-Source-of-Funds>. See also Green, Merritt. “The Costs of an EB-5 Regional Center Project Investment.” (June 27, 2014), available at: <http://www.generalcounselllaw.com/the-cost-of-an-eb-5-regional-center-project-investment/>.

⁸² Calculation: 1 percent of \$303,500 = \$3,035 (the new proposed fee for Form I-924A).

⁸³ Calculation: 1 percent of \$1,779,500 = \$17,995 (the new proposed fee for Form I-924).

⁸⁴ Department of Homeland Security, USCIS, Immigrant Investor Program Office.

6. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities Including Alternatives Considered Such as:

- (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- (2) Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- (3) Use of performance rather than design standards; and
- (4) Any exemption from coverage of the rule, or any part thereof, for such small entities.

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to those eligible for fee waivers and exemptions. DHS funds the costs of providing services without charge by using a portion of the filing fees that are collected for other immigration benefits. Without an increase in fees, USCIS will be unable to maintain the level of service for immigration and naturalization benefits as it now provides. DHS considered the alternative of maintaining fees at the current level but with reduced services and increased processing times, but has decided that this would not be in the interest of applicants and petitioners. While most immigration benefit fees are paid by individuals, as described above, some also apply to small entities. USCIS seeks to minimize the impact on all parties, but in particular small entities. Another alternative would be to maintain fees at their current level for small entities. This alternative would avoid additional fee-burdens on small entities; however, small entities would experience negative effects due to the service reductions that would result in the absence of the fee adjustments proposed in this rule.

Without the fee adjustments proposed in this rule, significant operational changes would be necessary. Given current filing volume and other economic considerations, USCIS requires additional revenue to prevent immediate and significant cuts in planned spending. These spending cuts would include reductions in areas such as federal and contract staff, infrastructure spending on information technology and facilities, and training. Depending on the actual level of

workload received, these operational changes would result in longer processing times, a degradation in customer service, and reduced efficiency over time. These cuts would ultimately represent an increased cost to small entities by causing delays in benefit processing and reductions in customer service.

7. DHS Seeks Public Comment on the Following Questions

- Please provide comment on the numbers of small entities that may be affected by this rulemaking.
- Please provide comment on any or all of the provisions in the proposed rule with regard to the economic impact of this rule, paying specific attention to the effect of the rule on small entities in light of the above analysis, as well as the full analysis on regulations.gov.
- Please provide comment on any significant alternatives DHS should consider instead of the changes proposed by this rule.
- Please describe ways in which the rule could be modified to reduce burdens for small entities consistent with the INA and the CFO Act of 1990 requirements.
- Please identify all relevant federal, state or local rules that may duplicate, overlap or conflict with the proposed rule.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any proposed or final rule “that is likely to result in promulgation of 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 million or more (adjusted annually for inflation) in any one year.”⁸⁵ While this rule may result in the expenditure of more than \$100 million by the private sector annually, the rulemaking is not a “Federal mandate” as defined for UMRA purposes,⁸⁶ as the payment of immigration benefit fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States.⁸⁷ Therefore, no actions were deemed necessary under the provisions of the UMRA.

⁸⁵ See 2 U.S.C. 1532(a).

⁸⁶ See 2 U.S.C. 658(6).

⁸⁷ See 2 U.S.C. 658(7)(A)(ii).

C. Small Business Regulatory Enforcement Fairness Act

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than \$100,000,000 in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and petitions and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants at no charge; and the full cost of providing similar benefits to other immigrants, as specified in the proposed regulation, at no charge. The increased costs would be recovered through the fees charged for various immigration benefit requests.

D. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. If implemented as proposed, we will submit to Congress and the Comptroller General of the United States a report regarding the issuance of the final rule prior to its effective date, as required by 5 U.S.C. 801.

E. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

1. Background and Purpose of the Proposed Rule

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available 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 proposed rule has been designated an “economically significant regulatory action” under section 3(f)(1) of Executive Order 12866. Accordingly, OMB has reviewed the proposed rule.

USCIS projects an annual budget of \$3.038 billion in FY 2016/FY 2017, a \$767 million (34 percent) increase over the FY 2010/FY2011 Fee Review-adjusted annual budget of \$2.271 billion. The implementation of this proposed rule would provide USCIS with an average of \$546 million in FY 2016 and FY 2017 annual fee revenue above the FY 2010/FY 2011 levels, based on a projected annual fee-paying volume of 4.9 million immigrant benefit requests and 2.6 million requests for

biometric services. USCIS would use this increase in revenue under subsections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit requests and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants at no charge; and the full cost of providing similar benefits to others at no charge.

If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit requests, it would be forced to make reductions in services provided to applicants and petitioners. These would reverse the considerable progress USCIS has made over the last several years to reduce the backlogs of immigration benefit filings, to increase the integrity of the immigration benefit system, and to

protect national security and public safety. The proposed revenue increase is based on USCIS costs and volume projections available at the time the rule was drafted. USCIS has placed in the rulemaking docket a detailed analysis that explains the basis for the annual fee increase. USCIS has included an accounting statement detailing the annualized costs of the proposed rule in Table 10 below.

TABLE 10—ACCOUNTING STATEMENT, FY 2016 THROUGH FY 2017

Category	Primary estimate	Maximum estimate
Benefits:		
Un-quantified Benefits	Maintain current level of service with respect to processing times, customer service, and efficiency levels.	
Transfers:		
Annualized Monetized Transfers at 3%	\$546,429,650	\$546,429,650.
Annualized Monetized Transfers at 7%	\$546,429,650	\$546,429,650.
Category	Effects	Source
Effects on State, local, and/or tribal governments.	For those state, local, and/or tribal governments that submit petitions for nonimmigrant and immigrant workers, they would face an increase in filing fees.	NPRM, EO 12866/13563 Analysis.
Effects on small businesses	For those small businesses that submit petitions for non-immigrant and immigrant workers, they would face an increase in filing fees.	NPRM, EO 12866/13563 Analysis, Small Entity Analysis.

2. Proposed Amendments and Impacts of Proposed Regulatory Change

This proposed rule is intended to adjust current fees to ensure that USCIS is able to recover the full costs of the immigration services it provides and maintain adequate service. In addition to increasing fees, USCIS proposes the following amendments: provisions that USCIS will reject an immigration benefit request paid with a dishonored check; provisions that USCIS will reject an application that does not include the required biometric services fee; the institution of a reduced fee for the Application for Naturalization, Form N-400; and provisions that fee refunds will be provided at USCIS discretion.

a. Dishonored Payments

Earlier in this preamble USCIS explains its proposal to change how it will treat a benefit request accompanied by fee payment (in the form of check or other financial instrument) that is subsequently returned as not payable.⁸⁸ Current regulations provide that when a

check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter will be notified and requested to pay the filing fee and associated service charge within 14 calendar days, without extension.⁸⁹ If the benefit request is pending and these charges are not paid within 14 days, the benefit request will be rejected as improperly filed. In addition, a receipt issued by a DHS officer for any remittance will not be binding upon DHS if the remittance is found uncollectable, and legal and statutory deadlines will not be deemed to have been met if payment is not made within 10 business days after notification by DHS of the dishonored check.⁹⁰ In accordance with these provisions, when a payment is returned as not payable, USCIS places the immigration benefit request on hold, and suspends adjudication. If the check was dishonored or payment fails, USCIS assesses a \$30 penalty and pursues the unpaid fee and penalty using administrative debt collection procedures.⁹¹ If payment is made within the allotted time, USCIS resumes processing the application or benefit request. If a payment is not corrected by

the applicant, USCIS rejects the filing for nonpayment.⁹²

DHS proposes to eliminate provisions requiring that applications or petitions be held while deficient payments are corrected. Under the proposed amendment, if a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the benefit request will be rejected as improperly filed.⁹³ If the benefit request was approved and finds payment to be deficient at a later time, the remitter will be requested to pay the filing fee plus the previously established \$30 service charge within 14 calendar days, without extension.⁹⁴ If these charges are not paid, the approval will be automatically rejected for nonpayment.⁹⁵

In order to get an estimate of the numbers of applicants who make a payment with a dishonored check or failed payment, USCIS analyzed the count of all returned and subsequently corrected payments of a credit card or check from fiscal years 2012 to 2015.⁹⁶ In FY 2015, 10,818 payments were returned (Table 11). Of those 10,818

⁸⁸ USCIS proposes to immediately reject and not accept for processing any applications and petitions submitted with invalid payments, e.g. an unsigned check or invalid bank account on an electronic payment. The subsequent identification as not payable would occur when an attempt is made to process the payment through a bank, but the bank does not honor the payment, e.g. returned for insufficient funds.

⁸⁹ See 8 CFR 103.2(a)(7)(ii).

⁹⁰ See 8 CFR 103.2(a)(7)(ii), 103.7(a)(2).

⁹¹ See 8 CFR 103.7(a)(2).

⁹² See 8 CFR 103.2(a)(7)(ii).

⁹³ See proposed 8 CFR 103.2(a)(7)(ii).

⁹⁴ See proposed 8 CFR 103.7(a)(2).

⁹⁵ *Id.*

⁹⁶ Corrected payments include any payment collected by USCIS after the return of an initial payment.

returned payments, 6,399 (59.2 percent) were later corrected. The average annual number of returned payments from FY 2012 to FY 2015 was 9,781 with an

annual average of 6,478 payments (66.2 percent) later corrected. Assuming all included a current service fee of \$30, the resulting total annual cost to

applicants for returned payments is \$293,430.⁹⁷

TABLE 11—COUNT OF RETURNED AND CORRECTED CREDIT CARD/CHECK PAYMENTS, FY 2012–2015

Year	Total returned payments	Total corrected payments	Percentage of corrected payments
2015	10,818	6,399	59.2
2014	9,200	6,467	70.3
2013	9,785	6,496	66.4
2012	9,322	6,550	70.3
Average	9,781	6,478	66.2

Source: Department of Homeland Security, Immigration and Customs Enforcement, Burlington Finance Center.

The proposed provisions would require USCIS to reject these returned payments and associated benefit requests for nonpayment. The existing \$30 service charge would continue to be imposed for benefit requests rejected when a financial institution does not honor a payment. USCIS anticipates that the prospect of rejection would encourage applicants to provide the correct filing fees at the time they submit an application or petition. However, USCIS recognizes that there would continue to be applicants who file an application with an incorrect fee and would be required to pay the \$30 service fee. While USCIS knows currently this additional service fee averages to \$293,430 for all applicants and anticipates it would be lower in the future, we do not have enough information at this time to estimate the degree of this decrease.

For applicants, filing fees are a required and fundamental aspect of the benefit being requested. By providing a 14-day window to correct for dishonored checks, the regulation currently permits a benefit request paid with a dishonored payment instrument to secure a place in line ahead of a benefit request that was accompanied by a proper payment, for what may be a time sensitive or numerically limited program. In all cases, rejected filings may be refiled immediately with the proper payment but there are some slight differences depending upon if the submission is paper-based or electronically filed. The USCIS online filing system will permit the rejected applications to remain accessible for the applicant to print and view. The original rejected electronic submission would not be available for resubmission with a new payment; however, the rejected submission may be used as a

reference when a new application is being completed. In cases where the rejected submission is paper-based, the entire application/petition/request and supporting documentation are returned and can generally be refiled with the proper payment instrument.

The proposed amendments will provide several benefits to USCIS. First, USCIS currently clears payment checks via the ACH by converting checks to electronic payments. Because USCIS converts checks into ACH payments, there is currently little or no delay before USCIS knows whether the check is valueless. Thus, unlike in the past, USCIS would not begin adjudication until the check has cleared. USCIS benefits by streamlining the process for adjudicators to only begin work on those applications with properly filed fees, eliminating the need to hold applications. USCIS anticipates this streamlined process would help adjudicators to more efficiently process cases without the need to wait on payments. This change in process also provides parity to those applicants who file an application with the correct fees. In addition, the proposed amendments would lower USCIS administrative costs for holding and tracking applications and payments. The holding and tracking of applications requires physical storage space that would no longer be required with the proposed revisions. USCIS currently incurs administrative costs through tracking payments in postage costs and adjudicator time among other costs. USCIS recognizes the unique situation that these proposed changes may have on H–1B lottery regulations, which allow numbers available to petitions in the order in which the petitions are filed.⁹⁸ The H–1B lottery regulations allow the final receipt date to be any of the first 5 business days on

which petitions subject to the applicable numerical limit may be received. USCIS then will randomly apply all of the numbers among the petitions received on any of those 5 business days and conduct a random selection among the petitions subject to the exemption under section 214(g)(5)(C) of the Act first. Currently, petitions are still eligible for the H–1B lottery, despite having dishonored checks or failed payments as long as the payments are corrected within the provided 14-day or 10-day timeframe.⁹⁹ These proposed changes, however, would remove these petitions from the H–1B lottery as the dishonored checks or failed payments would result in a rejected petition as improperly filed. USCIS does not have data at this time to estimate the impact on how many petitions may be affected by these proposed changes. USCIS is also unable to monetize the cost to the applicant of having a petition removed from the lottery. DHS requests comments on this impact.

b. Failure To Pay the Biometrics Services Fees

DHS also proposes amendments to eliminate provisions governing non-payment of the biometric service fee. Currently, if a benefit request is received by DHS without the correct biometric service fee, USCIS will notify the applicant of the deficiency and take no further action on the benefit request until payment is received.¹⁰⁰ Failure to submit the correct biometric service fee within the time allotted in the notice will result in denial of the benefit request. To comply with these provisions, if the biometrics services fee was required and is missing, USCIS places an application or petition on hold, and suspends adjudication. If payment is made within the allotted

⁹⁷ Calculation: 9,781 (average number of returned payments) * \$30 (current service fee charge) = \$293,430 (total cost for returned payments).

⁹⁸ See 8 CFR 214.2(h)(8)(ii)(B).

⁹⁹ See 8 CFR 103.2(a)(7)(ii).

¹⁰⁰ See 8 CFR 103.17(b)(1).

time, USCIS resumes processing the benefit request. If the biometric fee is not paid, the benefit request is denied as abandoned.

USCIS proposes to eliminate the provisions requiring that applications be held while deficient payments are corrected. USCIS is proposing that if a benefit request is received by USCIS without the correct biometric service fee, as specified in the form instructions, USCIS would reject the benefit request.

In order to analyze the number of people who do not pay the biometric fee, USCIS gathered 6 months of data from USCIS lockbox facilities.¹⁰¹ The data covers from June 1, 2015 to November 30, 2015. During this 6-month period, USCIS lockbox facilities accepted 1,196,134 applications. Of these, 4,963 (.41 percent) of applicants were issued a notice alerting the applicant that their biometric fees were missing. Assuming this 6-month trend is typical of the number of deficient biometric fee notices, the proposed new provision will affect less than 1 percent of all applications received at the USCIS lockbox facilities. As previously mentioned, rejected filings may be refiled immediately. While applicants do not incur monetary costs associated with the rejection of an application, reapplying for benefits with the correct fees requires time. Again, USCIS anticipates this new provision would encourage applicants to file with the appropriate fees.

This change would streamline USCIS' process for handling applications and petitions when biometrics fees are not submitted when required. USCIS costs are reduced by eliminating the administrative handling costs associated with holding cases while biometric fees are collected.

c. Reduced Fee for Application for Naturalization

The current fee for the Application for Naturalization, Form N-400, is \$595. In most cases, applicants must also pay an \$85 biometrics fee, so the total cost for most applicants is \$680. If an applicant cannot pay the fee, he or she can file a Request for Fee Waiver, Form I-912, along with their Form N-400. USCIS considers anyone with a household income below 150 percent of the Federal Poverty Guidelines to be eligible for a fee waiver. If USCIS approves an applicant's fee waiver, both the \$595 Form N-400 fee and the \$85 biometrics fee, where applicable, are waived.

¹⁰¹ While USCIS prefers to base assumptions on a longer time period (ideally 5 years), 6 months was the longest time period for which this data was available.

DHS proposes to increase the Form N-400 fee from \$595 to \$640, a \$45 (8 percent) increase. The biometrics fee would remain unchanged at \$85. Therefore, if the proposed fees are implemented, the new costs of Form N-400 plus the biometric fee would total \$725. DHS also proposes an additional fee option for those non-military naturalization applicants with family incomes greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines. Specifically, DHS proposes that such applicants would receive a 50 percent discount and only be required to pay a filing fee of \$320 for the N-400, plus an additional \$85 for biometrics (for a total of \$405). DHS proposes this reduced fee option to limit any potential economic disincentives that some eligible naturalization applicants may face when deciding whether or not to seek citizenship. The lower fee would help ensure that those who have worked hard to become eligible for naturalization are not limited by their economic means. In order to qualify for this fee, the eligible applicant will have to submit a newly proposed Request for Reduced Fee, Form I-942, along with their Form N-400. Form I-942 will require the names of everyone in the household and documentation of the household income to determine if the applicant's household income is greater than 150 and not more than 200 percent of the Federal Poverty Guidelines.

As described earlier in the preamble, USCIS estimates that approximately 11 percent of all Form N-400 applicants, excluding military applicants, could qualify for the reduced fee. Given the non-military Form N-400 volume projection estimate of 821,500 annually, over the biennial period, USCIS expects that 90,365 filers would be included in the population eligible for the fee reduction.¹⁰² While these 90,365 filers represent only the current number of applicants who would be eligible for the fee reduction, USCIS anticipates an increase in Form N-400 filings as a result of these proposed changes. USCIS anticipates that the reduced fee for applicants with qualifying incomes would remove economic barriers associated with the costs of associated fees and thus encourage more eligible applicants to file their Form N-400 applications. While USCIS anticipates an increase in Form N-400 filings due to this proposed fee reduction, we cannot predict how many more eligible applicants would file their N-400 applications as a result at this time.

¹⁰² Calculation: 821,500 * 11 percent.

USCIS has factored the estimated revenue loss from this product line into its fee model, so those costs are reallocated over other fee paying benefit requests. While the costs of the reduced fee are being reallocated to other fee-paying customers, DHS believes the benefits of providing a means to promote citizenship among those with limited economic means outweighs the cost reallocation impacts.

As previously mentioned, an eligible applicant would have to submit a Form I-942 along with their N-400 application to qualify for this reduced fee. While USCIS is not imposing an additional fee for Form I-942, we have estimated the opportunity cost of time to applicants to complete the form. The total opportunity cost of time for applicants would be \$717,724, if all 90,365 eligible applicants apply for the reduced fee.¹⁰³ The federal minimum wage rate¹⁰⁴ of \$7.25 was used as the hourly wage rate as the anticipated applicants are asserting they cannot afford to pay the full USCIS fee. The anticipated applicants are assumed to be from occupations having a less than average income. The Bureau of Labor Statistics (BLS) reports the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. Using the most recent BLS report, DHS calculated a benefits-to-wage multiplier of 1.46 to estimate the full opportunity costs to applicants, including employee wages and salaries and the full costs of benefits such as paid leave, insurance, and retirement.¹⁰⁵ In order to anticipate the full opportunity cost of time to applicants, we multiplied the federal minimum wage rate by 1.46 to account for the full cost of employee benefits for a total of \$10.59. The time burden estimate was developed by USCIS with an average of 45 minutes (or .75 of an hour) to complete Form I-942. Therefore, the opportunity cost of time per petition is

¹⁰³ Total Opportunity Costs of Time to Applicants = Expected Filers (90,365) * (Full Cost of Employee Benefits (\$10.59) * Time Burden (.75 hr.)).

¹⁰⁴ U.S. Department of Labor, Wage and Hour Division. The minimum wage in effect as of January 20, 2016. Available at <http://www.dol.gov/general/topic/wages/minimumwage>.

¹⁰⁵ The benefits-to-wage multiplier is calculated as follows: (All Workers Total Employee Compensation per hour)/(Wages and Salaries per hour). See Economic News Release, U.S. Department of Labor, Bureau of Labor Statistics, Table 1. Employer Costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (Sept. 2015), available at <http://www.bls.gov/news.release/pdf/ecec.pdf>.

\$7.94.¹⁰⁶ This additional burden is offset by the benefits received through a reduced fee.

d. Refunds

DHS is also proposing to amend regulations for fee refunds. In general, and except for a premium processing fee under 8 CFR 103.7(e)(2)(i), USCIS does not refund a fee regardless of the decision on the immigration benefit request. USCIS makes very rare exceptions when USCIS determines that an administrative error occurred resulting in the inadvertent collection of a fee. USCIS errors may include:

- **Unnecessary filings.** Cases in which USCIS (or DOS in the case of an immigration benefit request filed overseas) erroneously requests that an individual file an unnecessary form along with the associated fee; and
- **Accidental Payments.** Cases in which an individual pays a required fee more than once or otherwise pays a fee in excess of the amount due and USCIS (or the DOS in the case of an immigration benefit request filed overseas) erroneously accepts the erroneous fee.

DHS is proposing to codify into regulation the continuance of providing these refunds under circumstances where refunds are necessary due to obvious USCIS error. Under this proposal, individuals would continue to request a refund by the current process. The current process requires that an individual call the customer service line or submit a written request for a refund to the office having jurisdiction over the relevant immigration benefit request.

Any USCIS refunds provided are generally due to obvious USCIS errors resulting from system behavior issues or human error. The anticipation of future electronic filings also spurs the need for this provision. Currently, DHS provides fee refunds and amounts to applicants as shown in Table 12. Over the past 3 fiscal years, an annual average of 5,363 refunds were provided by USCIS, resulting in an average of \$2.1 million refunded. This is approximately \$396 per refund. These numbers and amounts of refunds do not include premium processing refunds regulated under 8 CFR 103.7(e)(2)(i). In the context of the number of fees collected by USCIS, this average amount of refunds is still less than 1 percent of the total fees collected.

TABLE 12—AMOUNT AND NUMBER OF FEE REFUNDS PROVIDED BY USCIS

Fiscal year	Amount refunded	Number of refunds
2013	\$2,674,290	7,405
2014	1,805,006	4,198
2015	1,890,638	4,485
Average	2,123,311	5,363

Source: Department of Homeland Security, U.S. Immigration and Customs Enforcement, Burlington Finance Center.

These proposed amendments would benefit applicants that might accidentally submit payments twice. USCIS anticipates this to be a bigger issue as more forms and associated fees begin to be collected through electronic means. Applicants would recoup any fees that were submitted due to these electronic systems issues. USCIS would benefit by having clear regulatory authority to justify the few cases in which refunds are provided.

There may be some administrative costs associated with the issuance of refunds to USCIS, as well as some time burden costs to USCIS adjudicators who process these refund requests. It may be possible to see a potential increase initially in requests for refunds due to the visibility of this rule; however, USCIS does not anticipate a sustained increase as the parameters of the refunds issued are not proposed to be changed from current policy. There may also be a potential increase in the time burden costs for USCIS adjudicators due to potential initial increases in refund requests. USCIS does not have cost estimates at this time indicating the number of hours required to process and issue these refunds. There may also be some opportunity costs of time to applicants who submit a refund request; however, USCIS anticipates this cost is offset by the benefit gained in receiving a refund.

F. Executive Order 13132 (Federalism)

This proposed rule will not have substantial direct effects on the states, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in

sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), DHS is required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. USCIS is revising two information collections, adding a new information collection in association with this rulemaking action, and requesting public comments on the proposed information collection changes as follows: Application for Naturalization, Form N–400, to collect information necessary to document the applicant's eligibility for the reduced fee proposed in this rule at 8 CFR 103.7(b)(1)(i)(AAA)(1); Annual Certification of Regional Center, Form I–924A, and the Application for Regional Center Designation Under the Immigrant Investor Program, Form I–924, to add the instructions necessary to require the annual fee; and, Request for Reduced Fee, Form I–942, to document the applicant's eligibility for the reduced fee. DHS is requesting comments on the information collection changes included in this rulemaking. Comments on this revised information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(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, such as permitting electronic submission of responses.

Overview of Information Collection—Form N–400

a. *Type of information collection:* Revision of a Currently Approved Collection.

b. *Abstract:* USCIS uses the information gathered on Form N–400 to make a determination as to a respondent's eligibility to naturalize and become a U.S. citizen. USCIS is

¹⁰⁶ Calculation: \$10.59 hourly wage rate * .75 hour.

proposing changes to the form instructions to notify the public of the information needed to document an applicant's eligibility for the proposed reduced fee.

c. Title of Form/Collection:

Application for Naturalization.

d. Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form N-400; USCIS.

e. Affected public who will be asked or required to respond: Individuals or households.

f. An estimate of the total number of respondents: 830,673 respondents.

g. Hours per response: The estimated hour burden per response for the paper filing of the N-400 is 9.17 hours per response. The estimated hour burden per response for the electronic filing of the N-400 is 3.5 hours per response. The estimated hour burden per response for the biometric processing associated with the N-400 is 1.17 hours per response.

h. Total Annual Reporting Burden: 8,118,167 hours.

Overview of Information Collection—Forms I-924 and I-924A

a. Type of information collection:

Revision to a currently approved information collection.

b. Abstract: This collection is used to demonstrate a regional center's continued eligibility for regional center designation.

c. Title of Form/Collection:

Application for Regional Center Designation Under the Immigrant Investor Program/Annual Certification of Regional Center.

d. Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form I-924 and Form I-924A; USCIS.

e. Affected public who will be asked or required to respond: Businesses or other for-profit Entities; or State, local or Tribal Government

f. An estimate of the total number of respondents:

- Form I-924—400 respondents.
- Form I-924A—882 respondents.

g. Hours per response: For Form I-924, 51 hours; and Form I-924A, 14 hours.

h. Total Annual Reporting Burden: 32,748 hours.

Overview of Information Collection—Form I-942

a. Type of information collection:

New information collection.

b. Abstract: This collection is used for an applicant to request a reduced fee and document that annual household income is between 150% and 200% of the FPG.

c. Title of Form/Collection: Request for Reduced Fee.

d. Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form I-942, USCIS.

e. Affected public who will be asked or required to respond: Individuals.

f. An estimate of the total number of respondents: 90,365 respondents.

g. Hours per response: .75 hours.

h. Total Annual Reporting Burden: 67,774 hours.

Comments concerning these collections and forms can be submitted to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529-2020. Please include the OMB control number in the comment letter.

Please also submit comments on the forms to OMB by:

- Email: oira_submission@omb.eop.gov;
- Facsimile at 202-395-7285; or;
- Mail: Desk Officer for USCIS, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW., Washington, DC 20503

The changes to the proposed fees will require minor amendments to USCIS forms to reflect the new fees. The necessary changes to the annual cost burden and to the forms will be submitted to OMB when a final rule is submitted to OMB.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, and Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112-54.

■ 2. Section 103.2 is amended by:

- a. Revising paragraph (a)(1);
- b. Revising paragraph (a)(7); and
- c. Revising paragraph (b)(9).

The revisions read as follows:

§ 103.2 Submission and adjudication of benefit requests.

(a) * * *

(1) *Preparation and submission.* Every form, benefit request, or other document must be submitted to DHS and executed in accordance with the form instructions regardless of a provision of 8 CFR chapter I to the contrary. The form's instructions are hereby incorporated into the regulations requiring its submission. Each form, benefit request, or other document must be filed with the fee(s) required by regulation. Filing fees generally are non-refundable and, except as otherwise provided in this chapter I, must be paid when the benefit request is filed.

* * * * *

(7) *Benefit requests submitted.* (i) USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format.

(ii) A benefit request which is rejected will not retain a filing date. A benefit request will be rejected if it is not:

- (A) Signed with valid signature;
- (B) Executed;

(C) Filed in compliance with the regulations governing the filing of the specific application, petition, form, or request; and

- (D) Submitted with the correct fee(s).

If a financial instrument used to pay a fee is returned as unpayable, the filing will be rejected and a charge will be imposed in accordance with 8 CFR 103.7(a)(2).

(iii) A rejection of a filing with USCIS may not be appealed.

(b) * * *

(9) *Appearance for interview or biometrics.* USCIS may require any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request, or any group or class of such persons submitting requests, to appear for an interview and/or biometrics collection. USCIS may require the payment of the biometrics services fee in 8 CFR 103.7(b)(1)(i)(C) or that the individual obtain a fee waiver. Such appearance and fee may also be required by law, regulation, form instructions, or **Federal Register** notice applicable to the request type. USCIS will notify the affected person of the date, time and location of any required appearance under this paragraph. Any person required to appear under this paragraph

may, prior to the scheduled date and time of the appearance, either:

(i) Appear before the scheduled date and time;

(ii) For good cause, request that the biometric services appointment be rescheduled; or

(iii) Withdraw the benefit request.

* * * * *

■ 4. Section 103.7 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 103.7 Fees.

* * * * *

(a) * * *

(2) Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. Remittances must be made payable in accordance with the guidance specific to the applicable U.S. Government office when submitting to a Department of Homeland Security office located outside of the United States. Remittances to the Board of Immigration Appeals must be made payable to the "United States Department of Justice," in accordance with 8 CFR 1003.8. A charge of \$30.00 will be imposed if a remittance in payment of a fee or any other matter is not honored by the bank or financial institution on which it is drawn. If the remittance is found uncollectible the provisions of 8 CFR 103.2(a)(7)(ii) apply, no receipt will be issued, and if a receipt was issued, it is void and the benefit request loses its receipt date.

(b) *Amounts of fees.* (1) *Established fees and charges.* (i) *USCIS fees.* A request for immigration benefits submitted to USCIS must include the required fee as established under this section. The fees established in this section are associated with the benefit, the adjudication, or the type of request and not solely determined by the form number listed below. The term "form" as defined in 8 CFR part 1, may include a USCIS-approved electronic equivalent of such form as USCIS may provide on its official Web site at <http://www.uscis.gov>.

(A) *Certification of true copies:* \$2.00 per copy.

(B) *Attestation under seal:* \$2.00 each.

(C) *Biometric services fee.* For capturing, storing, and using biometric information (Biometric Fee). A service fee of \$85 will be charged to pay for background checks and have their biometric information captured, stored, and used for any individual who is required to submit biometric information for an application, petition, or other request for certain immigration and naturalization benefits (other than asylum or refugee status) or actions.

USCIS will not charge a biometric service fee when:

(1) An applicant under 8 CFR 204.3 submits to USCIS a written request for an extension of the approval period of an Application for Advance Processing of an Orphan Petition ("Application"), if the request is submitted before the approval period expires and the applicant has not yet filed a Petition to Classify Orphan as an Immediate Relative ("Petition") in connection with the approved Application. The applicant may submit only one extension request without having to pay an additional biometric service fee. If the extension of the approval expires before the applicant files an associated Petition, then the applicant must file either a new Application or a Petition, and pay a new filing fee and a new biometric service fee.

(2) The application or petition fee for the associated request has been waived under paragraph (c) of this section; or

(3) The associated benefit request is one of the following:

(i) Application for Posthumous Citizenship, Form N-644;

(ii) Refugee/Asylee Relative Petition, Form I-730;

(iii) Application for T Nonimmigrant Status, Form I-914;

(iv) Petition for U Nonimmigrant Status, Form I-918;

(v) Application for Naturalization, Form N-400, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service under paragraph (b)(1)(i)(WW) of this section;

(vi) Application to Register Permanent Residence or Adjust Status, Form I-485, from an asylee under paragraph (b)(1)(i)(U) of this section;

(vii) Application To Adjust Status under Section 245(i) of the Act, Supplement A to Form I-485, from an unmarried child less than 17 years of age, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized foreign national and who is qualified for and has applied for voluntary departure under the family unity program from an asylee under paragraph (b)(1)(i)(V) of this section; or

(viii) Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360, meeting the requirements of paragraphs (b)(1)(i)(T)(1), (2), (3) or (4) of this section.

(D) *USCIS Immigrant Fee.* For DHS domestic processing and issuance of required documents after an immigrant visa is issued by the U.S. Department of State: \$220.

(E) *Request for a search of indices to historical records to be used in*

genealogical research, Form G-1041: \$65. The search request fee is not refundable.

(F) *Request for a copy of historical records to be used in genealogical research*, Form G-1041A: \$65. USCIS will refund the records request fee only when it is unable to locate the file previously identified in response to the index search request.

(G) *Application to Replace Permanent Resident Card*, Form I-90. For filing an application for a Permanent Resident Card, Form I-551, to replace an obsolete card or to replace one lost, mutilated, or destroyed, or for a change in name: \$455.

(H) *Application for Replacement/Initial Nonimmigrant Arrival-Departure Document*, Form I-102. For filing a petition for an application for Arrival/Departure Record Form I-94, or Crewman's Landing Permit Form I-95, to replace one lost, mutilated, or destroyed: \$445.

(I) *Petition for a Nonimmigrant Worker*, Form I-129. For filing a petition for a nonimmigrant worker: \$460.

(J) *Petition for Nonimmigrant Worker in CNMI*, Form I-129CW. For an employer to petition on behalf of one or more beneficiaries: \$460 plus a supplemental CNMI education funding fee of \$150 per beneficiary per year. The CNMI education funding fee cannot be waived.

(K) *Petition for Alien Fiancé(e)*, Form I-129F. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: \$535; there is no fee for a K-3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a United States citizen on a Petition for Alien Relative, Form I-130.

(L) *Petition for Alien Relative*, Form I-130. For filing a petition to classify status of a foreign national relative for issuance of an immigrant visa under section 204(a) of the Act: \$535.

(M) *Application for Travel Document*, Form I-131. For filing an application for travel document:

(1) \$135 for a Refugee Travel Document for an individual age 16 or older.

(2) \$105 for a Refugee Travel Document for a child under the age of 16.

(3) \$575 for advance parole and any other travel document.

(4) No fee if filed in conjunction with a pending or concurrently filed Form I-485 with fee that was filed on or after July 30, 2007.

(N) *Immigrant Petition for Alien Worker*, Form I-140. For filing a petition to classify preference status of an alien

on the basis of profession or occupation under section 204(a) of the Act: \$700.

(O) *Application for Advance Permission to Return to Unrelinquished Domicile*, Form I-191. For filing an application for discretionary relief under section 212(c) of the Act: \$930.

(P) *Application for Advance Permission to Enter as a Nonimmigrant*, Form I-192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case or where the approval of the application is in the interest of the United States Government: \$930.

(Q) *Application for Waiver for Passport and/or Visa*, Form I-193. For filing an application for waiver of passport and/or visa: \$930.

(R) *Application for Permission to Reapply for Admission into the United States After Deportation or Removal*, Form I-212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense instead of deportation: \$930.

(S) *Notice of Appeal or Motion*, Form I-290B. For appealing a decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction: \$675. The fee will be the same for appeal of a denial of a benefit request with one or multiple beneficiaries. There is no fee for an appeal or motion associated with a denial of a petition for a special immigrant visa filed by or on behalf of an individual seeking special immigrant visa or status as an Iraqi or Afghan national who was employed by or on behalf of the U.S. Government in Iraq or Afghanistan.

(T) *Petition for Amerasian, Widow(er), or Special Immigrant*, Form I-360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant: \$435. The following requests are exempt from this fee:

(1) A petition seeking classification as an Amerasian;

(2) A self-petition for immigrant status as a battered or abused spouse, parent, or child of a U.S. citizen or lawful permanent resident; or

(3) A petition for special immigrant juvenile status; or

(4) A petition seeking special immigrant visa or status an Iraqi or Afghan national who was employed by or on behalf of the U.S. Government in Iraq or Afghanistan.

(U) *Application to Register Permanent Residence or Adjust Status*, Form I-485. For filing an application for permanent

resident status or creation of a record of lawful permanent residence:

(1) \$1,140 for an applicant 14 years of age or older; or

(2) \$750 for an applicant under the age of 14 years when:

(i) The application is submitted concurrently for adjudication with the Form I-485 of a parent; and

(ii) The applicant is seeking to adjust status as a derivative of his or her parent;

(3) There is no fee if an applicant is filing as a refugee under section 209(a) of the Act.

(V) *Application to Adjust Status under Section 245(i) of the Act*, Supplement A to Form I-485. Supplement to Form I-485 for persons seeking to adjust status under the provisions of section 245(i) of the Act: \$1,000. There is no fee when the applicant is an unmarried child less than 17 years of age, when the applicant is the spouse, or the unmarried child less than 21 years of age of an individual with lawful immigration status and who is qualified for and has applied for voluntary departure under the family unity program.

(W) *Immigrant Petition by Alien Entrepreneur*, Form I-526. For filing a petition for an alien entrepreneur: \$3,675.

(X) *Application To Extend/Change Nonimmigrant Status*, Form I-539. For filing an application to extend or change nonimmigrant status: \$370.

(Y) *Petition to Classify Orphan as an Immediate Relative*, Form I-600. For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. Only one fee is required when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters: \$775.

(Z) *Application for Advance Processing of Orphan Petition*, Form I-600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.): \$775. No fee is charged if Form I-600 has not yet been submitted in connection with an approved Form I-600A subject to the following conditions:

(1) The applicant requests an extension of the approval in writing and the request is received by USCIS before the expiration date of approval; and

(2) The applicant's home study is updated and USCIS determines that proper care will be provided to an adopted orphan.

(3) A no fee extension is limited to one occasion. If the Form I-600A approval extension expires before submission of an associated Form I-600, then a complete application and fee must be submitted for any subsequent application.

(AA) *Application for Waiver of Ground of Inadmissibility*, Form I-601. For filing an application for waiver of grounds of inadmissibility: \$930.

(BB) *Application for Provisional Unlawful Presence Waiver*, Form I-601A. For filing an application for provisional unlawful presence waiver: \$630.

(CC) *Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended)*, Form I-612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act: \$930.

(DD) *Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act*, Form I-687. For filing an application for status as a temporary resident under section 245A(a) of the Act: \$1,130.

(EE) *Application for Waiver of Grounds of Inadmissibility under Sections 245A or 210 of the Immigration and Nationality Act*, Form I-690. For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: \$715.

(FF) *Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act* (or a petition under section 210A of the Act), Form I-694. For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: \$890.

(GG) *Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Pub. L. 99-603)*, Form I-698. For filing an application to adjust status from temporary to permanent resident (under section 245A of Pub. L. 99-603): \$1,670. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

(HH) *Petition to Remove Conditions on Residence*, Form I-751. For filing a petition to remove the conditions on residence based on marriage: \$595.

(II) *Application for Employment Authorization*, Form I-765. \$410; no fee if filed in conjunction with a pending or concurrently filed Form I-485 with fee that was filed on or after July 30, 2007.

(JJ) *Petition to Classify Convention Adoptee as an Immediate Relative*, Form I-800.

(1) There is no fee for the first Form I-800 filed for a child on the basis of an approved Application for Determination of Suitability to Adopt a Child from a Convention Country, Form I-800A, during the approval period.

(2) If more than one Form I-800 is filed during the approval period for different children, the fee is \$775 for the second and each subsequent petition submitted.

(3) If the children are already siblings before the proposed adoption, however, only one filing fee of \$775 is required, regardless of the sequence of submission of the immigration benefit.

(KK) *Application for Determination of Suitability to Adopt a Child from a Convention Country*, Form I-800A. For filing an application for determination of suitability to adopt a child from a Convention country: \$775.

(LL) *Request for Action on Approved Application for Determination of Suitability to Adopt a Child from a Convention Country*, Form I-800A, Supplement 3. This filing fee is not charged if Form I-800 has not been filed based on the approval of the Form I-800A, and Form I-800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I-800A: \$385.

(MM) *Application for Family Unity Benefits*, Form I-817. For filing an application for voluntary departure under the Family Unity Program: \$600.

(NN) *Application for Temporary Protected Status*, Form I-821. For first time applicants: \$50. There is no fee for re-registration.

(OO) *Application for Action on an Approved Application or Petition*, Form I-824. For filing for action on an approved application or petition: \$465.

(PP) *Petition by Entrepreneur to Remove Conditions*, Form I-829. For filing a petition by entrepreneur to remove conditions: \$3,750.

(QQ) *Application for Suspension of Deportation or Special Rule Cancellation of Removal* (Pursuant to Section 203 of Pub. L. 105-100), Form I-881:

(1) \$285 for adjudication by DHS, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications at the same time will be \$570.

(2) \$165 for adjudication by the Immigration Court (a single fee of \$165 will be charged whenever applications are filed by two or more foreign nationals in the same proceedings).

(3) The \$165 fee is not required if the Form I-881 is referred to the Immigration Court by DHS.

(RR) *Application for Authorization to Issue Certification for Health Care Workers*, Form I-905: \$230.

(SS) *Request for Premium Processing Service*, Form I-907. The fee must be paid in addition to, and in a separate remittance from, other filing fees. The fee to request premium processing:

\$1,225. The fee for a request for premium processing fee may be adjusted annually by notice in the **Federal Register** based on inflation according to the Consumer Price Index (CPI). The fee for Premium Processing Service may not be waived.

(TT) *Application for Civil Surgeon Designation*, Form I-910. For filing an application for civil surgeon designation: \$785. There is no fee for an application from a medical officer in the U.S. Armed Forces or civilian physician employed by the U.S. Government who examines members and veterans of the Armed Forces and their dependents at a military, Department of Veterans Affairs, or U.S. Government facility in the United States.

(UU) *Application for T Nonimmigrant Status*, Form I-914. No fee.

(VV) *Application for U Nonimmigrant Status*, Form I-918. No fee.

(WW) *Application for Regional Center Designation under the Immigrant Investor Program*, Form I-924. For filing an application for regional center designation under the Immigrant Investor Program: \$17,795.

(XX) *Annual Certification of Regional Center*, Form I-924A. To provide updated information and certify that an Immigrant Investor Regional Center has maintained their eligibility: \$3,035.

(YY) *Petition for Qualifying Family Member of a U-1 Nonimmigrant*, Form I-929. For U-1 principal applicant to submit for each qualifying family member who plans to seek an immigrant visa or adjustment of U status: \$230.

(ZZ) *Application to File Declaration of Intention*, Form N-300. For filing an application for declaration of intention to become a U.S. citizen: \$270.

(AAA) *Request for a Hearing on a Decision in Naturalization Proceedings (Under section 336 of the Act)*, Form N-336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act: \$700.

There is no fee if filed on or after October 1, 2004, by an applicant who has filed an Application for Naturalization under sections 328 or 329 of the Act with respect to military service and whose application has been denied.

(BBB) *Application for Naturalization*, Form N-400. For filing an application for naturalization: \$640. Except:

(1) The fee for an applicant whose documented income is greater than 150% and not more than 200% of the federal poverty level is \$320.

(2) No fee is charged an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service.

(CCC) *Application to Preserve Residence for Naturalization Purposes*, Form N-470. For filing an application for benefits under section 316(b) or 317 of the Act: \$355.

(DDD) *Application for Replacement Naturalization/Citizenship Document*, Form N-565. For filing an application for a certificate of naturalization or declaration of intention in place of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act: \$555. There is no fee when this application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate that contains an error.

(EEE) *Application for Certificate of Citizenship*, Form N-600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act: \$1,170. There is no fee for any application filed by a member or veteran of any branch of the United States Armed Forces.

(FFF) *Application for Citizenship and Issuance of Certificate under section 322 of the Act*, Form N-600K. For filing an application for citizenship and issuance of certificate under section 322 of the Act: \$1,170.

(GGG) *American Competitiveness and Workforce Improvement Act (ACWIA) fee*. \$1,500 or \$750 for filing certain H-1B petitions as described in 8 CFR 214.2(h)(19) and USCIS form instructions.

(HHH) *Fraud detection and prevention fee*. \$500 for filing certain H-1B and L petitions, and \$150 for H-2B petitions as described in 8 CFR 214.2(h)(19).

(III) *9-11 Response and Biometric Entry-Exit Fee for H-1B Visa*. \$4,000 for certain petitioners who employ 50 or more employees in the United States if more than 50 percent of the petitioner's employees are in H-1B, L-1A or L-1B nonimmigrant status. Collection of this fee is scheduled to end on September 30, 2025.

(JJJ) *9-11 Response and Biometric Entry-Exit Fee for L-1 Visa*. \$4,500 for

certain petitioners who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees are in H-1B, L-1A or L-1B nonimmigrant status. Collection of this fee is scheduled to end on September 30, 2025.

* * * * *

■ 5. Section 103.16 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 103.16 Collection, use and storage of biometric information.

(a) *Use of biometric information.* An individual may be required to submit biometric information by law, regulation, **Federal Register** notice or the form instructions applicable to the request type or if required in accordance with 8 CFR 103.2(b)(9). * * *

* * * * *

■ 6. Section 103.17 is amended by revising paragraph (b) to read as follows:

§ 103.17 Biometric service fee.

* * * * *

(b) *Non-payment.* If a benefit request is received by DHS without the correct biometric services fee as provided in the form instructions, DHS will reject the benefit request.

PART 204—IMMIGRANT PETITIONS

■ 7. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1641; 8 CFR part 2.

■ 8. Section 204.6 is amended by revising paragraph (m)(6) to read as follows:

§ 204.6 Petitions for employment creation aliens.

* * * * *

(m) * * *

(6) *Continued participation requirements for regional centers.* (i) Regional centers approved for participation in the program must:

(A) Continue to meet the requirements of section 610(a) of the Appropriations Act.

(B) Provide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area, using a form designated for this purpose; and

(C) Pay the fee provided by 8 CFR 103.7(b)(1)(i)(WW).

(ii) USCIS will issue a notice of intent to terminate the designation of a regional center in the program if:

(A) A regional center fails to submit the information required in paragraph (m)(6)(i)(B) of this section, or pay the associated fee; or

(B) USCIS determines that the regional center no longer serves the

purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

(iii) A notice of intent to terminate the designation of a regional center will be sent to the regional center and set forth the reasons for termination.

(iv) The regional center will be provided 30 days from receipt of the notice of intent to terminate to rebut the ground or grounds stated in the notice of intent to terminate.

(v) USCIS will notify the regional center of the final decision. If USCIS determines that the regional center's participation in the program should be terminated, USCIS will state the reasons for termination. The regional center may appeal the final termination decision in accordance with 8 CFR 103.3.

(vi) A regional center may elect to withdraw from the program and request a termination of the regional center designation. The regional center must notify USCIS of such election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its decision regarding the withdrawal request in writing.

* * * * *

Jeh Charles Johnson,
Secretary.

[FR Doc. 2016-10297 Filed 5-3-16; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Parts 51 and 52

Protection of Visibility: Amendments to Requirements for State Plans;
Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 51 and 52**

[EPA-HQ-OAR-2015-0531; FRL-9935-27-OAR]

RIN 2060-AS55

Protection of Visibility: Amendments to Requirements for State Plans**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to requirements under the Clean Air Act (CAA) for state plans for protection of visibility in mandatory Class I federal areas (Class I areas) in order to continue steady environmental progress while addressing administrative aspects of the program. The EPA amendments would clarify the relationship between long-term strategies and reasonable progress goals in state plans, and the long-term strategy obligation of all states. The amendments would also change the way in which some days during each year are to be selected for purposes of tracking progress towards natural visibility conditions to account for events such as wildfires; change aspects of the requirements for the content of progress reports; update, simplify and extend to all states the provisions for reasonably attributable visibility impairment and revoke existing federal implementation plans (FIPs) that require the EPA to assess and address any existing reasonably attributable visibility impairment situations in some states; and add a requirement for states to consult with Federal Land Managers (FLMs) earlier in the development of state plans. The EPA also proposes to address administrative aspects of the program by making a one-time adjustment to the due date for the next state implementation plans (SIPs), revising the due dates for progress reports and removing the requirement for progress reports to be SIP revisions.

DATES: *Comments.* Written comments on this proposal must be received on or before July 5, 2016. *Public hearing.* The EPA is holding a public hearing concerning the proposed rule on May 19, 2016, in Washington, DC. The last day to pre-register to speak at the hearing is May 17, 2016. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on submitting comments and the public hearing. *Information collection request.* Under the Paperwork Reduction Act (PRA), comments on the information collection

provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before June 3, 2016.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2015-0531, 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/comments.html>. *Public hearing:* A public hearing will be held at William Jefferson Clinton East building (WJC East), Room 1117A, in Washington, DC. Identification is required. If your driver's license is issued by American Samoa, Illinois or Missouri, you must present an additional form of identification to enter. Enhanced driver's licenses from Minnesota and Washington are acceptable. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearing and location requirements.

FOR FURTHER INFORMATION CONTACT: For general information on this proposed rule and Information Collection Request (ICR), contact Mr. Christopher Werner, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541-5133 or by email at werner.christopher@epa.gov; or Ms. Rhea Jones, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541-2940 or by email at jones.rhea@epa.gov. For information on the public hearing or to register to speak at the hearing, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919)

541-0641 or by email at long.pam@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. Preamble Glossary of Terms and Acronyms**

The following are abbreviations of terms used in this document.

AQVR Air quality related value
 BART Best available retrofit technology
 b_{ext} Light extinction
 CAA Clean Air Act
 CFR Code of Federal Regulations
 EGU Electric generating unit
 EPA Environmental Protection Agency
 FIP Federal implementation plan
 FLM or FLMs Federal Land Manager or Managers
 ICR Information collection request
 IMPROVE Interagency monitoring of protected visual environments
 NAAQS National ambient air quality standards
 NO_x Nitrogen oxides
 OMB Office of Management and Budget
 PM Particulate matter
 PM_{2.5} Particulate matter equal to or less than 2.5 microns in diameter (fine particulate matter)
 PM₁₀ Particulate matter equal to or less than 10 microns in diameter
 PRA Paperwork Reduction Act
 PSD Prevention of significant deterioration
 RPO Regional planning organization
 SIP State implementation plan
 SO₂ Sulfur dioxide
 TAR Tribal Authority Rule
 URP Uniform rate of progress

B. Does this action apply to me?

Entities potentially affected directly by this proposed rule include state, local and tribal¹ governments, as well as FLMs responsible for protection of visibility in mandatory Class I areas. Entities potentially affected indirectly by this proposed rule include owners and operators of sources that emit particulate matter equal to or less than 10 microns in diameter (PM₁₀), particulate matter equal to or less than 2.5 microns in diameter (PM_{2.5} or fine

¹ The Regional Haze Rule may apply, as appropriate under the Tribal Authority Rule (TAR) in 40 CFR part 49, to an Indian tribe that receives a determination of eligibility for treatment as a state for purposes of administering a tribal visibility protection program under section 169A of the CAA. No tribe has applied for such status, and so at present the EPA is responsible for implementation of the Regional Haze Rule in areas of tribal authority. This responsibility includes, but is not limited to, implementation of the reasonable progress requirements of 40 CFR 51.308(f) in instances where potentially affected sources are located on tribal land, as necessary or appropriate. The proposed rule changes may impact the development and approvability of tribal implementation plans that tribes may wish to develop in the future. We encourage states to provide outreach and engage in discussions with tribes about their regional haze SIPs as they are being developed.

PM), sulfur dioxide (SO₂), oxides of nitrogen (NO_x), volatile organic compounds and other pollutants that may cause or contribute to visibility impairment. Others potentially affected indirectly by this proposed rule include members of the general public who live, work or recreate in mandatory Class I areas affected by visibility impairment. Because emission sources that contribute to visibility impairment in Class I areas also may contribute to air pollution in other areas, members of the general public may also be affected by this proposed rulemaking.

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

When submitting comments, remember to:

- Identify the rulemaking docket by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The proposed rule may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- 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 to support your comment.
- 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 wherever possible, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Please note that this is a narrow proposed rulemaking. Please focus your comments on only those sections of the CFR affected by our proposed changes.

D. What information should I know about the public hearing?

The May 19, 2016, public hearing will be held to accept oral comments on this proposed rulemaking. The hearing will be held at the U.S. Environmental Protection Agency, William Jefferson Clinton East Building (WJC East), Room 1117A, 1201 Constitution Avenue NW., Washington, DC. It will convene at 9:00 a.m. and continue until the earlier of 5:00 p.m. or 1 hour after the last registered speaker has spoken. We have scheduled a lunch break from 12:00 to

1:00 p.m. People interested in presenting oral testimony should contact Ms. Pamela Long, Air Quality Planning Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-0641, fax number (919) 541-5509, email address long.pam@epa.gov, at least 2 days in advance of the public hearing (*see DATES*). Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. Depending on the flow of the day, times may fluctuate. People interested in attending the public hearing should also call Ms. Long to verify the time, date and location of the hearing. While the EPA expects the hearing to go forward as set forth, we ask that you monitor our Web site at <http://www.epa.gov/visibility> or contact Ms. Pamela Long to determine if there are any updates to the information on the hearing.

Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) before the hearing and in hard copy form at the hearing.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking.

Because this hearing is being held at United States (U.S.) government facilities, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by American Samoa, Illinois or Missouri, you must present an additional form of identification to enter the federal building. Enhanced driver's licenses from Minnesota and Washington are acceptable. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. For additional information for the status of your state regarding REAL ID, go to <http://>

www.dhs.gov/real-id-enforcement-brief. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

Attendees may be asked to go through metal detectors. To help facilitate this process, please be advised that you will be asked to remove all items from all pockets and place them in provided bins for screening; remove laptops, phones, or other electronic devices from their carrying case and place in provided bins for screening; avoid shoes with metal shanks, toe guards, or supports as a part of their construction; remove any metal belts, metal belt buckles, large jewelry, watches, and follow the instructions of the guard if identified for secondary screening. Additionally, no weapons or drugs or drug paraphernalia will be allowed in the building. We recommend that you arrive 20 minutes in advance of your speaking time to allow time to go through security and to check in with the registration desk.

E. Where can I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at <http://www.epa.gov/visibility>.

*F. How is this **Federal Register** document organized?*

The information presented in this document is organized as follows:

- I. General Information
 - A. Preamble Glossary of Terms and Acronyms
 - B. Does this action apply to me?
 - C. What should I consider as I prepare my comments for the EPA?
 - D. What information should I know about the public hearing?
 - E. Where can I obtain a copy of this document and other related information?
 - F. How is this **Federal Register** document organized?
- II. What action is the EPA proposing to take?
- III. What is the background for the EPA's proposed action?
 - A. Reasonably Attributable Visibility Impairment
 - B. Regional Haze
 1. Requirements of the 1990 CAA Amendments and the EPA's Regional Haze Rule
 2. Roles of Agencies in Addressing Regional Haze
 3. Requirements for the Regional Haze SIPs

- 4. Requirements for the Regional Haze Progress Reports
- 5. Tribes and Regional Haze
- C. Air Permitting
- IV. Proposed Rule Changes
 - A. Clarifications To Reflect the EPA's Long-Standing Interpretation of the Relationship Between Long-Term Strategies and Reasonable Progress Goals
 - B. Other Clarifications and Changes to Requirements for Periodic Comprehensive Revisions of Implementation Plans
 - C. Changes to Definitions and Terminology Related to How Days Are Selected for Tracking Progress
 - D. Impacts on Visibility From Anthropogenic Sources Outside the U.S.
 - E. Impacts on Visibility From Wildland Fires Within the U.S.
 - F. Clarification of and Changes to the Required Content of Progress Reports
 - G. Changes to Reasonably Attributable Visibility Impairment Provisions
 - H. Consistency Revisions Related to Permitting of New and Modified Major Sources
 - I. Changes to FLM Consultation Requirements
 - J. Extension of Next Regional Haze SIP Deadline From 2018 to 2021
 - K. Changes to Scheduling of Regional Haze Progress Reports
 - L. Changes to the Requirement that Regional Haze Progress Reports Be SIP Revisions
 - M. Changes to Requirements Related to the Grand Canyon Visibility Transport Commission
- V. Environmental Justice Considerations
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act (PRA)
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- VII. Statutory Authority

II. What action is the EPA proposing to take?

The EPA is proposing changes to the requirements that states (and, if applicable, tribes) would have to meet as they implement programs for the protection of visibility in mandatory

Class I areas.² This proposal would support continued environmental progress by clarifying certain or revising existing regulatory provisions and removing older rule provisions that have been superseded by subsequent developments. The EPA is proposing to clarify the relationship between long-term strategies and reasonable progress goals in state plans and the long-term strategy obligation of all states. The EPA is also proposing to revise the way in which some days during each year are to be selected for purposes of tracking progress towards natural visibility conditions in order to focus attention on days when anthropogenic emissions impair visibility; revise aspects of the requirements for the content of progress reports; update, simplify and extend to all states the provisions for reasonably attributable visibility impairment and revoke existing FIPs that require the EPA to assess and address any existing reasonably attributable visibility impairment situations in some states; and add a requirement for states to consult with FLMs earlier in the development of state plans. Other changes address administrative aspects of the program in order to reduce unnecessary burden. Specifically, the EPA proposes to make a one-time adjustment to the due date for the next SIPs (from 2018 to 2021, which would help states to coordinate regional haze planning with that for other programs), to revise the due dates for progress reports and to remove the requirement for progress reports to be SIP revisions. All of these changes would apply to periodic comprehensive state implementation plans developed for the second and subsequent implementation periods and for progress reports submitted subsequent to those plans. We do not intend the proposed changes to affect the development of state plans for the first implementation period or

² Areas designated as mandatory Class I areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, the EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas that they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I federal area is the responsibility of a "Federal Land Manager." 42 U.S.C. 7602(f). When we use the term "Class I area" in this action, we mean any one of the 156 "mandatory Class I Federal areas" where visibility has been identified as an important value.

the first progress reports due under the existing Regional Haze Rule.

The EPA is proposing these changes for several reasons, as described more fully in the descriptions of each change detailed later in this proposed action. The proposed clarifications regarding the relationship between reasonable progress goals, long-term strategies and the long-term strategy obligation of all states reflect long-standing EPA interpretation of the Regional Haze Rule and are intended to ensure consistent (and appropriate) understanding of these requirements as states prepare their plans for the second implementation period. Changes to FLM consultation requirements would help ensure that the expertise and perspective of these officials are brought into the state plan development process earlier, so that they contribute meaningfully during the state's technical analysis and deliberations. The proposals related to how days are selected for visibility progress tracking would provide the public and state officials more meaningful information on how existing and potential new emission reduction measures are contributing or could contribute to reasonable progress in reducing man-made visibility impairment, by greatly reducing the trend-distorting effect of wildfires and natural dust storms. Collectively, these changes would serve to strengthen the regional haze program based upon lessons learned during the decade and a half since the program's inception.

With regard to the proposed extension of the current deadline of July 31, 2018, to July 31, 2021, for states' comprehensive SIP revisions for the second implementation period, the EPA believes this one-time change would benefit states by allowing them to obtain and take into account information on the effects of a number of other regulatory programs that will be affecting sources over the next several years. The change would also allow states to develop SIP revisions for the second implementation period that are more integrated with state planning for these other programs, an advantage that was widely confirmed in discussions with states and that is anticipated to result in greater environmental progress than if planning for these multiple programs were not as well integrated. The end date for the second implementation period remains 2028, meaning state plans will still focus on emission reduction measures designed to achieve reasonable progress by 2028,³

³ When considering the "time necessary for compliance," see 42 U.S.C. 7491(g)(1), a state

as required by the current rule. Other than the proposed one-time change to the next due date for periodic comprehensive SIP revisions (*i.e.*, for those currently due in 2018), no change is being proposed for due dates for future periodic comprehensive SIP revisions.

The proposed changes related to progress reports are intended to make the timing of progress reports more useful as mid-course reviews, to clarify the required content of progress reports for aspects on which there has been some ambiguity, and to allow states to conserve their administrative resources and make progress reports more timely by removing the requirement that they be submitted as formal SIP revisions. We are proposing to retain a requirement that states consult with FLMs on their progress reports, and that states offer the public an opportunity to comment on progress reports before they are finalized, which are two of the steps that apply now to progress reports that are SIP revisions and which will help ensure ongoing accountability for progress reports.

Finally, the current provisions related to reasonably attributable visibility impairment require a recurring process of assessment and planning by the states. Experience since the current provisions were promulgated suggests that situations involving reasonably attributable visibility impairment occur infrequently and therefore that an “as needed” approach for initiating a state planning obligation would be more efficient in the use of resources. The EPA is proposing to replace the recurring process of assessment of reasonably attributable visibility impairment with an as-needed approach, and given our increased understanding of the interstate nature of visibility impairment, to expand the applicability for reasonably attributable visibility impairment from only states with Class I areas to all states. The proposed change to an as-needed approach only applies to reasonably attributable visibility impairment; periodic planning for purposes of regional haze will continue. This would improve visibility protection, if a situation exists or arises in which a source in a state without any Class I area causes reasonably attributable visibility impairment at a Class I area in another state.

The EPA also intends to provide states with updated guidance on the development of regional haze SIPs, in consultation with the states and FLMs, separately from this rulemaking. The guidance will assist states as they refocus on reasonable progress analyses for the next regional haze implementation period ending in 2028. We expect to invite public comment on a draft of this new guidance, and we expect to receive and be able to consider those comments before we finalize the Regional Haze Rule revisions.

III. What is the background for the EPA’s proposed action?

A. Reasonably Attributable Visibility Impairment

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation’s national parks, wilderness areas and other Class I areas due to their “great scenic importance.”⁴ This section of the CAA establishes as a national goal the “prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.”

In 1980, the EPA promulgated regulations to address visibility impairment in Class I areas, including but not limited to impairment that is “reasonably attributable” to a single source or small group of sources, *i.e.*, “reasonably attributable visibility impairment.” 45 FR 80084 (December 2, 1980). These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase in addressing visibility impairment from existing sources. They also addressed potential visibility and other air quality-related impacts from new and modified major sources already subject to permitting requirements for purposes of protection of the National Ambient Air Quality Standards (NAAQS) and preventing significant deterioration of air quality. The EPA explicitly deferred action on regional haze (visibility-impairing pollution that is caused by the emission of air pollutants from numerous sources located over a wide geographic area) until some future date when improvement in monitoring techniques provided more data on source-specific levels of visibility impairment, regional scale models became refined, and our scientific knowledge about the relationships between emitted air

pollutants and visibility impairment improved.

It is important to note that not all states were subject to the 1980 reasonably attributable visibility impairment requirements. Under the 1980 rules, the 35 states and one territory (Virgin Islands) containing Class I areas were required to submit SIPs addressing reasonably attributable visibility impairment. The 1980 rules required states to (1) develop, adopt, implement and evaluate long-term strategies for making reasonable progress toward remedying existing and preventing future impairment in the mandatory Class I areas through their SIP revisions; (2) adopt certain measures to assess potential visibility impacts due to new or modified major stationary sources, including measures to notify FLMs of proposed new source permit applications, and to consider visibility analyses conducted by FLMs in their new source permitting decisions; (3) conduct visibility monitoring in mandatory Class I areas, and (4) revise their SIPs at 3-year intervals to assure reasonable progress toward the national visibility goal. In addition, the 1980 regulations provide that an FLM may certify to a state at any time that visibility impairment at a Class I area is reasonably attributable to a single source or small group of sources. Following such a certification by an FLM, a state is required to address the requirements for best available retrofit technology (BART) for BART-eligible sources considered to be contributing to reasonably attributable visibility impairment. Also, the appropriate control of any source certified by an FLM, whether BART-eligible or not, would be specifically addressed in the long-term strategy for making reasonable progress toward the national goal of natural visibility conditions. *See* existing § 51.302(c)(2)(i).

In practice, the 1980 rules resulted in few SIPs being submitted by states and approved by the EPA, requiring the EPA to develop and apply FIPs to those states that failed to submit an approvable reasonably attributable visibility impairment SIP. 52 FR 45132 (November 24, 1987). Most of these FIPs contain planning requirements only, *i.e.*, most of the FIPs merely commit the EPA to assessing on a 3-year cycle whether reasonably attributable visibility impairment is occurring and to adopting an appropriate strategy of required emission controls if it is.

We are proposing extensive changes to the existing provisions regarding reasonably attributable visibility impairment to improve coordination with the regional haze program

⁴ should account for this factor by setting an appropriate compliance schedule. The EPA expects that any control measure included in a SIP submitted by the proposed July 31, 2021, submission deadline will be feasible to implement by 2028.

⁴ H.R. Rep. No. 294, 95th Cong. 1st Sess. at 205 (1977).

requirements and enhance the potential for environmental protection, as described in the “Proposed Rule Changes” section of this document (Section IV.G).

B. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities that are located across a broad geographic area and emit PM₁₀, PM_{2.5} (e.g., sulfates, nitrates, organic carbon, elemental carbon and soil dust) and their precursors (e.g., SO₂, NO_x and, in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form PM_{2.5}, which impairs visibility by scattering and absorbing light. This light scattering reduces the clarity, color and visible distance that one can see. Particulate matter can also cause serious health effects in humans (including premature death, heart attacks, irregular heartbeat, aggravated asthma, decreased lung function and increased respiratory symptoms) and contribute to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the “Interagency Monitoring of Protected Visual Environments” (IMPROVE) monitoring network, show that at the time the Regional Haze Rule was finalized in 1999, visibility impairment caused by air pollution occurred virtually all the time at most national park and wilderness areas. The average visual range⁵ in many Class I areas in the western U.S. was 62–93 miles, but in some Class I areas, these visual ranges may have been impacted by natural wildfire and dust episodes in addition to anthropogenic impacts. In most of the eastern Class I areas of the U.S., the average visual range was less than 19 miles. 64 FR 35715 (July 1, 1999).

Based on visibility data through 2014, considerable visibility improvements (4 to 7 deciviews)⁶ have been made in eastern Class I areas on the 20 percent haziest days. Some western Class I areas

have also experienced visibility improvements on the 20 percent haziest days (1 to 4 deciviews). However, in some areas, such as Sawtooth Wilderness area in Idaho, improvements from reduced emissions from man-made sources have been overwhelmed by impacts from wildfire and/or dust events. There are also some western areas where visibility has changed only by a slight amount.

1. Requirements of the 1990 CAA Amendments and the EPA’s Regional Haze Rule

Congress added section 169B to the CAA in 1990 to address regional haze issues. Among other things, this section included provisions for the EPA to conduct visibility research on regional regulatory tools with the National Park Service and other federal agencies, and to provide periodic reports to Congress on visibility improvements due to implementation of other air pollution protection programs. Section 169B also generally allowed the Administrator to establish visibility transport commissions and specifically required the Administrator to establish a commission for the Grand Canyon area. The EPA promulgated a rule to address regional haze in 1999. 64 FR 35714 (July 1, 1999). The 1999 Regional Haze Rule established a more comprehensive visibility protection program for Class I areas. The requirements for regional haze are found at 40 CFR 51.308 and 51.309.

The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands.⁷ Congress subsequently amended the deadlines for regional haze SIPs, and the EPA adopted regulations requiring states to submit the first implementation plans addressing regional haze visibility impairment no later than December 17, 2007. 70 FR 39104. These initial SIPs were to address emissions from certain large stationary sources and other requirements, which we discuss in greater detail later. Few states submitted a regional haze SIP by the December 17, 2007, deadline, and on January 15, 2009, the EPA found that 37 states, the District of Columbia and the Virgin Islands had failed to submit SIPs addressing the regional haze requirements. 74 FR 2392. These findings triggered a requirement for the EPA to promulgate FIPs within 2 years unless a state submitted a SIP and the

EPA approved that SIP within the 2-year period. CAA section 110(c). Most states eventually submitted SIPs.⁸

Further, 40 CFR 51.308(f) currently requires states to submit periodic comprehensive revisions of implementation plans (referred to in this document as periodic comprehensive SIP revisions) addressing regional haze visibility impairment by no later than July 31, 2018, and every 10 years thereafter. These periodic comprehensive SIP revisions must address a number of elements, including current visibility conditions and actual progress made toward natural conditions during the previous implementation period; a reassessment of the effectiveness of the long-term strategy in achieving the reasonable progress goals over the prior implementation period; and affirmation of or revision to the reasonable progress goals. Further information on these periodic comprehensive SIP revisions can be found in section III.B.3 of this document. In addition, 40 CFR 51.308(g) requires each state to submit progress reports, in the form of SIP revisions, every 5 years after the date of the state’s initial SIP submission. The progress reports are required to evaluate the progress made towards the reasonable progress goals for mandatory Class I areas located within the state, as well as those mandatory Class I areas located outside the state that may be affected by emissions from within the state. Further information on progress reports can be found in Section III.B.4 of this document.

The 1999 Regional Haze Rule sought to improve efficiency and transparency by requiring states to coordinate planning under the 1980 reasonably attributable visibility impairment provisions with planning under the provisions added by the 1999 Regional Haze Rule. The states were directed to submit reasonably attributable visibility impairment SIPs every 10 years rather than every 3 years, and to do so as part of the newly required regional haze SIPs. Many, but not all, states submitted initial regional haze SIPs that committed to this coordinated planning process. Coordination of reasonably attributable visibility impairment and regional haze planning is described in more detail later.

2. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program requires long-

⁵ Visual range is the greatest distance, in kilometers or miles, at which a dark object can be discerned against the sky by a typical observer. Visual range is inversely proportional to light extinction (b_{ext}) by particles and gases and is calculated as: Visual Range = $3.91/b_{ext}$ (Bennett, M.G., The physical conditions controlling visibility through the atmosphere; Quarterly Journal of the Royal Meteorological Society, 1930, 56, 1–29). Light extinction has units of inverse distance (i.e., Mm^{-1} or inverse Megameters [$mega = 10^6$]).

⁶ The deciview haze index (discussed in more detail in Section III.B.3 of this document) is logarithmically related to light extinction and is used by the regional haze program because it describes uniform differences in visibility across a range of visibility conditions.

⁷ This requirement does not apply to other U.S. territories because they do not have mandatory Class I Federal areas and are too distant from any such areas to affect them.

⁸ All states and territories, with the exception of Hawaii, Montana and the Virgin Islands, submitted initial regional haze SIPs.

term regional coordination among states, tribal governments and various federal agencies. As noted earlier, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of miles. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, and because these sources may be numerous and emit amounts of pollutants that, even though small, contribute to the collective whole, the EPA has encouraged states to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were formed after the promulgation of the Regional Haze Rule in 1999 to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then supported the development (by states) of regional strategies to reduce emissions of pollutants that lead to regional haze.

3. Requirements for Regional Haze SIPs

The Regional Haze Rule required the implementation plans due in 2007, which covered what we refer to as the first implementation period, to give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, by requiring these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment.

BART Requirement. Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to include such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources⁹ procure, install and operate BART. Under the Regional Haze Rule, the EPA directed states to conduct BART determinations for any “BART-

eligible” sources¹⁰ that may be anticipated to cause or contribute to any visibility impairment in a Class I area. The EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (hereinafter referred to as the “BART Guidelines”) to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. 70 FR 39104 (July 6, 2005). The Regional Haze Rule also gives states the flexibility to adopt an emissions trading program or other alternative program in lieu of source-specific BART as long as the alternative provides greater reasonable progress towards improving visibility than BART and meets certain other requirements set out in 40 CFR 51.308(e)(2).

States undertook the BART determination process during the first implementation period. The BART requirement was a one-time requirement, but BART-eligible sources may need to be re-assessed for additional controls in future implementation periods under the CAA’s reasonable progress provisions. Specifically, we anticipate that BART-eligible sources that installed minor controls (or no controls at all) will need to be reassessed. States should treat BART-eligible sources the same as other reasonable progress sources going forward. Consequently, we are not proposing any changes to the BART provisions in this rulemaking.

Visibility Metric. The Regional Haze Rule established a standard, conventional approach to quantifying visibility conditions and tracking how they change over time. The Regional Haze Rule established the 24-hour deciview haze index as the principal metric or unit for expressing visibility on any particular day. See 70 FR 39104, 39118. The deciview haze index is calculated from light extinction values and expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy. Deciview values are calculated by using air quality measurements to estimate light extinction, most recently using the revised IMPROVE algorithm, and then transforming the value of light extinction using a logarithmic

function.¹¹ The deciview is a more useful measure for comparing days and tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility typically perceived by a human observer. Most people can detect a change in visibility of one deciview. The preamble to the 1999 Regional Haze Rule provides additional details about the deciview haze index. We are proposing minor editorial changes to definitions related to the deciview index to ensure more consistent terminology across sections of the Regional Haze Rule.

Baseline, Current and Natural Conditions and Tracking Changes in Visibility. To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate visibility conditions at each Class I area for a 5-year period just preceding each periodic comprehensive SIP revision.¹² To do this, the Regional Haze Rule requires states to determine average visibility conditions (in deciviews) for the 20 percent least impaired days and the 20 percent most impaired days over the 5-year period at each of their Class I areas.

States must also develop an estimate of natural visibility conditions for the purpose of estimating progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. The EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions at each Class I area.¹³ After the EPA issued this guidance, a number of interested parties developed alternative estimates of natural conditions using a more refined approach (known as “NC-II”), which

¹¹ Pitchford, M.; Malm, W.; Schichtel, B.; Kumar, N.; Lowenthal, D.; Hand, J. Revised algorithm for estimating light extinction from IMPROVE particle speciation data; J. Air & Waste Manage. Assoc. 2007, 57, 1326–1336; doi: 3155/1047–3289.57.11.1326.

¹² Under the current version of the Regional Haze Rule, states must also periodically review progress in reducing impairment every 5 years.

¹³ Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, September 2003, EPA–454/B–03–005, available at http://www3.epa.gov/ttn/caaa/t1/memoranda/rh_envcurhr_gd.pdf; and Guidance for Tracking Progress Under the Regional Haze Rule, September 2003, EPA–454/B–03–004, available at http://www3.epa.gov/ttn/oarpg/t1/memoranda/rh_tpurhr_gd.pdf.

⁹ The set of “major stationary sources” potentially subject-to-BART is listed in CAA section 169A(g)(7).

¹⁰ BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

were used by most states in their first regional haze SIPs with EPA approval.¹⁴

Baseline visibility conditions reflect the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the 5-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement that would be necessary to attain natural visibility. Over time, the comparison of current conditions¹⁵ to the baseline conditions will indicate the amount of progress that has been made.

The rule text adopted in 1999 defined “visibility impairment” as a humanly perceptible change (*i.e.*, difference) in visibility from that which would have existed under natural conditions. The rule text directed the tracking of visibility impairment on the 20 percent “most impaired days” and 20 percent “least impaired days” in order to determine progress towards natural visibility conditions. Section 51.308(d)(2)(i–iv). In light of the 1999 rule’s definition of “impairment,” the term “impaired” in the phrases “most impaired days” and “least impaired days” could be taken to connote anthropogenic impairment. However, the preamble to the 1999 final rule stated that the least and most impaired days were to be selected as the monitored days with the lowest and highest actual deciview levels, respectively. In 2003, the EPA issued guidance describing in detail the steps necessary for selecting and calculating light extinction on the “worst” and “best” visibility days, and this guidance also indicated that the monitored days with the lowest and highest actual deciview levels were to be selected as

the least and most impaired days.¹⁶ This approach has worked well in many Class I areas but has not in other areas. Specifically, the “worst” visibility days in some Class I areas can be impacted by natural emissions (*e.g.*, wildland wildfires and dust storms). These natural contributions to haze vary in magnitude and timing. Anticipating this variability, in the 1999 Regional Haze Rule the EPA had decided to use 5-year averages of visibility data to minimize the impacts of the interannual variability in natural events. However, as the IMPROVE monitoring network has collected more years of data, it has become obvious that in many Class I areas 5-year averages are not sufficient for minimizing these impacts. As a result, visibility improvements resulting from decreases in anthropogenic emissions can be hidden in this uncontrollable natural variability. In addition, because of the logarithmic deciview scale, changes in PM concentrations and light extinction due to reductions in anthropogenic emissions have little effect on the deciview value on days with high PM concentrations and light extinction due to natural sources. The use of the days with the highest deciview index values, without consideration of the source of the visibility impacts, thus has created difficulties when attempting to track visibility improvements resulting from controls on anthropogenic sources. States have identified this difficulty and asked that the EPA explore options for focusing the visibility tracking metric on controllable anthropogenic emissions. To help states minimize the impacts of uncontrollable emissions on visibility tracking, the EPA is proposing to more explicitly (and consistently) address this issue for future implementation periods in the “Proposed Rule Changes” section of this document (Sections IV.C. and IV.D).

Reasonable Progress Goals and Long-Term Strategy. To ensure continuing progress towards achieving the natural visibility goal, each SIP in the series of periodic comprehensive regional haze SIPs must establish two distinct reasonable progress goals (one for the most impaired and one for the least impaired days) for every Class I area for the following implementation period. See 40 CFR 51.308(d) and (f). The Regional Haze Rule does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for “reasonable

progress” toward achieving natural visibility conditions. In setting reasonable progress goals, states must provide for an improvement in visibility for the most impaired days over the period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period. *Id.* Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIPs a 10- to 15-year strategy for making reasonable progress, § 51.308(d)(3) of the Regional Haze Rule requires that states include their long-term strategy in their regional haze SIPs. The reasonable progress goals themselves, however, are not enforceable. 64 FR 35754.

In establishing reasonable progress goals, states are required to consider the following factors set out in the definition of “reasonable progress” in section 169A of the CAA and incorporated into the Regional Haze Rule at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors have been considered when selecting the reasonable progress goals for the least impaired and most impaired days for each applicable Class I area. It is important to understand that a state’s long-term strategy is inextricably linked to the reasonable progress goals because the long-term strategy “must include enforceable emission limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by states having mandatory Class I Federal areas.” 40 CFR 51.308(d)(3). As intended by the EPA and as understood by all states in the first implementation period, the four reasonable progress factors are considered by a state in setting the reasonable progress goal by virtue of the state having first considered them, and certain other factors listed in § 51.308(d)(3) of the Regional Haze Rule, when deciding what controls are to be included in the long-term strategy. Then, the numerical levels of the reasonable progress goals are the predicted visibility outcome of implementing the long-term strategy in addition to ongoing pollution control programs stemming from other CAA requirements. To ensure consistent understanding about the relationship between reasonable progress goals and the long-term strategy, we are proposing rule text changes to clarify this

¹⁴ Regional Haze Rule Natural Level Estimates Using the Revised IMPROVE Aerosol Reconstructed Light Extinction Algorithm, available at http://vista.cira.colostate.edu/improve/Publications/GrayLit/032_NaturalCondIPaper/Copeland_etal_NaturalConditionsII_Description.pdf; Revised IMPROVE Algorithm for Estimating Light Extinction from Particle Speciation Data, available at http://vista.cira.colostate.edu/improve/Publications/GrayLit/019_RevisedIMPROVEeq/RevisedIMPROVEAlgorithm3.doc; and Regional Haze Data Analysis Workshop, June 8, 2005, Denver, CO, agenda and documents available at <http://www.wrapair.org/forums/aamrf/meetings/050608den/index.html>.

¹⁵ Given the required timing of the first regional haze SIPs that were due by December 17, 2007, “baseline visibility conditions” were also the “current” visibility conditions. For future SIPs, “current conditions” will be updated to the 5-year period just preceding the SIP revision.

¹⁶ Guidance for Tracking Progress Under the Regional Haze Rule, September 2003, <http://www3.epa.gov/ttnamti1/files/ambient/visible/tracking.pdf>.

relationship in the “Proposed Rule Changes” section of this document (Section IV.A). The proposed rule text is consistent with our long-held interpretation of the existing rule text as stated earlier.¹⁷

In deciding on the long-term strategy and in setting the reasonable progress goals, states must also consider the rate of progress for the most impaired days that would be needed to reach natural visibility conditions by 2064 and the emission reduction measures that would be needed to achieve that rate of progress over the approximately 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress that states are to use for analytical comparison to the amount of progress they expect to achieve on average. The CAA has the goal of reaching natural conditions,¹⁸ but does not have any date for achievement of that goal, requiring only that plans demonstrate reasonable progress towards it. The Regional Haze Rule reiterates the CAA goal, and provides for the use of an analytical framework that compares the rate of progress that will be achieved by a SIP (as represented by the reasonable progress goals for the end of the implementation period) to the rate of progress that if continued would result in natural conditions in 2064 (*i.e.*, the URP). When a SIP contains a reasonable progress goal for the most impaired days that reflects progress that is equal to the URP, the reasonable progress goal is said to be “on the URP line” or “on the glidepath.” If a state’s reasonable progress goal for the most impaired days is not on the glidepath, § 51.308(d)(1)(ii) requires the state to demonstrate that it would not be reasonable to adopt a reasonable progress goal (and by implication a long-term strategy) that would be on the glidepath. The Regional Haze Rule does not establish an enforceable requirement that natural

conditions be reached in 2064. The EPA has approved a number of SIPs for the first implementation period that have projected that continued progress at the rate expected to be achieved during that first period would not result in natural conditions until a date after 2064.

In setting reasonable progress goals, each state with one or more Class I areas must also consult with potentially “contributing states,” *i.e.*, other nearby states with emission sources that may be affecting visibility impairment in the state’s Class I areas. In such cases, the contributing state must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the reasonable progress goals for the Class I area. Furthermore, section 169A(g)(1) of the CAA and § 51.308(d)(1)(i)(A) of the Regional Haze Rule require that states determine “reasonable progress” by considering the four statutory factors. Also, § 51.308(d)(3) requires each state to consider its own Class I areas (if it has any) and downwind Class I areas (which may be affected by emissions from the state) when it develops its long-term strategy. In determining whether a state’s long-term strategy and reasonable progress goals provide for reasonable progress toward natural visibility conditions, the EPA is required to evaluate the demonstrations developed by the state. 40 CFR 51.308(d)(1). To ensure consistent understanding about the long-term strategy obligations of all states, we are proposing rule text changes to clarify these obligations in the “Proposed Rule Changes” section of this document (Section IV.B). The proposed rule text is consistent with our long-held interpretation of the existing rule text as stated earlier.

In accordance with the Regional Haze Rule, states should consider all types of anthropogenic sources of visibility impairment in developing their long-term strategy, including major and minor stationary sources, mobile sources and area sources. At a minimum, states must describe how each of the following seven factors are taken into account in developing their long-term strategy: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the reasonable progress goal; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6)

enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area and mobile source emissions over the period addressed by the long-term strategy. 40 CFR 51.308(d)(3)(v). We are proposing to update the terminology in the fifth of these factors. We are not proposing any changes to the current requirements regarding the other six factors.

As discussed earlier, the current version of the Regional Haze Rule requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. The reasonable progress goals are specific to the end date of a given implementation period. New reasonable progress goals for the end of the next period are established in the next periodic comprehensive SIP revision. We are proposing to extend, to July 31, 2021, the due date for the SIP revision that under the existing Regional Haze Rule is due July 31, 2018. This proposed change is discussed in the “Proposed Rule Changes” section of this document (Section IV.J).

Coordinating Regional Haze and Reasonably Attributable Visibility Impairment. The 1999 Regional Haze Rule fulfilled the EPA’s responsibility to put in place a national regulatory program that addresses both reasonably attributable and regional haze visibility impairment. As part of the Regional Haze Rule, the EPA revised 40 CFR 51.306(c) regarding reasonably attributable visibility impairment assessment and planning to require that the reasonably attributable visibility impairment plan must continue to provide for a periodic review and SIP revision not less frequently than every 3 years until the date of submission of the state’s first plan addressing regional haze visibility impairment, which was due December 17, 2007. On or before this date, the state must have revised its plan to provide for periodic review and revision of a coordinated long-term strategy for addressing reasonably attributable visibility impairment and regional haze, and the state must have submitted the first such coordinated long-term strategy with its first regional haze SIP. Under the current version of the regulations, future coordinated long-term strategies, and periodic progress reports evaluating progress towards reasonable progress goals, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state’s long-

¹⁷ The EPA’s interpretation of the proper relationship between a state’s reasonable progress goals and its long-term strategy is explained in detail in our proposed action on SIPs from Texas and Oklahoma. See section IV.C at 79 FR 74828. This interpretation was reaffirmed in our final action on these SIPs. See section II.C of 81 FR 296 (January 5, 2016).

¹⁸ The text of the Regional Haze Rule states the goal of achieving “natural visibility conditions.” Section 169A(a)(1) of the CAA calls for “the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.” The D.C. Circuit has affirmed that the Regional Haze Rule properly interprets the visibility goal stated in the CAA as achievement of “natural visibility conditions.” *American Corn Growers Ass’n v. EPA*, 291 F.3d 1, 25–27 (D.C. Cir. 2002).

term strategy must report on both regional haze visibility impairment and reasonably attributable visibility impairment and must be submitted to the EPA in the form of a periodic comprehensive SIP revision. Under our proposed changes to the reasonably attributable visibility impairment provisions, described in detail in Section IV.G of this document, this coordinated approach to a state's long-term strategies for regional haze and reasonably attributable visibility impairment would continue, but would apply only when the state is under an obligation to respond to a reasonably attributable visibility impairment certification.

Monitoring Strategy and Other Implementation Plan Requirements. Section 51.308(d)(4) of the Regional Haze Rule includes the requirement for a monitoring strategy for measuring, characterizing and reporting of regional haze visibility impairment that is representative of all mandatory Class I areas within the state. The strategy must be coordinated with the monitoring strategy required in the current version of § 51.305 for reasonably attributable visibility impairment. Compliance with this requirement may be met through "participation" in the IMPROVE network.¹⁹ A state's participation in the IMPROVE network includes state support for the use of CAA state and tribal assistance grants funds to partially support the operation of the IMPROVE network as well as its review and use of monitoring data from the network. The monitoring strategy was due with the first regional haze SIP, and under the current Regional Haze Rule it must be reviewed every 5 years as part of the progress reports. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether reasonable progress goals will be met. To date, neither the EPA nor any state has concluded that the IMPROVE network is not sufficient in this way. The evolution of the IMPROVE network will be guided by a Steering Committee that has FLM, EPA and state participation, within the evolving context of available resources. It is the EPA's objective that individual states will not be required to commit to providing monitoring sites beyond those planned to be operated by the IMPROVE program during the period covered by a SIP revision. The EPA also believes that

if the IMPROVE program must discontinue a monitoring site, this would not be a basis for an approved regional haze SIP to be found inadequate, but rather the state, the federal agencies and the IMPROVE Steering Committee should work together to address the Regional Haze Rule requirements when the next SIP revision is developed. As described in Section IV.F of this document, we are proposing that progress reports from individual states no longer be required to review and modify as necessary the state's monitoring strategy. We believe the IMPROVE Steering Committee structure, the requirement to review the monitoring strategy as part of the periodic comprehensive SIP revision, and the requirement for a state to consider any recommendations from the EPA or a FLM for additional monitoring for purposes of reasonably attributable visibility impairment will be sufficient to achieve the objective of the current progress report requirement to review the monitoring strategy.

Consultation between States and FLMs. The existing Regional Haze Rule requires that states consult with FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the reasonable progress goals and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. We are proposing to require that states also consult with FLMs earlier in the development of their SIPs, as described in Section IV.I of this document.

4. Requirements for the Regional Haze Progress Reports

The current version of the Regional Haze Rule includes provisions for progress reports to be submitted at 5-year intervals, counting from the submission of the first required SIP revision by the particular state. The

requirements for these reports are included for most states in 40 CFR 51.308 (g) and (h). Three western states (New Mexico, Utah and Wyoming) exercised an option provided in the Regional Haze Rule to meet alternative requirements contained in 40 CFR 51.309 for their SIPs. For these three states, the requirements for the content of the 5-year progress reports are identical to those for the other states, but for these states the requirements for the reports are codified in 40 CFR 51.309(d)(10). This section specifies fixed due dates in 2013 and 2018 for these progress reports. Regardless, the current Regional Haze Rule provides that these three states will revert to the progress report requirements in 40 CFR 51.308 after the report currently due in 2018.

An explanation of the 5-year progress reports is provided in the preamble to the 1999 Regional Haze Rule. 64 FR 35747 (July 1, 1999). This 5-year review is intended to provide an interim report on the implementation of, and, if necessary, mid-course corrections to, the regional haze SIP, which, as noted earlier, is prepared in 10-year increments. The progress report provides an opportunity for public input on the state's (and the EPA's) assessment of whether the approved regional haze SIP is being implemented appropriately and whether reasonable visibility progress is being achieved consistent with the projected visibility improvement in the SIP.

Required elements of the progress report include: The status of implementation of all measures included in the regional haze SIP; a summary of the emissions reductions achieved throughout the state; an assessment of current visibility conditions and the change in visibility impairment over the past 5 years; an analysis tracking the change over the past 5 years in emissions of pollutants contributing to visibility impairment from all sources and activities within the state; an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred over the past 5 years that have limited or impeded progress in reducing pollutant emissions and improving visibility; an assessment of whether the current SIP elements and strategies are sufficient to enable the state (or other states with mandatory Class I areas affected by emissions from the state) to meet all established reasonable progress goals; a review of the state's visibility monitoring strategy and any modifications to the strategy as necessary; and a determination of the adequacy of the existing SIP (including

¹⁹ While compliance with § 51.308(d)(4) for regional haze may be met through participation in the IMPROVE network, additional analysis or techniques beyond participation in IMPROVE may be required for compliance with § 51.305 for reasonably attributable visibility impairment.

taking one of four possible actions).²⁰ We are proposing a number of clarifications and changes to the requirements for the content of progress reports, as described in Section IV.F of this document.

In accordance with 40 CFR 51.308(g) and 51.309(d)(10), progress reports must currently take the form of SIP revisions, so states must follow formal administrative procedures (including public review and opportunity for a public hearing) before formally submitting the 5-year progress report to the EPA. *See* 40 CFR 51.102, 40 CFR 51.103, and Appendix V to Part 51—Criteria for Determining the Completeness of Plan Submissions. We are proposing to remove the requirement that progress reports be submitted as SIP revisions, as described in Section IV.L of this document.

In addition, as with SIPs, states are required to provide FLMs with an opportunity for in-person consultation at least 60 days prior to any public hearing on an implementation plan or plan revision, which must include an opportunity for FLMs to discuss their assessment of impairment of visibility in any mandatory Class I area, and discuss their recommendations on the development of reasonable progress goals and the development of implementation strategies to address visibility impairment. *See* 40 CFR 51.308(i)(2) and (3). Procedures must also be provided for continuing consultation between the state and FLM regarding development and review of progress reports. *See* 40 CFR 51.308(i)(4). We are proposing to preserve the existing requirement for consultation with FLMs on progress reports.

The first progress reports are currently due 5 years from the initial SIP submittal (with the next progress reports for New Mexico, Utah, and Wyoming due in 2018). Most of these deadlines have already passed although some are due in 2016 and in 2017. We are proposing a set of common due dates for future progress reports from all states, as described in Section IV.K of this document.

5. Tribes and Regional Haze

Tribes have a distinct interest in regional haze due to the effects of

visibility impairment on tribal lands as well as on other lands of high value to tribal members, such as landmarks considered sacred. Tribes, therefore, have a strong interest in emission control measures that states and the EPA incorporate into SIPs and FIPs with regard to regional haze, and also have an interest in the state response to any reasonably attributable visibility impairment certification made by an FLM.

The EPA takes seriously our government-to-government relationship with tribes.²¹ The agency has a tribal consultation policy that covers any plan that the EPA would promulgate that may affect tribal interests. This consultation policy applies to situations where a potentially affected source is located on tribal land, as well as situations where a SIP or FIP concerns a source that is located on state land and may affect tribal land or other lands that involve tribal interests. In addition, the EPA has and will continue to consider any tribal comments on any proposed action on a SIP or FIP.

In the first implementation period for regional haze SIPs, the partnerships within the RPOs included strong relationships between the states and the tribes, and the EPA encourages states to continue to invest in those relationships (including consulting with tribes), particularly with respect to tribes located near Class I areas. States should continue working directly with tribes on their SIPs and their response to any reasonably attributable visibility impairment certification made by an FLM. The EPA believes that it is preferable for states to address tribal concerns during their planning process rather than the EPA addressing such concerns in its subsequent rulemaking process. During the development of this rulemaking, the EPA was asked by the National Tribal Air Association to adopt a requirement that states formally consult with tribes during the development of their regional haze SIPs. While we recognize the value of dialog between state and tribal representatives, we are not proposing to require it. We note that the CAA does not explicitly authorize the EPA to impose such a requirement on the states.

C. Air Permitting

One part of the visibility protection program, 40 CFR 51.307, New Source

Review, was created in 1980 with the rationale that while most new sources that may impair visibility were already subject to review under the Prevention of Significant Deterioration (PSD) provisions (Part C of Title I of the CAA), additional regulations would “ensure that certain sources exempt from the PSD regulations because of geographic criteria will be adequately reviewed for their potential impact on visibility in the mandatory Class I Federal area.” 45 FR 80084 (December 2, 1980). The EPA explained at proposal that this was necessary because the PSD regulations did not call for the review of major emitting facilities (or major modifications) located in nonattainment areas,²² and that it was appropriate to “clarify certain procedural relationships between the FLM and the state in the review of new source impacts on visibility in Federal class I areas.” 45 FR 34765 (May 22, 1980). The EPA envisioned that state and FLM consultation would commence with the state notifying the FLM of a potential new source, and that consultation would continue throughout the permitting process. We are proposing to revise § 51.307 only as needed to maintain consistency with revisions to other sections of 40 CFR part 50 subpart P.

IV. Proposed Rule Changes

The changes being proposed by the EPA will continue steady environmental progress in the regional haze program while streamlining its administrative aspects that do not add to environmental protection. The EPA has gained a substantial amount of knowledge through the process of approving SIPs for the first regional haze implementation period and has learned what aspects of the program work well and what aspects should be modified going forward. Feedback

²² In 1978, PSD rules were put in place that required permitting agencies to interact with FLMs and for air quality related values (AQRVs) to be taken into consideration in the PSD permitting process. 43 FR 26380 (June 19, 1978). Those PSD rules did not cover sources in nonattainment areas, and while there were EPA rules for nonattainment new source review in existence, they did not require consideration of Class I areas. In 1979, 40 CFR part 51, appendix S established rules for nonattainment permitting, but they did not (and still do not) require consideration of visibility or FLM notification. (The same is also true of a more recent addition, 40 CFR 51.165. Where applicable to nonattainment areas, this rule does not require Class I reviews. While 40 CFR 51.165(b) requires that sources located in attainment areas cannot cause or contribute to a NAAQS violation anywhere, this does not cover AQRVs in Class I areas.) As a result, in 1980, the EPA added requirements to 40 CFR 51.307 for notification of FLMs of pending permits for new sources in nonattainment areas.

²⁰ 40 CFR 51.308(g). *See also* General Principles for the 5-Year Regional Haze Progress Reports for the Initial Regional Haze State Implementation Plans (Intended to Assist States and EPA Regional Offices in Development and Review of the Progress Reports), April 2013, EPA-454/B-03-005, available at https://www.epa.gov/sites/production/files/2016-03/documents/haze_5year_4-10-13.pdf, (hereinafter referred to as “our 2013 Progress Report Guidance”).

²¹ Like the EPA, the Department of the Interior and the U.S. Forest Service in the U.S. Department of Agriculture have strong tribal consultation policies. *See*: <http://www.epa.gov/tribal/consultation/index.htm>; <http://www.fs.fed.us/spf/tribalrelations/authorities.shtml>, and <https://www.doi.gov/tribes/Tribal-Consultation-Policy>.

received from co-regulators during this process has been invaluable in developing this proposal, which seeks to reduce administrative burdens of the regional haze program without sacrificing environmental protection. Indeed, the EPA believes that reducing administrative burdens will result in a more effective program in terms of achieving the goal of improved visibility.

A. Clarifications To Reflect the EPA's Long-Standing Interpretation of the Relationship Between Long-Term Strategies and Reasonable Progress Goals

The EPA is proposing to amend § 51.308(f) of the Regional Haze Rule, which contains the requirements for comprehensive periodic revisions to regional haze SIPs, by adding new provisions that will govern the development of long-term strategies and reasonable progress goals in future implementation periods. We are proposing these changes to make clear the connections between the existing long-strategy and reasonable progress goal requirements. Although the regional haze SIPs submitted by the states during the first planning period generally demonstrated a clear understanding of the connections between these two program elements, recent comments by some owners of industrial sources and states have indicated confusion as to the meaning of these provisions. The EPA's proposed revisions to § 51.308(f) are consistent with the EPA's long-standing interpretation²³ of the existing regulations at § 51.308(d), but are organized in a more logical fashion. While the new provisions track the language of the existing regulations at § 51.308(d) in many respects, the EPA also has proposed changes in certain places to eliminate ambiguities created by the existing language and to conform with substantive changes being proposed elsewhere in this rulemaking. In this section, we discuss only those changes that are intended to provide clarity regarding the relationship between long-term strategies and reasonable progress goals. Unlike some of the provisions discussed in subsequent sections of this preamble,

the changes discussed in this section do not create new requirements for states.

Section 51.308(d) of the existing Regional Haze Rule is organized into four subsections: (d)(1), concerning the calculation of reasonable progress goals; (d)(2), concerning the calculation of baseline and natural visibility conditions; (d)(3), concerning the development of long-term strategies; and (d)(4), concerning the development of monitoring strategies. This organizational structure does not reflect the actual sequence of steps in the regional haze planning process. For example, § 51.308(d) lists the requirements for reasonable progress goals before the requirements for long-term strategies. In practice, states must evaluate the four statutory factors to select emission control measures for their long-term strategies before they can calculate their reasonable progress goals by modeling the visibility improvement that will result from the implementation of those controls.

To address this issue and provide clarity to states and other stakeholders, the EPA is proposing to organize the requirements in § 51.308(f) in a more logical fashion. First, proposed subsection (f)(1) provides the requirements governing the calculation of baseline and natural visibility conditions, which are necessary to calculate the URP. A state should calculate current visibility conditions, the URP and the URP line first. In doing so, the contributions of PM species to current anthropogenic light extinction (referred to as the anthropogenic light extinction budget) will become evident, which will inform the state's thinking as to which sources or source categories should be evaluated for potential reasonable progress control measures. Second, proposed subsection (f)(2) provides the requirements governing the development of long-term strategies. In this step, states must, among other things, evaluate sources that impact visibility at one or more Class I areas for potential control measures by considering the four statutory factors. Third, proposed subsection (f)(3) provides the requirements governing the calculation of reasonable progress goals. Once a state has established emission limitations and other control measures as part of its long-term strategy, the state will have the information necessary to model the visibility improvement that will result at each Class I area on the 20 percent most impaired days and 20 percent clearest days after the long-term strategy has been implemented. The projected visibility conditions at the end of the applicable implementation period constitute the reasonable progress goals.

States must then compare the goals for the Class I area to the URP. If the goal for the 20 percent most impaired days is above the URP line, the state must demonstrate that there are no additional control measures for sources reasonably anticipated to contribute to visibility impairment in the Class I area that are reasonable to include in the long-term strategy. Finally, proposed subsection (f)(6) provides the requirements governing monitoring strategies, which must be sufficient to allow states to assess the adequacy of their long-term strategies going forward.

In addition to these organizational changes, the EPA is proposing new language in § 51.308(f)(2) that differs from the existing language in § 51.308(d)(3), but is intended to achieve the same result. First, the EPA is proposing language in § 51.308(f)(2)(i) and (iv) to clarify that all states, not just those with Class I areas, must consider the four statutory factors and properly document all cost, visibility and other technical analyses when developing their long-term strategies. Second, the EPA is proposing language in § 51.308(f)(2)(ii) that requires states to consider the URP and the measures that contributing states are including in their long-term strategies when determining whether the state's own long-term strategy is sufficient to ensure reasonable progress.²⁴ Finally, the EPA is proposing language in § 51.308(f)(2)(iii) to clarify the respective obligations of "contributing states" and "states affected by contributing states," during interstate consultation. As is the case under the existing rule text, the EPA will evaluate the sufficiency of the record developed by each state, the state's conclusions, and any disagreements among states to determine whether the state has used reasoned decision making in choosing a set of a control measures that will achieve reasonable progress at the Class I areas impacted by the state's sources. States must document all substantive interstate consultations.

B. Other Clarifications and Changes to Requirements for Periodic Comprehensive Revisions of Implementation Plans

The following clarifications and changes are also proposed to be included in the revised § 51.308(f).

²³ The EPA's interpretation of the proper relationship between a state's reasonable progress goals and its long-term strategy is explained in detail in our proposed action on SIPs from Texas and Oklahoma. See section IV.C at 79 FR 74828. This interpretation was reaffirmed in our final action on these SIPs. See section II.C at 81 FR 308 (January 5, 2016).

²⁴ The EPA views this as a clarification of the requirement that states with sources affecting a given Class I area consult on the content of their long-term strategies. Such consultation would be pointless if each state were not meant to consider the other states' planned emission control measures.

The uniform rate of progress line starts at 2000–2004, for every implementation period. The current text of § 51.308(d)(1)(i)(B) contains a discussion of how states must analyze and determine “the rate of progress needed to attain natural visibility conditions by the year 2064.” While not actually used within the current rule text, the term that has been commonly used to describe this rate is the “uniform rate of progress” or URP. The current text of § 51.308(f) indicates that states must evaluate and reassess all elements required by § 51.308(d), and hence the URP, in the second and subsequent implementation periods. Section 51.308(d) is not perfectly clear about whether “the rate of progress needed to attain natural visibility conditions by the year 2064” is meant to refer to needed progress measured from visibility conditions in the baseline period of 2000–2004, or further needed progress measured from “current” visibility conditions (*i.e.*, the visibility conditions during a 5-year period ending shortly before SIP submission). In other words, the section is not perfectly clear as to whether the glidepath or URP line that applies to the SIP for the second or a later implementation period always starts in the baseline period of 2000–2004, or in the most recent 5-year period. It is clear that the glidepath or URP line then reaches natural visibility conditions in “2064,” but no exact date in 2064 is specified.

To ensure consistent understanding, the EPA is proposing rule revisions to state explicitly that in every implementation period, the glidepath or URP line for each Class I area is drawn starting on December 31, 2004, at the value of the 2000–2004 baseline visibility conditions for the 20 percent most impaired days, and ending at the value of natural visibility conditions on December 31, 2064. In this way, it is clear that for a Class I area that has achieved more than the URP in the first implementation period, the state can take that into account in its URP analysis for the second implementation period. Specifying that the 5-year average baseline visibility conditions are associated with the date of December 31, 2004 and that natural visibility conditions are associated with the date of December 31, 2064 also clarifies that the period of time between the baseline period and natural visibility conditions, which is needed for determining the URP (deciviews/year) is 60 years.

Note that because of updates to the IMPROVE program, some data values from 2000–2004 may be revised over

time.²⁵ Therefore, the value of the starting point for the URP (*i.e.*, baseline visibility conditions) should be recalculated for purposes of accuracy of analysis in any given periodic comprehensive SIP revision. In addition, the value of the baseline visibility conditions must be recalculated to be consistent with the approach used for the selection of the most impaired days in the SIP revision under preparation (*see* Section IV.C of this document).

Along with the clarification that the baseline period remains 2000–2004 for subsequent implementation periods, the EPA also proposes to include clarifications on how states treat Class I areas without available monitoring data or Class I areas with incomplete monitoring data. If Class I areas do not have monitoring data for the baseline period, data from representative sites should be used. If baseline monitoring data are incomplete, states should use the 5 complete years closest to the baseline period (*e.g.*, if a monitor began operating in mid-2000, then 2001–2005 would be used as the baseline period for the Class I area). The proposed rule text on this issue, appearing in § 51.308(f)(1)(i), does not appear in the current § 51.308(d) because at the time § 51.308(d) was proposed and finalized, it was not anticipated that this data incompleteness situation would exist. We are proposing to add this provision to remove any uncertainty about how an issue of data incompleteness should be addressed in a SIP.

As part of this clarification and to maintain consistency in the reasonable progress goal framework, the proposed language in § 51.308(f)(3)(i) (and an accompanying definition of “end of the applicable implementation period” added to § 51.301) would make clear that reasonable progress goals are to address the period extending to the end of the year of the due date of the next periodic comprehensive SIP revision. Also, proposed § 51.308(f)(1)(iv) specifies the end day of 2064 as the ending point of the glidepath or URP line.

Visibility conditions on the clearest 20 percent of days must show no deterioration from conditions in 2000–2004. The current text of § 51.308(d)(1) states that the reasonable progress goals must provide for an improvement in

²⁵ IMPROVE data from the 2000–2004 period may be revised after initially reported because of more recently revised methods for calculating ambient concentrations from measurements made on filters and because of revised methods for filling in missing or invalidated data. Such revisions are made in order to maintain consistency in reported results across the years.

visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. This text is ambiguous as to whether “the period of the implementation plan” refers to the entire period since the baseline period of 2000–2004, or to the specific implementation period addressed by the periodic SIP revision. However, a summary table in the preamble to the 1999 Regional Haze Rule indicated that the 2000–2004 period would be used for “tracking visibility improvement.”²⁶ To provide further clarity, we are proposing new rule text in revised § 51.308(f)(3)(i) to make it clear that the baseline for determining whether there is deterioration on the 20 percent clearest days is the baseline period of 2000–2004.

Analytical Obligation When the Reasonable Progress Goal for the 20 Percent Most Impaired Days Is Not On or Below the URP Line. The EPA is proposing to clarify how the comparison of the reasonable progress goal for the 20 percent most impaired days to the rate of visibility improvement needed to attain natural conditions by 2064 (*i.e.*, the glidepath or URP line) determines the content of the demonstration the state must submit to show that its long-term strategy provides for reasonable progress. This clarification appears in the proposed § 51.308(f)(3)(ii).

The current text of § 51.308(d)(1)(ii) discusses required actions of the state containing the Class I area should it set a reasonable progress goal that provides for a slower rate of visibility improvement than that needed to attain natural conditions by 2064 (*i.e.*, a reasonable progress goal for the 20 percent most impaired days that is above the URP line). This section provides that in this situation, the state must demonstrate, based on the four reasonable progress factors, that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable, and that the progress goal adopted by the state is reasonable. To clarify how a state must show that being on the URP line is not reasonable in its SIP for the second and subsequent regional haze implementation periods, the EPA is proposing in § 51.308(f)(3)(ii)(A) that if the reasonable progress goal is above the URP line, the state must demonstrate, based on the four reasonable progress factors, that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the state that may be reasonably anticipated to

²⁶ 64 FR 35730 (July 1, 1999).

contribute to visibility impairment that would be reasonable to include in the long-term strategy. States must provide a robust demonstration, including documenting the criteria used to determine which sources or groups of sources were evaluated and how the four factors were taken into consideration in selecting the measures for inclusion in its long-term strategy.

In existing sections 51.308(d)(2)(iv) and 51.308(d)(3)(i) and (ii), sentences addressing obligations of the state with the Class I area and obligations of the contributing state(s) are juxtaposed in such a way that it can be confusing for a reader to understand which of the two states is being referred each time the word “state” appears. The proposed § 51.308(f)(2)(iii) more clearly spells out the respective consultation responsibilities of states containing Class I areas as well as states with sources that may reasonably be anticipated to cause or contribute to visibility impairment in those areas.

To clarify and solidify the obligations of what we are referring to as contributing states, § 51.308(f)(3)(ii)(B) is proposed to specify that in situations where reasonable progress goals are set above the glidepath, a contributing state must make the same demonstration with respect to its own long-term strategy that is required of the state containing the Class I area, namely that there are no other measures needed to provide for reasonable progress. This provision will ensure that states perform rigorous analyses, and adopt measures necessary for reasonable progress, with respect to Class I areas that their sources contribute to, regardless of whether such areas are physically located within their borders.

Emission inventories. The proposed language of § 51.308(f)(2)(iv) regarding the baseline emissions inventory to use in developing the technical basis for the state’s long-term strategy would reconcile this section with changes that have occurred to 40 CFR part 51, subpart A, Air Emissions Reporting Requirements, since the Regional Haze Rule was originally promulgated in 1999. The proposed changes also would provide flexibility in the base inventory year the state chooses to use, as the EPA has always intended if there is good reason to use another inventory year.

EPA action on reasonable progress goals. Proposed language in § 51.308(f)(3)(iv) would make clear that in approving a state’s reasonable progress goals, the EPA will consider the controls and technical demonstration provided by a contributing state with respect to its long-term strategy, in addition to those

developed by the state containing the Class I area with respect to its long-term strategy. This section is a clarification of § 51.308(d)(1)(iii), which only explicitly mentions the demonstration provided by the state containing the Class I area.

Progress reports. Finally, proposed language in § 51.308(f)(5) complements proposed changes regarding progress reports and the proposal to eliminate separate progress reports being due simultaneously with periodic comprehensive SIP revisions. This language would require the periodic comprehensive SIP revision to include certain items of information that would have been addressed in the progress report, thereby expanding its scope somewhat. While the state would no longer need to prepare and submit two separate documents at the same time (the periodic comprehensive SIP revision and a progress report), the same information would still be covered. Combining requirements in this way will avoid the overlap in content that would occur with two separate documents.

Smoke management programs and basic smoke management practices. The proposed § 51.308(f)(2)(vi)(E) mirrors the existing § 51.308(d)(3)(v)(E) with updates to reflect terminology used within the air quality and land management communities to clarify and promote a common understanding of this provision. We propose to replace the term “smoke management techniques” in § 51.308(d)(3)(v)(E) with “basic smoke management practices.” We propose to replace the term “forestry management purposes” with “wildland vegetation management purposes” in recognition that not all wildland for which fire and smoke are issues is forested. We also propose to replace the phrase “plans” with “smoke management programs for prescribed fire.” Like § 51.308(d)(3)(v)(E), the proposed § 51.308(f)(2)(vi)(E) would require states to consider only currently existing smoke management programs (formerly referred to as “plans”). Section IV.E of this document discusses wildland fire-related issues in more detail and includes explanations of the terms “basic smoke management practices” and “smoke management program.”

C. Changes to Definitions and Terminology Related to How Days Are Selected for Tracking Progress

Section 51.308(d) of the existing Regional Haze Rule requires states to determine the visibility conditions (in deciviews) for the average of the 20 percent least impaired and 20 percent most impaired visibility days over a

specified time period at each of their Class I areas. Section 51.301 of the Regional Haze Rule defines visibility impairment as the humanly perceptible change in visibility from that which would have existed under natural conditions. This definition of visibility impairment suggests that only visibility impacts from anthropogenic sources should be included when considering the degree of visibility impairment. However, the preamble to the 1999 final rule stated that the least and most impaired days were to be selected as the monitored days with the lowest and highest actual deciview levels, respectively. 64 FR 35728 (July 1, 1999). The interpretation in the preamble was subsequently reflected in the EPA guidance on setting reasonable progress goals and tracking progress. In practice, in their SIPs for the first implementation period states followed the approach described in the 1999 preamble and the subsequent guidance, and the EPA approved the SIPs with respect to that aspect. However, as described later, experience now indicates that for the most impaired days an approach focusing on anthropogenic impairment in particular is more appropriate going forward. We are not proposing to change the approach of using the 20 percent of days with the best visibility to represent good visibility conditions for reasonable progress goal and tracking purposes, but we are proposing text changes to accurately describe how those days are to be selected. These days would be referred to as the 20 percent clearest days.

Natural contributions to the total actual deciview levels vary from year to year. In order to minimize interannual variability, the Regional Haze Rule uses 5-year averages for determining the baseline and current visibility conditions. Also, under the EPA’s modeling guidance for regional haze SIPs, reasonable progress goals are projected starting from the average of visibility conditions in a 5-year period that is centered around (or at least includes) the year of the base emission inventory used in the air quality modeling process. Now that many visibility monitoring sites have at least 15 years of data, it is clear that in some locations 5-year averages are not long enough to dampen the visibility impacts of occasional extreme fire years. In their SIPs and SIP revisions for the first implementation period, some states explained that the 20 percent most impaired days in certain Class I areas can be dominated by uncontrollable visibility impacts. Many states, particularly western states, have urged

the EPA to make rule changes that would allow them to track visibility progress in Class I areas using a method that is more closely linked with visibility impacts from controllable emissions.

To help states minimize the impacts of uncontrollable emissions on visibility tracking, the EPA proposes to more explicitly (and consistently) address this issue for future implementation periods. In general, the proposed changes related to the selection of days for visibility tracking are intended to accomplish the following for future implementation periods: (1) Clarify that “visibility impairment” means the deviation from natural visibility and therefore is due to anthropogenic impacts, (2) revise definitions in § 51.301 to make clear that the 20 percent most impaired days should be selected based on anthropogenic visibility impairment rather than based on the days with highest deciview values due to impacts from all types of sources, and (3) continue to use the 20 percent of days with the lowest total deciviews (*i.e.*, “clearest days”) rather than the 20 percent least impaired days for purposes of tracking any adverse trend in visibility on clear days.

The definitions in § 51.301 for several terms and phrases related to the selection of days for visibility tracking have been clarified in the proposed revisions of the rule text. Definitions that are proposed to be changed slightly to provide more clear explanations of their meanings include the following: *Deciview*, *most impaired days*, and *visibility impairment*.

Additionally, we propose definitions for the following previously undefined terms to be included in § 51.301: *Clearest days*, *the deciview index* (the term was *deciview haze index* in the 1999 Regional Haze Rule), *natural visibility conditions* and *visibility*. We propose the addition of the term *clearest days* to unambiguously describe the days with the lowest actual deciview values, for which there is to be no degradation in visibility.²⁷ We propose changing the deciview haze index to *the deciview index* to remove the word *haze*, since the deciview index can be used for visibility impairment as well as for the total effect of all sources.²⁸ *Visibility* was

previously undefined although used in the definitions of several other important terms, and so we have added a proposed definition to describe that visibility is the change in optical clarity when viewing objects at a distance. We also propose adding a definition for *natural visibility conditions* to clarify that natural visibility conditions cannot be measured and must be inferred or estimated, and to distinguish the visibility conditions that occur due to natural conditions from natural conditions themselves such as humidity, emissions from natural sources, etc.

Given the current Regional Haze Rule’s definitions of *most impaired days* and *visibility impairment*, the regulations could be read to direct states and the EPA to use the days with the most perceptible anthropogenic impairment as the 20 percent most impaired days. The proposed changes to these definitions in § 51.301 do not change this direction. The EPA solicits comments on a first proposal, fully reflected in the proposed rule text, which would require that states select the 20 percent most impaired days based on anthropogenic impairment, rather than based on the highest deciview values due to all sources affecting visibility. If this approach is finalized, states would still have the option to also present the visibility data using the current approach based on the days with the highest overall deciview index values (*i.e.*, the 20 percent haziest days). Including this information in the SIP may help communicate to the public the magnitude of impacts from natural sources including wildland wildfires and dust storms, and thus the utility of the change in approach. Under this first proposal, the reasonable progress goals and URP line that are calculated using anthropogenic impairment to select the most impaired days will be the glidepath that is used to trigger the requirement for a state to show that it is not reasonable for the SIP to provide for the rate of progress that would be needed to reach natural visibility conditions in 2064 (see Section IV.B of this document).

The EPA seeks comment also on a second, alternative proposal under which the final rule would allow each state with a Class I area to choose between using the revised approach described earlier (using the 20 percent most anthropogenically impaired days) and using the 20 percent haziest days (whether dominated by natural or anthropogenic impacts) to track

visibility as all states with Class I areas did in the first regional haze SIPs. (This alternative approach is not laid out in proposed rule text revisions, but only minor edits would be required to implement it in the final rule.) If the final rule takes this approach, states would still have the option to also present the visibility data using the other approach.

In summary, the EPA seeks comment on two approaches for selecting the 20 percent “worst” days from the IMPROVE monitoring data. In the first approach, states would be required to select the 20 percent most impaired days, *i.e.*, the days with the most impairment from anthropogenic sources. This first approach would be a change from the approach states used in the first implementation period. This first approach would also mean that all states would use a framework that is consistent on this aspect. In the second approach, states would be allowed to choose whether to select the 20 percent of days with the highest overall haze (*i.e.*, the approach used in the first implementation period) or to select the 20 percent of days with the most impairment from anthropogenic sources. EPA also solicits comments on additional approaches. The EPA will consider comments received on these two options or additional options offered by commenters.

If the 20 percent most anthropogenically impaired days are used to estimate natural visibility conditions, current visibility conditions and the URP, they must also be used in setting reasonable progress goals and in progress reports. Conforming edits are being proposed to the provisions related to each of these, for that purpose. If the final rule requires the revised approach described earlier in the first proposal, it would apply starting with the second and subsequent periodic comprehensive SIP revisions and then to progress reports submitted after the second SIP revision. There would be no change with respect to the EPA action on SIP revisions for the first implementation period.

In order to select the 20 percent most impaired days based on the days with the most anthropogenic impairment, natural contributions to daily deciview values must be estimated by some method. This in turn requires measured concentration values for PM components to be allocated to natural versus anthropogenic sources. The EPA is not proposing that any particular method for determining natural contributions to daily haze and thus the degree of visibility impairment for each monitored day be codified in the rule

²⁷ We are not proposing to remove the definition of least impaired days because it will still apply to the first implementation period (including the SIPs and progress reports covering the first implementation period).

²⁸ We note that the very definition of “regional haze” refers to “impairment,” making it confusing to use “haze” to refer to the actual level or degree of visibility considering the effects of both natural and anthropogenic sources. Our proposed edits are

aimed at avoiding any inconsistent use of the term “haze.”

text. The EPA plans to issue guidance describing a recommended approach along with a process for routinely providing relevant datasets for use by states when they develop their SIPs and progress reports. Because no particular method would be prescribed by rule, states could develop, justify and use another method in their SIPs, if the final rule requires (or allows) the 20 percent most impaired days based on anthropogenic impairment to be used.

D. Impacts on Visibility From Anthropogenic Sources Outside the U.S.

The EPA acknowledges that emissions (natural and anthropogenic) from other countries (and from marine vessel activity in non-U.S. waters) may impact Class I areas, especially those areas near borders and coastlines. We have had requests from states with such Class I areas that given these emissions are beyond states' control, the states should be allowed to account for international impacts when preparing SIPs and progress reports. For example, states have requested that they be allowed to consider impacts from international emissions when comparing their reasonable progress goals to the URP line. This comparison matters because (as described in Section IV.C of this document) it may trigger an additional analytical requirement by the state. Impacts from international emissions can also affect whether a progress report will conclude that actual visibility conditions are approaching the reasonable progress goals for the end of the implementation period. It has been suggested to the EPA that estimated impacts from international emissions might be added to the 2064 end point of the URP line. It has also been suggested that estimated impacts from international emissions be subtracted from baseline and current visibility conditions.

On this issue, we first wish to clarify that it has never been the intention of the EPA that states be obligated to in any way compensate for haze impacts from anthropogenic international emissions by adopting more stringent emission controls on their own sources. We also wish to note that impacts from natural sources in other countries should be considered part of natural visibility conditions. States have the flexibility under the Regional Haze Rule to justify and use values for natural visibility conditions that include such effects. We believe the proposed changes regarding which days in a year are used for tracking progress (see Section IV.C of this document), when supplemented by our planned guidance on this topic, will adequately address

international impacts related to significant wildland wildfires in Canada and Mexico and dust storms in Mexico (and perhaps also dust storms in northern Africa).

The EPA has further considered possible approaches regarding the impacts from anthropogenic sources in other countries, including border countries as well as more distant countries such as China. It is the role of the federal government, much more than of the states, to work with other countries to make such reasonable progress. The EPA is, in fact, actively engaged with other countries to help them reduce their anthropogenic emissions, particularly emissions in Mexico from sources near the U.S.-Mexico border. See <http://www2.epa.gov/border2020>.

We believe that it may be appropriate to allow states to adjust the reasonable progress goal framework, including their progress reports, to explicitly take into account international impacts from anthropogenic sources, but only when and if these impacts can be estimated with sufficient accuracy. We do not believe that explicit consideration of impacts from anthropogenic sources outside the U.S. would actually affect the conclusions that states should make about what emission controls for their own sources are needed for reasonable progress. Even so, explicit quantification of international impacts, if accurate, could improve public understanding and effective participation in the development of regional haze SIPs. Also, taking international impacts into account in some cases may affect whether a state (and contributing states) are subject to the requirement of proposed § 51.308(f)(3)(ii) regarding a demonstration that there are not additional emission reduction measures needed for reasonable progress. However, we are not convinced that such impacts can be estimated with sufficient accuracy at this time, in part due to great uncertainty about past, present and future emissions from sources in most other countries. However, it may be that by the time some future periodic comprehensive SIP revisions are to be prepared, for some states possibly as early as when they are preparing their second SIP, methods and data for estimating international impacts will be substantially more robust.

Therefore, the EPA is requesting comment on a proposed provision that would allow states with Class I areas significantly impacted by international emissions to make an adjustment to the URP with specific approval by the

Administrator. The adjustment would consist of adding to the value of natural visibility conditions an estimate of international impacts, only for the purpose of calculating the URP.²⁹ We believe that this adjustment should be permitted only if the Administrator determines the international impacts from anthropogenic sources outside the United States were estimated using scientifically valid data and methods. We are proposing specific rule text for this purpose in § 51.308(f)(1)(vi). In addition, we are proposing small rule text changes in § 51.308(f)(1)(i) and (vi) (compared to their counterparts in § 51.308(d)) to remove "needed to attain natural visibility conditions" from the reference to "uniform rate of progress," because when adjusted to reflect international impacts the "uniform rate of progress" would not be the rate of progress that would reach true natural visibility conditions. Because the manner in which a state with a Class I area calculates the URP may affect other states with sources that contribute to visibility impairment at the Class I area,³⁰ we recommend that a state seeking approval for such an adjustment first consult with contributing states. Such an adjustment would also be a topic for the required consultation with the FLM for the Class I area at issue. We welcome comments on this proposed rule text as well as comments in general support or opposition to this concept, noting that the EPA may or may not finalize this portion of the proposal.

E. Impacts on Visibility From Wildland Fires Within the U.S.

Fires on wildlands within the U.S. can significantly impact visibility in some Class I areas on some days and have lesser impacts on a greater number of days. Accordingly, we discuss here whether measures to reduce emissions from wildland wildfire and wildland

²⁹ As another possible approach to accounting for international impacts, the analysis of IMPROVE monitoring data to develop the estimates of 2000–2004 baseline visibility conditions could include steps to remove the influence of emissions from anthropogenic sources outside the U.S. The calculation of the URP would be based on this adjusted estimate of baseline visibility conditions (see "The uniform rate of progress line starts at 2000–2004, for every implementation period" in Section IV.B of this document) and the true value of natural visibility conditions. Also, for consistency, the values for current visibility conditions and for the projected RPG would exclude the influence of international emissions. We invite comment on this alternative approach, which we may include in the final rule as the only allowed approach or as another allowed approach.

³⁰ Contributing states may be affected because under proposed § 51.308(f)(3)(iv)(B), a contributing state may have an additional analytical requirement if the RPG does not provide for the URP at an affected Class I area in another state.

prescribed fires may be needed for reasonable progress towards natural visibility conditions. We also discuss whether smoke from fires might cause the projected RPG to be above the URP line, thus triggering the additional analytical requirement (discussed in Section IV.B of this document) to show that there are no additional measures that are necessary for reasonable progress. We are proposing rule language to allow the Administrator to approve a state's proposal to adjust the URP to avoid subjecting a state to this additional analytical requirement due only to the impacts of specific types of wildland fire. This section does not address and does not apply to fires of any type on lands other than wildland or to burning on wildland that is for purposes of commercial logging slash disposal rather than wildland ecosystem health and public safety.

An extensive discussion of the background on wildland fire concepts, including actions that the manager of a prescribed fire can take to reduce the amount of smoke generated by a prescribed fire and/or to reduce public exposure to the smoke that is generated (*i.e.*, basic smoke management practices), was presented in the recently proposed revisions to the Exceptional Events rule (80 FR 72840, November 20, 2015) and is not repeated here. We do wish to note, however, that the term "smoke management program" is not currently defined in the Regional Haze Rule. At the time of the 1999 Regional Haze Rule, the term was generally used to mean a framework that included (i) authorization to burn, (ii) minimizing air pollutant emissions, (iii) smoke management components of burn plans, (iv) public education and awareness, (v) surveillance and enforcement and (vi) program evaluation. We believe this usage of the term is still appropriate. By "authorization to burn," we mean that a government authority restricts where, when and/or by whom a prescribed fire may be conducted. The proposed § 51.308(f)(2)(v)(E) would make a certain state obligation depend on whether a "smoke management program" currently exists within a state. See *"Consideration of control measures for wildland prescribed fire"* in this section for further discussion of this point.

We do not consider the term smoke management program for the purposes of § 51.308(f)(2)(v)(E) to mean programs that include only seasonal restrictions on burning because of fire safety concerns, voluntary educational programs designed to raise air quality awareness of potential prescribed fire users, voluntary programs in which land managers agree to coordinate their

prescribed fire activities but are free to withdraw from the program at any time or some combination of the above. The EPA supports these latter types of programs, but we do not believe it is appropriate to have the obligation in § 51.308(f)(2)(v)(E) triggered by the existence of these types of programs.³¹

The recently proposed revisions to the Exceptional Events Rule would clarify that in the context of the regulatory programs for the protection of the NAAQS, (i) wildland wildfires are natural events and prescribed fires are anthropogenic events; (ii) a wildland wildfire is not controllable or preventable (in the sense that generally it would not be reasonable to expect efforts at prevention of occurrence and/or control of emissions to have gone beyond the efforts actually made for a given wildfire by responsible land managers and fire safety officials); (iii) a prescribed fire is not reasonably controllable (in the sense that it would not have been reasonable to do more to control its emissions) if it was conducted in accordance with a state-certified smoke management plan or if the burn manager has employed appropriate basic smoke management practices; and (iv) a prescribed fire is presumptively not reasonably preventable (in the sense that it not would have been reasonable to not conduct it, because of the multiple important benefits that would have been foregone) if a multi-year land or resource management plan³² for a wildland area has a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire and the use of prescribed fire in the area has not exceeded the frequency indicated in that plan. These proposed revisions to the Regional Haze Rule do not include language to these same four effects because the Regional Haze Rule does not contain this level of specificity with respect to any source type. However, we do believe these same propositions apply in the regional haze context, and the remainder of this section is based on these propositions. We invite comment on these propositions, and on whether

it is appropriate to include in the final rule explicit language reflecting them.

Wildland Wildfires

As natural events, two issues are associated with wildfires on wildland. The first is whether and how a state is obligated to consider measures which could reduce emissions from these wildfires as part of a regional haze program. The second issue is the one identified at the start of this section, namely the possible impact of wildland wildfires on whether the RPG is above the URP line and thus whether a state is subject to the additional analytical requirement described Section IV.B of this document.

Consideration of control measures for wildland wildfires. Because wildland wildfires are considered natural events, emissions from wildfires are natural emissions that contribute to natural visibility conditions. Thus, states are not obligated to consider whether measures to reduce emissions from wildfires are necessary for reasonable progress towards natural visibility conditions. However, states may consider how use of prescribed fire may reduce the frequency, geographic scale and intensity of natural wildfires, such that vistas in Class I areas will be clearer on more days of the year, to the enjoyment of visitors. States may also consider how the use of prescribed fire on wildland can benefit ecosystem health, protect public health from the air quality impacts of catastrophic wildfires and protect against other risks from catastrophic wildfires. Today's proposals are intended to give states that have considered these factors, and other relevant factors, the flexibility to provide and plan for the use of prescribed fire, with basic smoke management practices applied, to an extent and in a manner that states believe appropriate. The EPA is committed to working with states, tribes, federal land managers, other stakeholders and other federal agencies concerning the use of prescribed fire, as appropriate, to reduce the impact of wildland fire emissions on visibility.

Possible effect on the comparison of the RPG to the URP line. Because wildland wildfires are natural events, emissions from wildland wildfires do not contribute to "visibility impairment" given that this term refers only to reductions in visibility attributable to anthropogenic sources. Under the proposed approach of basing RPGs on the 20 percent most impaired days, we expect that days with large impacts from wildland wildfires will not be included in the set of days selected as the 20 percent most

³¹ We note that the determining factor for the applicability of proposed § 51.308(f)(2)(v)(E) would be the existence of a program and its elements, not whether the program has been incorporated into the SIP as an enforceable measure or described in the narrative portion of the SIP.

³² These plans could also include State Forest Action Plans, fire management plans, prescribed fire on wildland management plans, landscape management plans or equivalent public planning documents.

impaired days in each year.³³ Thus, we expect that wildland wildfires with notable effects on visibility will not be a reason why a projected RPG for the 20 percent most impaired days would be above the URP line, simply because the URP line will be about visibility on other types of days. Thus, we expect that wildland wildfires will not affect whether a state becomes subject to the additional analytical requirement to show that there are no additional measures that are necessary for reasonable progress. Also, we expect that the 20 percent clearest days (selection of which is based on visibility as affected by all types of sources) will not include any days with notable effects from wildland wildfires. Thus, we expect that wildland wildfires will not affect whether a state is able to demonstrate that there is no deterioration in visibility on the 20 percent clearest days, which is a requirement for SIP approval.

Wildland Prescribed Fires

As anthropogenic events, two issues are associated with prescribed fires on wildland. The first is whether and how a state is obligated to consider measures that could reduce emissions from these prescribed fires as part of a regional required haze program. The second issue is the possible impact of wildland prescribed fires on whether the RPG is above the URP line.

Consideration of control measures for wildland prescribed fire. Under existing § 51.308(d)(2)(i) and proposed revised § 51.308(f)(2)(v), a state is required to identify all anthropogenic sources of visibility impairment considered by the state in developing its long-term strategy and the criteria used to select the sources for which additional emission reduction measures were considered in light of the four reasonable progress factors. Existing § 51.308(d)(3)(v)(E) more specifically requires a state to consider “smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes.” As explained in Section IV.B of this document, in carrying this paragraph forward into the revision of § 51.308(f) that will make it free standing, we are proposing to

update some of the terminology and to require states to consider “basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs as currently exist within the state for these purposes.”

Taken together, we interpret these provisions to mean that every state must consider whether wildland prescribed fires contribute to impairment at their own Class I areas or Class I areas in other states. If they do not contribute to any meaningful degree, the SIP may take note of this and thereby satisfy both provisions. If prescribed fires in a state contribute meaningfully to impairment at a Class I area, the state is required to consider basic smoke management practices for prescribed fires in the development of its long-term strategy, regardless of whether or not those practices are currently being implemented, required by state law or mandated by an EPA-approved SIP. The state would be required to consider only smoke management programs as currently exist within the state.³⁴ We believe that the state should in this situation give new consideration to the effectiveness of its smoke management programs in protecting air quality while also allowing appropriate prescribed fire for ecosystem health and to reduce the risk of catastrophic wildfires. The state could also consider the implementation of a new smoke management program.

We would like to make clear that taken together, these two provisions do not necessarily require any state to “select” wildland prescribed fire (under § 51.308(f)(2)(v)) as an anthropogenic source of visibility impairment for which it must consider and analyze emission reduction measures (such as a smoke management program or basic smoke management practices) based on the four reasonable progress factors listed in § 51.308(f)(2)(i). Thus, a state is not necessarily required to develop cost estimates for smoke management programs or basic smoke management practices. However, if a state does not “select” wildland prescribed fire as a source for four-factor analysis, it must explain why it has not. As previously stated, the explanation may be as simple as taking note that prescribed fires do not make a meaningful contribution to visibility impairment at in-state and nearby Class I areas. Where prescribed fires are more important, it may be sufficient for the SIP revision to explain

the role of properly planned and managed wildland prescribed fire as described in this section, the state’s ongoing smoke management programs, if any, and the current and possibly increased future use of basic smoke management practices by federal, state, local and private land managers, but not to “select” wildland prescribed fire as a source category for four-factor analysis.

If a state does “select” wildland prescribed fire as a source for four-factor analysis, the state must conclude this analysis by determining whether additional measures to reduce emissions from wildland prescribed fire are necessary for reasonable progress. Any such measures must be included in the long-term strategy. Because some of the basic smoke management practices are difficult to describe with the specificity needed to make them practically enforceable, it may not be appropriate to conclude that a SIP requirement for the use of each practice is necessary for reasonable progress. For example, one basic smoke management practice is to monitor the effects on air quality due to the smoke plume from a prescribed fire. “Monitoring” could include ground-based visual observations, aircraft observations, meteorology-based modeling, fixed or portable air quality monitoring stations, hand-held monitors, etc. Because the most appropriate monitoring approach is often situation- and resource-specific, mandating a specific approach is inadvisable. Therefore, a SIP commitment for a state or local agency to include the use of basic smoke management practices could be more desirable than a SIP requirement for land managers to use each basic smoke management practice.

Given the benefits of prescribed fires including the reduction they can achieve in visibility-obscuring smoke from wildfires that affect visitor’s experiences even though not intended to be reflected in the metrics for tracking progress towards natural visibility conditions, a state may determine that reasonable progress does not require implementation of a new or revised smoke management program that includes an authorization to burn component,³⁵ or it may adopt or revise such a smoke management program. We recommend that a smoke management program be designed so that it does not inappropriately restrict prescribed fires with these benefits. If a state determines that compliance with a smoke

³³ We intend to recommend an approach to identifying the 20 percent most impaired days that uses the ambient concentration of carbon-containing material to separate total light extinction between natural sources, including wildfires, and anthropogenic sources. A day strongly affected by wildfire will have high concentrations of carbon-containing material and a very large fraction of light extinction will be attributed to natural causes, thus the day likely will not be one of the 20 percent most impaired days.

³⁴ We interpret “currently exist” in both referenced sections of the Regional Haze Rule to refer to programs that are operational as of the SIP due date, not the date the Regional Haze Rule was promulgated.

³⁵ See the prior discussion of an authorization to burn component being one of the six distinguishing features of a “smoke management program” in the context of the Regional Haze Rule.

management program of a particular design is required for reasonable progress, then the state must include the smoke management program in the SIP as part of the long-term strategy. We believe that states can include sufficiently detailed, enforceable language in their smoke management programs to make them practically enforceable for SIP purposes (as may not be the case for all basic smoke management practices). One of the distinguishing elements of a smoke management program is a provision for periodic program evaluation. We recommend that every smoke management program include a plan for this periodic assessment by the responsible authorities that provides for input from land managers, affected communities and stakeholders. This evaluation should include an assessment of whether the program is meeting its goals regarding improving ecosystem health and reducing the damaging effects of catastrophic wildfires. We are proposing to add to § 51.308(g) a requirement for the periodic progress report on a state's regional haze program to include a summary of the most recent periodic assessment of any smoke management program that is part of the long term strategy.

While the Regional Haze Rule thus does not require regional haze SIPs to include measures to limit emissions from prescribed fire, it is not our intention to in any way discourage federal, state, local or tribal agencies or private land owners from taking situation-appropriate steps to minimize emissions from prescribed fires on wildland, or other types of land. The EPA encourages all land owners and managers to apply appropriate basic smoke management practices to reduce emissions from prescribed fires. The EPA understands that the FLMs apply these measures routinely and will be available to consult with other agencies and private parties interested in doing the same.

Possible effect on the comparison of the RPG to the URP line. Prescribed fire on wildlands may contribute to impairment on some of the days that are among the 20 percent most impaired days. Therefore, the issue of whether prescribed fires might cause the projected RPG to be above the URP line is germane.

Generally, as discussed earlier in this section, we do not expect the total acreage subject to prescribed fires on wildlands to decrease in the future because prescribed fire is needed for ecosystem health and to reduce the risk

of catastrophic wildfires.³⁶ Thus, the occurrence of prescribed fire generally will not be projected to decline towards zero by 2064, nor to decline over any one implementation period at the proportional rate inherently assumed in the URP line. In fact, in many areas there may be reason to adopt policies that facilitate, and accordingly to forecast for purposes of setting the RPG, more use of prescribed fire and thus higher contributions to impairment on the 20 percent most impaired days. At this time, we do not know whether or where such a projected trend may affect whether the RPG for a Class I area will be above the URP line. However, we expect that if this is an issue, western Class I areas would be more likely to be affected.

If the projected RPG for a Class I area is above the URP line due only to the anticipated use of wildland prescribed fire needed for ecosystem health and to reduce the risk of catastrophic wildfires, we do not believe that states should expend valuable analytical and decision making resources on additional analysis of measures necessary for reasonable progress if basic smoke management practices have been applied to prescribed fires and the states have otherwise satisfied the terms of the Regional Haze Rule. Therefore, we are requesting comment on a proposed provision in § 51.308(f)(1)(vi) that would allow states with Class I areas significantly impacted by emissions from wildland prescribed fires to make an adjustment to the URP with specific approval by the Administrator. The adjustment would consist of adding to the value of natural visibility conditions an estimate of wildland prescribed fire impacts, only for the purpose of calculating the URP and only for prescribed fires that were conducted with the objective to establish, restore and/or maintain sustainable and resilient wildland ecosystems, to reduce the risk of catastrophic wildfires and/or to preserve endangered or threatened species during which appropriate basic smoke management practices were applied. We would consider a plan for prescribed fire use on federal, state, tribal or private lands with this objective that has been reviewed and certified by the appropriate fire and/or resource management professionals and agreed to and followed by the land owner/manager to be sufficient to meet this restriction on the scope of the

³⁶ See the discussion of climate change effects on wildfire trends in the preamble to the proposed revisions of the Exceptional Events Rule. 80 FR 72866–72871, November 20, 2015.

adjustment to the URP.³⁷ Other evidence of the objective of a prescribed fire would be considered on a case-by-case basis. We believe that this adjustment should be permitted only if such prescribed fire impacts have been estimated with methods and data approved by the Administrator as scientifically valid.³⁸

We are also proposing changes to fire-related definitions in § 51.301. One of the proposed changes is to remove the term “prescribed natural fire” from the definition of “fire” because we consider prescribed fires to be anthropogenic, although we recognize that some prescribed fires are intended to emulate and/or mitigate natural wildfires that would otherwise occur at some point in time. In addition, we are adding definitions for wildland, wildfire and prescribed fire. The proposed definitions are consistent with the definitions we recently proposed for inclusion in the Exceptional Events Rule.

F. Clarification of and Changes to the Required Content of Progress Reports

The EPA believes that additional amendments to § 51.308(g) are appropriate at this time in order to clarify the substance of the regional haze progress reports. In its current form, there is ambiguity in this section with respect to the period to be used for calculating current visibility conditions, as well as ambiguity with respect to whether forward-looking, quantitative modeling is required in the progress reports to assess whether reasonable progress goals will be met. The EPA wishes to clarify both of these and other issues, and so proposes to amend § 51.308(g) in the following ways. The EPA seeks comment on these proposed amendments as well as alternative approaches.

Section 51.308(g)(3)(ii) is proposed to be amended by adding a number of explanatory sentences to better indicate what “current visibility conditions” are and how to calculate them. Under the current version of the rule, it is not clear what “current visibility conditions” are, in part because the term is not defined in § 51.301. Although § 51.308(g)(3) makes reference to 5-year averages of

³⁷ Examples of these plans include federal land or resource management plans, State Forest Action Plans, fire management plans, prescribed fire on wildland management plans or landscape management plans.

³⁸ The invitation, in the context of international impacts, for comment on alternative adjustment approaches also applies to this proposal regarding an adjustment to account for prescribed fire impacts. Our recommendation for consultation with other states and FLMs in the same context also applies to prescribed fire impacts.

annual values for most impaired and least impaired days, and § 51.308(g)(3)(i) requires states to assess current visibility conditions for the most impaired and least impaired days, there is no clear indication as to which 5-year average the state should and can practicably use in a progress report for the current visibility conditions calculation. For example, the “current conditions” terminology does not explicitly allow for the time delay needed for the IMPROVE network manager to get quality assured data into its database so they are accessible to the states preparing progress reports. Practicality requires that “current conditions” should mean “conditions for the most recent period of available data.”³⁹ There is also an issue of whether this availability is to be determined based on the start of work on the progress report, the due date for the progress report, or the actual submission date of the progress report. The proposed text makes clear that the period for calculating current visibility conditions is the most recent rolling 5-year period for which IMPROVE data are available as of a date 6 months preceding the required date of the progress report. Because we are also proposing that progress reports no longer be submitted as SIP revisions, meaning that there would be a much simpler and expeditious state administrative process to submit a progress report once technical work on it is completed, we believe that this 6-month period would be sufficient for states to incorporate the most recent available data into their progress reports.⁴⁰ The EPA invites comment on other specific timeframes as the amount of time necessary for states to incorporate the most recent available data into their progress reports, including 3 months, 9 months and 12 months.

Section 51.308(g)(3)(iii), as currently written, requires a progress report to contain the value of the change in visibility impairment for the most and least impaired days over the past 5

years. This text fails to make clear what the “past 5 years” are for assessing the change in visibility impairment. Because of data reporting delays, the period covered by available monitoring data will not line up with the periods defined by the submission dates for progress reports. Moreover, it is important to ensure that each year of visibility information is included either in a periodic comprehensive SIP revision or the progress report that follows it. Therefore, the “past 5 years” text is proposed to be deleted and replaced with text indicating the change in visibility impairment is to be assessed over the period since the period addressed in the most recent periodic comprehensive SIP revision.

The same change to existing “past 5 years” text is proposed to be made to the first sentence of § 51.308(g)(4) for the purposes of reporting changes in emissions of pollutants contributing to visibility impairment, for similar reasons. Like monitoring trend summaries, available emissions trend summaries will not line up with the periods defined by the submission dates of progress reports. Therefore, the proposed language removes the “past 5 years” text and replaces it with text indicating the change in emissions of pollutants contributing to visibility impairment is to be assessed over the period since the period addressed in the most recent periodic comprehensive SIP revision.

The final sentence of § 51.308(g)(4) is proposed to be modified to revise and clarify the obligation of states regarding emissions inventories. The current rule text directs the analysis be based on the “most recent updated emissions inventory,” with emissions estimates “projected forward as necessary and appropriate to account for emissions changes during the applicable 5-year period.” States are otherwise required by 40 CFR part 51, subpart A (Air Emissions Reporting Requirements) to prepare complete emission inventories only for every third calendar year (2011, 2014, etc.) and to submit these inventories to the EPA’s National Emissions Inventory (NEI). (After aggregating and quality assuring these submissions, the EPA then publicly provides summaries of the inventories that have been submitted.) The current text of § 51.308(g)(4) seemingly requires a state to “project” the most recent of these inventories to the end of the “applicable 5-year period” whenever that end is not the year of a triennial inventory required by subpart A. Emissions projection is not a simple or low-resource task even if limited to a projection date that is in the recent past,

as would be the case here. We do not think the informational value of such projections is in balance with the effort and time that would be required. At the same time, we believe that progress reports should present for each significant source sector the most recently available information, which may be newer for some sectors than for others. For most sectors, this will be the information for the triennial year of the most recent NEI submission. However, the EPA operates a data system that provides information on emissions from electric generating units (EGUs), which account for a significant percentage of visibility impairing pollution in many states, with only a few months lag time. This information comes from reports submitted by the EGU operators based on continuous emissions monitoring systems. Therefore, we are proposing text changes that explain clearly the most recent year through which the emissions analysis must be extended, by sector. States would be required to include in their progress reports emissions with respect to all sources and activities up to the triennial year for which information has already been submitted to the NEI. With regard to EGUs, states would need to include data up to the most recent year for which the EPA has provided a state-level summary of such EGU-reported data. Finally, the last sentence of the proposed text for this section makes clear that if emission estimation methods have changed from one reporting year to the next, states need not backcast, *i.e.*, use the newest methods to repeat the estimation of emissions in earlier years, in order to create a consistent trend line over the whole period. The EPA has never expected states to backcast in this context, but some states have expressed concern that other parties may interpret the current Regional Haze Rule as requiring such backcasting. This final change would remove any uncertainty about the sufficiency of a state’s progress report.

Section 51.308(g)(5) involves assessments of any significant changes in anthropogenic emissions that have occurred, and is proposed to be changed in a similar fashion to other sections, deleting the reference to the “past 5 years” and instead directing that the period to be assessed involves that since the last periodic comprehensive SIP revision. Text is also proposed to be added that would require states to report whether these changes were anticipated in the most recent SIP. Having this explanation within the progress report should not be a significant burden on the state and will

³⁹ In our guidance on the preparation of progress reports, the EPA has indicated that for “current visibility conditions,” the reports should include the 5-year average that includes the most recent quality assured public data available at the time the state submits its 5-year progress report for public review. See section ILC of General Principles for the 5-Year Regional Haze Progress Reports for the Initial Regional Haze State Implementation Plans, April 2013.

⁴⁰ Note that we are not proposing this specification of 6 months for the progress report aspects of a periodic comprehensive SIP revision (see Section IV.C of this document), in light of the longer time needed for administrative steps between completion of technical work and submission to the EPA.

assist the FLMs, the public and the EPA in understanding the significance of any change in emissions for the adequacy of the SIP to achieve established visibility improvement goals.

The existing § 51.308(g)(6) is proposed to be renumbered as § 51.308(g)(7). Proposed changes to its provisions regarding assessment of progress toward meeting reasonable progress goals would clarify that the reasonable progress goals to be assessed are those established for the period covered by the most recent periodic comprehensive SIP revision. This does not change the intended meaning of this section, and only clarifies that in a progress report, a state is not required to look forward to visibility conditions beyond the end of the current implementation period.

The new § 51.308(g)(6) is proposed to include a provision requiring a state whose long-term strategy includes a smoke management program for prescribed fires on wildland to include a summary of the most recent periodic assessment of the smoke management program including conclusions that were reached in the assessment as to whether the program is meeting its goals regarding improving ecosystem health and reducing the damaging effects of catastrophic wildfires.

A final proposed change to § 51.308(g) is to remove the provisions of the existing § 51.308(g)(7) entirely, relieving the state of the need to review its visibility monitoring strategy within the context of the progress report. This change was requested by many states during our pre-proposal consultations, and is appropriate in our view. Because all states currently rely on their participation in the IMPROVE monitoring program and expect to continue to do so, continuing the requirement for every state to submit a distinct monitoring strategy element in each progress report would consume state and EPA resources with little or no practical value for visibility protection. As needed, the EPA will work with involved states and the IMPROVE Steering Committee to address any needed changes in the visibility monitoring program.

It should be noted that minor changes are proposed to § 51.308(h) regarding actions the state is required to take based on the progress report. These changes merely remove the implication that all progress reports are to be submitted at 5-year intervals, and improve public understanding of the declaration that a state must make when it determines that no SIP revisions are required by removing the word “negative.” Minor changes are also

proposed to § 51.308(i) in order to create a stand-alone requirement that states must consult with FLMs regarding progress reports. This stand-alone requirement is needed if progress reports are not SIP revisions, because at present the FLM consultation requirements are applicable only to SIP revisions.

G. Changes to Reasonably Attributable Visibility Impairment Provisions

The EPA is proposing extensive changes to 40 CFR 51.300 through 51.308 in regard to reasonably attributable visibility impairment. As discussed in Section III of this document, the reasonably attributable visibility impairment provisions were originally promulgated in 1980, when technology for evaluating visibility impairment and its causes was in its infancy and visual observation of “plume blight” was the main method of determining whether a source was affecting a mandatory Class I area. Since that time, there have been many advances in ambient monitoring, emissions quantification, emission control technology and meteorological and air quality modeling. These advances have been built into the regional haze program, such that state compliance with the Regional Haze Rule’s requirements will largely ensure that progress is made towards the goal of natural visibility conditions. Therefore, it is likely that some aspects of the reasonably attributable visibility impairment provisions of the visibility regulations have less potential benefit than they did when they originally took effect over 3 decades ago. In addition, the reasonably attributable visibility impairment provisions have received few amendments over the years, including during amendments made by the Regional Haze Rule in 1999 where the changes to integrate the reasonably attributable visibility impairment assessment and mitigation provisions with the new regional haze program requirements were limited to putting the two separately designed programs on the same recurring schedule. This has left a substantial amount of confusing and outdated language within the current visibility regulations including seemingly overlapping and redundant requirements, particularly between §§ 51.302 and 51.306. Also, as noted in Section III.A of this document, in actual practice the portion of the reasonably attributable visibility impairment provisions mandating periodic assessment of reasonably attributable visibility impairment by states (or by the EPA in the case of states that do not have an approved reasonably

attributable visibility impairment SIP) has not resulted in any additional emission control requirements being placed on emission sources. While there have historically been very few certifications of existing reasonably attributable visibility impairment by an FLM, in several situations a certification by an FLM has ultimately resulted in new controls or changes in source operation.

The EPA therefore believes it is time to bring clarity to the reasonably attributable visibility impairment provisions of the rule and enhance the potential for environmental protection. In brief, our proposed changes would (1) eliminate recurring requirements on states that we believe have no significant benefit for visibility protection;⁴¹ (2) clarify and strengthen the existing provisions under which states must address reasonably attributable visibility impairment when an FLM certifies that such impairment is occurring in a particular Class I area due to a single source or a small number of sources; (3) remove existing FIP provisions that require the EPA to periodically assess whether reasonably attributable visibility impairment is occurring and to respond to FLM certifications; and (4) edit various portions of §§ 51.300–308 to make them clearer and more compatible with each other. The substantive and clarifying changes are described in the following discussion in order of section number. The EPA seeks comment on each of the following proposed changes, as well as suggestions for alternative approaches to modernizing the reasonably attributable visibility impairment provisions.

The EPA is proposing to amend § 51.300, Purpose and applicability, to expand the reasonably attributable visibility impairment requirements to all states and territories, with the exceptions of Guam, Puerto Rico, American Samoa and the Northern Mariana Islands. These territories have no mandatory Class I areas and are sufficiently far from other Class I areas to have no anticipated impact on visibility in such areas. Under our proposal, the geographic coverage of the reasonably attributable visibility impairment provisions and the regional haze provisions would be the same. The EPA believes these changes would strengthen the visibility program and are appropriate in light of the evolved understanding that pollutants emitted

⁴¹ These changes, when finalized, would mean that those states with SIPs that commit them to periodically assess whether reasonably attributable visibility impairment is occurring at their Class I areas could remove that commitment from their SIPs.

from one or a small number of sources can affect Class I areas many miles away. In other words, emissions occurring in states without Class I areas can affect downwind states with Class I areas. This proposed change would provide these areas with additional protection from reasonably attributable visibility impairment.

The EPA is proposing to amend § 51.301, Definitions, to change the definition of *reasonably attributable*. The current definition of *reasonably attributable* is “attributable by visual observation or any other technique the State deems appropriate.” We are proposing to modify this definition to read “attributable by visual observation or any other appropriate technique.” This change would remove the current implication that only a state can determine what techniques are appropriate, even though the FLMs are charged with certifying reasonably attributable visibility impairment. The proposed change would make it clear that a state does not have complete discretion to determine what techniques are appropriate for attributing visibility impairment to specific sources. It is appropriate that the EPA be able to review the technique(s) that an FLM has relied upon to determine that reasonably attributable visibility impairment is occurring, in light of the views and supporting information provided by both the FLM and the state. While these views and supporting information, regardless of whether provided by the FLM or by the state, will not be presumptive in EPA’s ultimate determination as to whether any attribution technique used is appropriate, the universe of potentially appropriate attribution techniques is not limited to only those techniques that may have been utilized during past reasonably attributable visibility impairment certifications or that have been previously recommended or discussed via EPA guidance or actions. Rather, the aforementioned advances in ambient monitoring, emissions quantification, emission control technology and meteorological and air quality modeling that have occurred in the decades since 1980 make clear that modeling is one possible technique for determining that reasonably attributable visibility impairment is occurring.

Due to the confusing, and in large part outdated, content of § 51.302, the EPA is proposing to delete the entire text of this section and replace it with new language. The new text clearly describes a state’s responsibilities upon receiving a FLM certification of reasonably attributable visibility impairment.

The proposed § 51.302(a) involves FLM certification of reasonably attributable visibility impairment and reads much like the existing § 51.302(c), with the added language that FLMs would identify in the certification which single source or small number of sources is responsible for the reasonably attributable visibility impairment being certified.⁴² Further, the original reasonably attributable visibility impairment formulation did not anticipate a situation where one or a small number of sources in one state could create impairment of visibility in other state(s). Therefore, proposed language is included to explain that the FLMs would provide the certification to the state in which the source or small number of sources is located, which may not necessarily be the state where the visibility impairment occurs. The proposed language also addresses the possible situation that a “small number of sources” may be partially in one state and partially in another, such that a certification might be addressed to multiple states.

The proposed § 51.302(b) describes the required state action in response to any FLM reasonably attributable visibility impairment certification, *i.e.*, regardless of the type of source, namely that a state shall revise its regional haze implementation plan to include a determination, based on the four reasonable progress factors set forth in § 51.308(d)(1)(i)(A), of any controls necessary on the certified source(s) to make reasonable progress toward natural visibility conditions in the affected Class I area. This preserves the current state obligation with much the same wording as in the current section, including the fact that a certification by an FLM would not create a definite state obligation to adopt a new control requirement, but rather only to submit a SIP revision that provides for any controls necessary for reasonable progress. In some cases, this SIP revision could be combined with an already required SIP revision. The EPA would review the responding SIP, and would be available to consult with the state and the certifying FLM as the state

prepares its responding SIP. It would be the EPA, not the certifying FLM, that would determine whether the responding SIP is adequate and the response reasonable. The proposed section further maintains the current requirement that the state include emissions limitations and schedules for compliance, and adds the requirement that SIPs include monitoring, recordkeeping and reporting requirements in order to enforce those emissions limitations.

The proposed § 51.302(c) addresses those situations where an FLM certifies as a reasonably attributable visibility impairment source a BART-eligible source where there is at that time no SIP or FIP in place setting BART emission limits for that source or addressing BART requirements via a better-than-BART alternative program.⁴³ In such an instance, the proposed rule requires the state to revise its regional haze SIP to meet the requirements of § 51.308(e), BART requirements for regional haze visibility impairment, and notes that this requirement exists in addition to the requirements of § 51.302(b) regarding imposition of controls for reasonable progress. The new version of § 51.302(c) clarifies two aspects of the current rule to match the EPA’s past and current interpretations. First, a reasonably attributable visibility impairment certification for a BART-eligible source prior to the EPA’s approval of a state’s BART SIP for that source does not impose any substantive obligation on a state that is over and above the BART obligation imposed by § 51.308. However, the state’s response to the reasonably attributable visibility impairment certification of a BART-eligible source must take into account current information. This may require a state to update an analysis prepared earlier in support of a BART SIP that has not been approved. Second, a reasonably attributable visibility impairment certification of a BART-eligible source after the state’s BART SIP for that source has been approved by the EPA does not trigger a requirement for a new BART determination based on the five statutory factors for BART. Rather, the state’s obligation with respect to that source is the same as for a non-BART eligible source, as stated in the paragraph immediately earlier. This is

⁴² The existing rule text at § 51.302(c)(1) does not explicitly require the FLM to identify a particular source or small number of sources as responsible for the reasonably attributable impairment, but the EPA and the FLMs understand that such identification should be part of a certification. See 45 FR 80086, “The Federal Land Manager may provide the State with a list of sources suspected of causing or contributing to visibility impairment in the mandatory Class I Federal area.” Under the proposed new language of § 51.302(b), if the FLM does not identify the source or small number of sources causing the impairment, the certification would not create any obligation on the state to respond with a SIP revision.

⁴³ Although most of the BART requirements have been addressed in most states, there remain a handful of states with BART obligations. In addition, there is litigation over the BART element in some approved SIPs and promulgated FIPs. We expect that this situation may exist in one or more states at some time after the effective date of the final rule.

true regardless of how the state's SIP has addressed the BART requirement for the source, whether through source-specific emission limits, an alternative better-than-BART analysis, or the special provisions of § 51.309, which may have not resulted in any new emission limit for the source.

Regarding the time schedule for state response to an FLM certification of reasonably attributable visibility impairment, we are considering a number of possible approaches for the final rule, with proposed rule text provided for three alternative approaches referred to as options one, two and three.

The first alternative proposed rule text at, option one, § 51.302(d) would retain the existing requirement for a state to respond to a reasonably attributable visibility impairment certification with a SIP revision within 3 years regardless of when the certification is made in the cycle of periodic comprehensive SIP revisions.

The second alternative proposed rule text, option two, at § 51.302(d) would require the state's responsive SIP revision to be submitted on the due date of the next progress report (but not as part of the progress report, if the final

rule does not require progress reports themselves to be submitted as SIP revisions) or the next periodic comprehensive SIP revision, whichever is earlier, provided the earlier date is at least 2 years after the RAVI certification.

The third alternative proposed rule text, option three, at § 51.302(d) provides for different deadlines for the state response to the certification depending on when in the cycle of periodic comprehensive SIP revisions the reasonably attributable visibility impairment certification is made. Table 1 provides specific examples of how application of the third alternative approach in the proposed rule text would determine due dates for the state response to a certification.

- If the certification is made more than 2 years prior to the due date for any periodic comprehensive regional haze SIP revision required under § 51.308(f) (but, with respect to the SIP due for the just-prior period, not so early as to be within the 6-month window described next), then a state must respond to the certification in that upcoming SIP revision. Failure to respond adequately would prevent full approval of that SIP revision. If the certification is made more than 2 years

before the SIP due date, the state would have more than 2 years to respond, except as provided in the next bullet.⁴⁴

- If the certification is made less than 2 years prior to the due date for any periodic comprehensive SIP revision (but no more than 6 months subsequent to the submission date of that periodic comprehensive regional haze SIP revision or a SIP revision that amends a previous submission in a way that affects the emission limits applicable to the reasonably attributable visibility impairment-certified source),⁴⁵ then the state must submit a revision to its regional haze SIP within 2 years from the date of certification. The EPA believes that in this second timing situation, when the state's analytical infrastructure has been recently used to prepare a SIP revision and thus would not be in need of much, if any, refreshment, it is appropriate to require a responding SIP revision without waiting longer than 2 years for the next periodic comprehensive SIP revision. In this timing situation, the EPA would act on the state's standard regional haze SIP without regard to the not-yet-due obligation for a reasonably attributable visibility impairment-response SIP revision.

TABLE 1—EXAMPLE FLM REASONABLY ATTRIBUTABLE VISIBILITY IMPAIRMENT CERTIFICATION DATES AND CORRESPONDING DUE DATES FOR STATE RESPONSE UNDER THE THIRD ALTERNATIVE PROPOSED RULE TEXT (OPTION THREE).

[All assume submission of a SIP revision by July 31, 2021, unless otherwise noted.]

Date of FLM certification	Proposed due date for state response
July 30, 2019	July 31, 2021.
August 1, 2019	August 1, 2021.
January 30, 2022	January 30, 2024.
February 1, 2022	July 31, 2028.
April 1, 2022, after late submission of a SIP on March 1, 2022	April 1, 2024.
August 31, 2022, after revised SIP submission on July 31, 2021, affecting the source identified in the reasonably attributable visibility impairment certification.	August 31, 2024.

The final rule may incorporate any one of these three proposals, or may combine features of these proposals.

It is important to note that regardless how the final rule sets the deadline for the state's responsive SIP revision, if the reasonable progress goals in the periodic comprehensive regional haze SIP for a

state with a Class I area (and thus required to have reasonable progress goals in its SIP for that area) have been approved prior to the approval of its own or a contributing state's separate reasonably attributable visibility impairment-response SIP, the state would not be required to revisit and

revise its reasonable progress goals to take into account any additional emission reductions from the certified source until the next due date for a periodic comprehensive SIP revision.

Proposed changes to § 51.303, Exemptions from control, are minor edits to paragraph (a) designed to

⁴⁴ Under the third alternative proposed rule text, for a certification made between the 2021 and 2028 SIP due dates, the state might have up to 6.5 years to respond, assuming the next bullet does not apply. For a certification made between the 2028 and 2038 due dates, the state might have up to 9.5 years to respond.

⁴⁵ If a certification is made not too long after a SIP due date, this parenthetical provision contained in the third alternative proposed rule text would operate to require the SIP revision needed to respond to the reasonably attributable visibility impairment certification to be due sooner than the

6.5 or 9.5 year extreme noted in the previous footnote.

correctly refer to the new § 51.302(c) as well as to the BART provisions in § 51.308(e). These proposed changes do not alter which existing facilities may apply to the Administrator for an exemption from BART. Rather, the proposed changes simply make the language more clear and direct the reader to the appropriate sections for reference information.

Proposed changes to § 51.304, Identification of integral vistas, are more extensive. An integral vista is defined in § 51.301 as a view perceived from within the Class I area of a specific landmark or panorama located outside the boundary of the Class I area. The current version of § 51.304 was written at a time when FLMs were still in the process of identifying integral vistas. We are proposing to remove antiquated language in § 51.304 in light of the fact that FLMs were required to identify any such integral vistas on or before December 31, 1985. The proposed language would explain this fact as well as list those few integral vistas that were properly identified during the applicable time period. States would continue to be subject to the requirement that these integral vistas be listed in their SIPs. The EPA notes that the current version of 40 CFR part 51, subpart P is not perfectly clear on how the existence of an identified integral vista affects obligations on states and sources, but we are not proposing any clarification as part of this rulemaking.⁴⁶ We invite comment on whether all references to integral vistas should be removed from subpart P, and we may do so in the final rule.

Proposed changes to § 51.305, Monitoring for reasonably attributable visibility impairment, involve adding language stating that the requirement for a state to include in a periodic comprehensive SIP revision a monitoring strategy specifically for evaluating reasonably attributable visibility impairment in Class I area(s) only applies in situations where the Administrator, Regional Administrator or FLM has advised the state of a need for it. In concept, special monitoring for reasonably attributable visibility impairment purposes might be appropriate for a Class I area without an IMPROVE monitoring station or when

the impairment is from a relatively narrow plume such that the existing IMPROVE monitoring site is not affected. The nature of the special monitoring might be situation-specific, and might be the same as or different than the IMPROVE monitoring protocols. These proposed changes would reduce the paperwork that states are required to submit to the EPA on a recurring schedule, since under the proposed language a state containing one or more Class I areas and participating in the IMPROVE monitoring program would be relieved of the need to include information in its SIP regarding monitoring to specifically assess reasonably attributable visibility impairment absent being advised to do so. A strategy for monitoring for regional haze visibility impairment under § 51.308(d)(4) is still required and any monitoring for reasonably attributable visibility impairment under § 51.305 would be in addition to that requirement.

Section 51.306, on long-term strategy requirements for reasonably attributable visibility impairment, is proposed to be completely removed and reserved. Like the current version of § 51.302, the language of this section is outdated. In this case, the EPA believes it makes sense to delete the entire text of this section and instead refer to long-term strategy requirements for reasonably attributable visibility impairment within the text of § 51.308, specifically in § 51.308(f)(2). In this way, long-term strategy requirements for reasonably attributable visibility impairment would be retained in clearer form, and the visibility program would be more understandable to states and the public by listing the long-term strategy requirements for both regional haze and reasonably attributable visibility impairment in one place. Such a change would also reduce the planning burden on states by making clear in § 51.308(f)(2) that a long-term strategy for reasonably attributable visibility impairment is not required without an FLM having made a reasonably attributable visibility impairment certification under § 51.302(a).

Several proposed changes in § 51.308 were discussed in Sections IV.A, B, C, D, E and F of this document. We are also proposing changes in § 51.308 related to reasonably attributable visibility impairment. The proposed addition of § 51.308(c) (currently a reserved section) explains the relationship between regional haze and reasonably attributable visibility impairment and the state requirements for each, including that a state would not be required to address reasonably

attributable visibility impairment unless triggered to do so by an FLM certification under § 51.302(a), and that a state would not be required to re-address its monitoring strategy for reasonably attributable visibility impairment unless advised to perform monitoring as described in the proposed § 51.305.

The EPA is also proposing changes to the language of § 51.308(f)(2) to describe when reasonably attributable visibility impairment must be addressed in the long-term strategy required for regional haze. Finally, proposed changes to § 51.308(f)(6) regarding the monitoring strategy requirements for SIPs would remove references to § 51.305 that exist in the corresponding subsection in § 51.308(d), namely, subsection (4) (again, regarding monitoring for reasonably attributable visibility impairment).

Proposed changes to § 51.308(e), BART, relate to a state's option to enact an emissions trading program or other alternative measure in lieu of source-specific BART. Under the proposed approach, if a source is already covered for BART by an approved emissions trading program or other alternative measure (or the program codified in § 51.309), certification of that source by an FLM would not trigger a new BART determination. However, certification would still trigger the requirement for a reasonable progress analysis. Proposed changes to § 51.308(e)(4) are similar in nature and motivated by the same concerns.

Consistent with our proposal to remove the requirement for states to periodically assess reasonably attributable visibility impairment, we are also proposing to amend many sections of 40 CFR part 52, to remove provisions that establish FIPs that require the EPA to periodically assess whether reasonably attributable visibility impairment exists at Class I areas in certain states and to address it if it does, and to respond to any reasonably attributable visibility impairment certification that may be directed to a state that does not have an approved reasonably attributable visibility impairment SIP. These changes include the removal of §§ 52.26 and 52.29, which now contain the statement of the EPA's obligations, and specific provisions for 30 states to establish that §§ 52.26 and 52.29 are applicable to those states.

H. Consistency Revisions Related to Permitting of New and Modified Major Sources

Proposed changes to § 51.307, New Source Review, involve a few proposed

⁴⁶ Section 51.301 states that "visibility in any mandatory Class I Federal area includes any integral vista associated with that area" but also that "adverse impact on visibility" does not include effects on integral vistas. Section 307(b) requires that SIPs provide for the review of any new major stationary source or major modification that may have an impact on any integral vista of a mandatory Class I Federal area. Other references to "integral vista" are merely definitional or relate to the procedure for identifying integral vistas.

changes to maintain consistency with other sections of the Regional Haze Rule and with the CAA. The first change involves § 51.307(b)(1) concerning integral vistas, for which we are proposing deletion of obsolete language regarding the now-expired identification period for integral vistas. Instead, the newly proposed addition of a listing of integral vistas in § 51.304(b) will be referenced. In section § 51.307(b)(2), the deletion of a reference to specific sections of the CAA is proposed in order to remove unnecessary language, as the EPA believes a reference simply to section “107(d)(1)” is sufficient.

I. Changes to FLM Consultation Requirements

The EPA believes that state consultation with FLMs is a critical part of the creation of quality SIPs. As mentioned earlier, the EPA is proposing to extend the FLM consultation requirements of § 51.308(i)(2) to progress reports that are not SIP revisions. In addition, the EPA believes further edits to § 51.308(i)(2) are necessary because the current requirement for consultation at least 60 days prior to a public hearing may not occur sufficiently early in the state's planning process to meaningfully inform the state's development of the long-term strategy. This proposed rule change would add a requirement that such consultation occur early enough to allow the state time for full consideration of FLM input, but no fewer than 60 days prior to a public hearing or other public comment opportunity. A consultation opportunity that takes place no less than 120 days prior to a public hearing or other public comment opportunity would be deemed to have been “early enough.”

Finally, the EPA notes that pursuant to the existing provisions of § 51.307(a), the SIP for every state must require the new source permitting authority to consult with FLMs regarding new source review of any new major stationary source or major modification that would be constructed in an area that is designated attainment or unclassified that may affect visibility in any Class I Federal area. As required by the regulations, that consultation must include sharing with the FLMs a copy of all information relevant to the permit application for the proposed new stationary source or major modification. The regulations also specify that this material must be provided within particular time frames. Also, under § 51.307(b)(2), a proposed new major source or major modification locating in a nonattainment area is subject to review if it may have an impact on

visibility in any mandatory Class I area. Two EPA guidance documents interpret the consultation requirement, particularly with regard to evaluating whether a proposed new major source or major modification may affect visibility in a Class I area and thus consultation is required.⁴⁷ The EPA regional offices can provide additional assistance to states in ensuring that their permitting programs meet the regulations and that the appropriate consultation is being conducted for affected permits. No changes are being proposed to these consultation requirements.

J. Extension of Next Regional Haze SIP Deadline From 2018 to 2021

The EPA is proposing to amend § 51.308(f) to move the compliance deadline for the submission of the next periodic comprehensive SIP revisions from July 31, 2018, to July 31, 2021. Under this proposal, states would retain the option of submitting their SIP revisions before July 31, 2021. Regardless of the date on which a state chooses to submit its periodic comprehensive SIP revision, the EPA would evaluate that SIP using the same criteria. The EPA is proposing to leave the end date for the second implementation period at 2028, regardless of when SIP revisions are submitted. We are proposing this change as a one-time schedule adjustment. Periodic comprehensive SIP revisions for the third planning will be due on July 31, 2028, with future periodic comprehensive SIP revisions due every 10 years thereafter.

We are proposing this extension of the due date for periodic comprehensive SIP revisions to allow states to coordinate regional haze planning with other regulatory programs, including but not limited to the Mercury and Air Toxics Standards,⁴⁸ the 2010 1-hour SO₂ NAAQS,⁴⁹ the 2012 annual PM_{2.5} NAAQS,⁵⁰ and the Clean Power Plan.⁵¹ With this one-time extension, states

would be able to gather more information on the effects of these programs and develop periodic comprehensive SIP revisions that are more integrated with state planning for these other programs, an advantage that was widely confirmed in our discussions with states. The Regional Haze Rule requires states to address the impacts of other regulatory programs when developing their regional haze SIPs. A number of other regulatory programs will be taking effect in the coming years, which presents an excellent opportunity for states to coordinate their strategies to address significant sources of emissions. The EPA expects this cross-program coordination to lead to better overall policies and enhanced environmental protection.

K. Changes to Scheduling of Regional Haze Progress Reports

The EPA is proposing to amend the requirements in 40 CFR 51.308(g) and (h) regarding the timing of submission of reports evaluating progress towards the natural visibility goal. Under the current rule, regional haze progress reports are required to be submitted 5 years after submission of periodic comprehensive SIP revisions. Because states submitted these first SIP revisions on dates spread across about a 3-year period, many of the due dates for progress reports currently do not fall mid-way between the due dates for periodic comprehensive SIP revisions, as the EPA initially envisioned that they would. Looking forward, the current Regional Haze Rule would in many cases require a progress report shortly before or shortly after a periodic comprehensive SIP revision, at which time it could not be expected to have much utility as a mid-course review of environmental progress or much incremental informational value for the public compared to the data contained in that SIP revision.

Complementing the proposed amendments to 40 CFR 51.308(f) regarding the deadlines for submittal of periodic comprehensive revisions, we propose to amend 40 CFR 51.308 (g) and (h) such that second and subsequent progress reports would be due by January 31, 2025, July 31, 2033, and every 10 years thereafter, placing one progress report mid-way between the due dates for periodic comprehensive SIP revisions. The EPA believes that this timing provides a good balance between allowing the implementation of the most recent SIP revision to have proceeded far enough since its adoption for a review to be possible and worthwhile and having enough time

⁴⁷ New Source Review Workshop Manual—Prevention of Significant Deterioration and Nonattainment Area Permitting (Draft), October 1990, available at: <https://www.epa.gov/sites/production/files/2015-07/documents/1990wman.pdf>; and Appendix A of Timely Processing of Prevention of Significant Deterioration (PSD) Permits when EPA or a PSD-Delegated Air Agency Issues the Permit, October 2012, available at: <https://www.epa.gov/sites/production/files/2015-07/documents/timely.pdf>.

⁴⁸ 77 FR 9304, February 16, 2012.

⁴⁹ 75 FR 35520, June 22, 2010.

⁵⁰ 78 FR 3086, January 15, 2013.

⁵¹ 80 FR 64,662, October 23, 2015. The compliance deadlines in the Clean Power Plan have been stayed by the Supreme Court. Order in Pending Case, *West Virginia v. EPA*, No. 15A773 (Feb. 9, 2016).

remaining before the next comprehensive SIP revision for state action to make changes in its rules or implementation efforts, if necessary, separately from the actions in that next SIP.

Regarding the concept of a progress report also being useful at or near the time of submission of a periodic comprehensive SIP revision, as the EPA envisioned in the 1999 Regional Haze Rule, we note that although they are expressed with somewhat different terminology, in practical terms a progress report would provide little additional information beyond that required to be addressed in a periodic comprehensive SIP revision. The only significant additional information required in a progress report but not explicitly required in a periodic comprehensive SIP revision is the requirement to report on the trend in visibility over the whole period since the baseline period of 2000–2004. While the EPA believes that a state should be aware of, and share with the public, information on the trend in visibility over the whole period since the baseline period of 2000–2004, we believe it would be inefficient to require the preparation of a separate progress report for this purpose. Therefore, we are proposing to limit the requirement for separate progress reports to the one due mid-way between periodic comprehensive SIP revisions, and to add to the requirement for periodic comprehensive SIP revisions a requirement to include this trend information. The EPA believes this approach would substantially reduce administrative burdens and make progress reports of more informational use to the public, with no attendant reduction in environmental protection. The EPA solicits comment on this and any alternative approaches to progress report scheduling.

L. Changes to the Requirement That Regional Haze Progress Reports Be SIP Revisions

The EPA is proposing to amend 40 CFR 51.308(g) regarding the requirements for the form of progress reports. Under the current regulations, progress reports must take the form of SIP revisions that comply with the procedural requirements of 40 CFR 51.102, 40 CFR 51.103 and Appendix V to Part 51—Criteria for Determining the Completeness of Plan Submissions. The EPA included the requirements for progress reports in the Regional Haze Rule primarily with an emphasis toward ensuring that the states remain on track during the 10 years between periodic comprehensive SIP revisions. By

requiring progress reports to be in the form of SIP revisions, the 1999 Regional Haze Rule ensured an opportunity for public input on the progress reports, while specifically pointing out that the EPA “intends for progress reports to involve significantly less effort than a comprehensive SIP revision.” 64 FR 35747 (July 1, 1999). For all SIP revisions, however, the state must provide public notice and a public hearing if requested, and it must conform to certain administrative procedural requirements and provide various administrative material. Also, the submission must be made by an official who is authorized by state law to submit a SIP revision. As a required SIP revision, a finding by the EPA that a state has not submitted a complete progress report by the deadline would start a “clock” for the EPA to prepare, take public comment on, and issue a progress report like the state was required to submit.

We are proposing that progress reports need not be in the form of SIP revisions, but that states must consult with FLMs and obtain public comment on their progress reports before submission to the EPA. We are also proposing that the SIP revision that would be due in 2021 must include a commitment to prepare and submit these progress reports to the EPA according to the proposed revised schedule (*see* previous section). These progress reports would be acknowledged and assessed by the EPA, but our review of these reports would not result in a formal approval or disapproval of them.

The EPA is proposing these changes because it believes these reports are not the kind of state submissions for which the formality of a SIP revision, and the accompanying requirement for the EPA to have to prepare the report within 2 years of finding that a state has failed to do so, are warranted. It is important to note that as part of the EPA’s review of the report, we will follow up with the state on any appropriate next steps. There are also additional remedies, such as undertaking a less formal assessment of the results of the implementation of the previously submitted SIP, that are available to the EPA in the event a state fails to properly submit a progress report. These changes have been widely supported by state air agencies in our pre-proposal consultations because they would allow more efficient use of state resources. This option would relieve states of the obligation to follow the procedural requirements of 40 CFR 51.102 and 51.103. States have expressed concern that these procedural requirements are resource-intensive,

and increase the burden on states by requiring formal procedures be followed when submitting progress reports. By avoiding the specific formal steps required for a SIP revision, including requirements imposed by state law that may involve time-consuming steps beyond those required by the EPA, this proposal may also reduce the time between the completion of the technical analysis in the progress report and when the final report becomes available to the EPA and the public. Thus, progress reports could contain fresher information on the environmental progress being made by a state. Removing the requirement that progress reports be submitted as SIP revisions is consistent with regulatory requirements for similar reports from states for progress reporting or planning purposes where control requirements are not imposed, such as annual monitoring plans required for planning and maintenance of state monitoring networks.⁵²

The EPA invites comment on whether it should finalize this proposed change. Also, the EPA invites comment on changing the progress report scheduling as described in the previous section without making any change to the requirement that progress reports take the form of SIP revisions, and vice versa.

It is important to note that under this option, states would still be required to include the required progress report elements listed in 40 CFR 51.308(g)(1) through (g)(6). Also, § 51.308(h) would continue to require that at the same time the state is required to submit a progress report, it must also take one of four listed actions concerning whether the SIP is adequate to achieve established goals for visibility improvement. Where a state determines that its own SIP is or may be inadequate to ensure reasonable progress due to emissions from sources within the state, the state will continue to have an obligation to revise its SIP to address the plan’s deficiencies within 1 year of its submission of such a determination.

Upon receipt of such progress reports, the EPA would review the reports. In addition, the EPA intends to create a system of logging progress reports as they are received, and making them available to the public. In addition to putting the public on notice that a progress report was received by the EPA, this system would provide the public an opportunity to view the contents of the progress report. Although the EPA would not formally approve or disapprove a progress report,

⁵² See 40 CFR 58.10(a)(1) and (2).

the EPA would still have discretion to assess the adequacy of the SIP, relying in part on the information in the progress report. Under the CAA, a discretionary determination that the SIP is inadequate would create a non-discretionary duty for the EPA to issue a SIP call requiring the state to correct the inadequacy. A failure by the state to submit a progress report could be determined by the EPA to constitute failure to implement the regional haze SIP, given that we are proposing that every regional haze SIP include a commitment to submit the required progress reports (*see* next paragraph).

We are proposing that the next periodic comprehensive SIP revisions (currently due in 2018 but proposed to be due in 2021) would need to include a commitment for states to provide progress reports. The 1999 Regional Haze Rule does not require such a commitment because the current requirement for progress reports to be submitted in the form of SIP revisions makes such a commitment superfluous. The EPA solicits comment on this or alternative approaches to ensuring that states continue to provide progress reports.

M. Changes to Requirements Related to the Grand Canyon Visibility Transport Commission

Section 51.309 has limited applicability going forward because its provisions apply only to 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report, and only to the first regional haze implementation period (*i.e.*, through 2018). Nevertheless, certain conforming amendments at this time are appropriate to avoid confusion going forward. Section 51.309(d)(4)(v) is proposed to be amended to correctly refer to the new § 51.302(b) (in lieu of (e), which no longer exists in the proposed section § 51.302) and to delete the reference to BART since it does not appear in § 51.302(b). The title of § 51.309(c)(10), Periodic implementation plan revisions, is proposed to be amended to include “and progress reports” at the end. This insertion would complement the proposed amendments that will no longer require progress reports be considered SIP revisions by making clear from the title of the section that it applies to both SIP revisions and progress reports. Within § 51.309(c)(10), amendments are proposed that would preserve the existing requirement that the progress reports due in 2013 were to take the form of SIP revisions, but direct the reader to the provisions of § 51.308(g) for subsequent progress reports. In similar fashion,

§ 51.309(c)(10)(i) and (ii) would be amended to specifically refer to the 2013 progress reports, while § 51.309(c)(10)(iii) would point to § 51.308(g) for subsequent progress reports. Section 51.309(c)(10)(iv) is proposed to be added to indicate that subsequent progress reports are subject to the requirements of § 51.308(h) regarding determinations of adequacy of existing SIPs.

A final change in section 51.309 appears in § 51.309(g)(2)(iii). This change is purely to correct a typographical error and the EPA will therefore not consider comments on this subsection.

V. Environmental Justice Considerations

The EPA believes this action would not have disproportionately high and adverse human health, well-being or environmental effects on minority, low-income or indigenous populations because it would not negatively affect the level of protection provided to human health, well-being or the environment under the CAA’s visibility protection program. When promulgated, these proposed regulations will revise procedural and timing aspects of the SIP requirements for visibility protection but will not substantively change the requirement that SIPs provide for reasonable progress towards the goal of natural visibility conditions. These SIP requirements are designed to protect all segments of the general population.

The EPA acknowledges that the proposed delay in submitting SIP revisions from 2018 to 2021 might cause delays in when sources must comply with any new requirements. However, because neither the CAA nor the existing Regional Haze Rule set specific deadlines for when sources must comply with any new requirements in a state’s next periodic comprehensive SIP revision, states have substantial discretion in establishing reasonable compliance deadlines for measures in their SIPs. Given this, we expect to see a range of compliance deadlines in the next round of regional haze SIPs from early in the second implementation period to 2028, depending on the types of measures adopted, whether or not these proposed rule changes are finalized. Thus, the EPA believes the delay in the periodic comprehensive SIP revision submission deadline from 2018 to 2021 will not meaningfully reduce the overall progress towards better visibility made by the end of 2028 and will not meaningfully adversely affect environmental protection for all general segments of the population.

VI. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the OMB for review because it raises novel policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned the EPA ICR number 2540.01. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0421. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing these amendments to requirements for state regional haze planning to change the requirements that must be met by states in developing regional haze SIPs, periodic comprehensive SIP revisions, and progress reports for regional haze. The main intended effects of this rulemaking are to provide states with additional time to submit regional haze plans for the second implementation period and to provide states with an improved schedule and process for progress report submission. Further reductions in burden on states include this proposal’s removal of the requirement for progress reports to be SIP revisions, clarifying that states are not required to project emissions inventories as part of preparing a progress report, and relieving the state of the need to review its visibility monitoring strategy within the context of the progress report. With all of these proposed changes considered, the overall burden on states would represent a reduction compared to what would otherwise occur if the provisions of the current rule were to stay in place. Total estimated burden is estimated to be reduced from 10,307 hours (per year) to 5,974 hours (per year), and total estimated cost is expected to be reduced from \$510,498 (per year) to \$295,876 (per year). All states are required to submit regional haze SIPs and progress reports under this rule.

Respondents/affected entities: All state air agencies.

Respondent’s obligation to respond: Mandatory, in accordance with the

provisions of the 1999 Regional Haze Rule.

Estimated number of respondents: 52: 50 states, District of Columbia and U.S. Virgin Islands.

Frequency of response:

Approximately every 10 years (SIP) and approximately every 10 years (progress report).

Total estimated burden: 5,974 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$295,876 (per year), includes \$0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to oir_a_submissions@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than June 3, 2016. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Entities potentially affected directly by this proposal include state governments, and for the purposes of the RFA, state governments are not considered small government. Tribes may choose to follow the provisions of the Regional Haze Rule but are not required to do so. Other types of small entities are not directly subject to the requirements of this rule. The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small

governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. The CAA imposes the obligation for states to submit regional haze SIPs. In this rule, the EPA is proposing to revise those requirements in a manner that would not increase the obligation of any state, local or tribal governments or the private sector. In this rule, the EPA is also proposing to extend the reasonably attributable visibility impairment certification provisions to some additional states, but these states are not small governments and any mandate on the private sector would be indirect since this rule does not mandate how an affected state should address such a certification. Therefore, this action is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The requirement to submit regional haze SIPs is mandated by the CAA. Thus, Executive Order 13132 does not apply to these proposed regulations.

In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA has already consulted extensively with state air agency officials prior to this proposal. The EPA specifically solicits comments on this proposed action from state and local officials. In addition, the EPA intends to meet with organizations representing state and local officials during the comment period for this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications as specified in Executive Order 13175. It would not have a substantial direct effect on one or more Indian tribes. Furthermore, these proposed regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in characterizing air quality and developing plans to protect visibility in Class I areas. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA solicits comment on this proposed action from tribal officials. The EPA also intends to offer to consult with any tribal government to discuss this proposal. See also Section III.B.5 of this document for further discussion regarding the role of tribes in visibility protection.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of our evaluation are contained in Section V of this document.

VII. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7403, 7407, 7410 and 7601.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Nitrogen dioxide, Particulate matter, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: April 25, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. In § 51.300, revise paragraph (b) to read as follows:

§ 51.300 Purpose and applicability.

(b) *Applicability*—The provisions of this subpart are applicable to all States as defined in section 302(d) of the Clean Air Act (CAA) except Guam, Puerto Rico, American Samoa, and the Northern Mariana Islands.

■ 3. In § 51.301:

■ a. Add a definition for “Clearest days;”

■ b. Revise the definition of “Deciview;”

■ c. Add definitions for “Deciview index” and “End of the applicable implementation period;”

■ d. Revise the definitions of “Federal Class I area,” “Least impaired days,” “Mandatory Class I Federal Area,” and “Most impaired days;”

■ e. Add definitions for “Natural visibility conditions” and “Prescribed fire;”

■ f. Revise the definition of “Reasonably attributable;”

■ g. Add a definition for “Visibility;”

■ h. Revise the definitions of “Visibility impairment;” and

■ i. Add definitions for “Wildfire,” and “Wildland.”

The revisions and additions read as follows:

§ 51.301 Definitions.

Clearest days means the twenty percent of monitored days in a calendar year with the lowest values of the deciview index.

Deciview is the unit of measurement on the deciview index scale for quantifying in a standard manner human perceptions of visibility.

Deciview index means a value for a day that is derived from calculated or measured light extinction, such that uniform increments of the index correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to very obscured. The deciview index is calculated based on the following equation (for the purposes of calculating deciview using IMPROVE data, the atmospheric light extinction coefficient must be calculated from aerosol measurements and an estimate of Rayleigh scattering):

Deciview index = $10 \ln (b_{\text{ext}}/10 \text{ Mm}^{-1})$.
 b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

End of the applicable implementation period means December 31 of the year in which the next periodic comprehensive implementation plan revision is due under § 51.308(f).

Federal Class I area or *Class I Federal area* means any Federal land that is classified or reclassified Class I. Mandatory Federal Class I areas are identified in part 81, subpart D. Other Federal Class I areas are identified in part 52 of this title.

Least impaired days means the twenty percent of monitored days in a calendar year with the lowest amounts of visibility impairment.

Mandatory Class I Federal Area or *Mandatory Federal Class I Area* means any area identified in part 81, subpart D of this title.

Most impaired days means the twenty percent of monitored days in a calendar year with the highest amounts of visibility impairment.

Natural visibility conditions means visibility (contrast, coloration, and texture) that would have existed under natural conditions. Natural visibility conditions vary with time and location, and are estimated or inferred rather than directly measured.

Prescribed fire means any fire intentionally ignited by management actions in accordance with applicable laws, policies, and regulations to meet specific land or resource management objectives.

Reasonably attributable means attributable by visual observation or any other appropriate technique.

Visibility means the degree of perceived clarity when viewing objects at a distance. Visibility includes perceived changes in contrast, coloration, and texture of elements in a scene.

Visibility impairment means any humanly perceptible difference between actual visibility conditions and natural visibility conditions. Because natural visibility conditions can only be estimated or inferred, visibility impairment also is estimated or inferred rather than directly measured.

Wildfire means any fire started by an unplanned ignition caused by lightning; volcanoes; other acts of nature; unauthorized activity; or accidental, human-caused actions, or a prescribed fire that has been declared to be a wildfire. A wildfire that predominantly occurs on wildland is a natural event.

Wildland means an area in which human activity and development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.

■ 4. Revise § 51.302, to read as follows:

§ 51.302 Reasonably attributable visibility impairment.

(a) The affected Federal Land Manager may certify, at any time, that there exists reasonably attributable impairment of visibility in any mandatory Class I Federal area and identify which single source or small number of sources is responsible for such impairment. The affected Federal Land Manager will provide the certification to the State in which the impairment occurs and the State(s) in which the source(s) is located.

(b) The State(s) in which the source(s) is located shall revise its regional haze implementation plan, in accordance with the schedules set forth in paragraphs (d)(1) and (2) of this section, to include for each source or small number of sources that the Federal Land Manager has identified in whole or in part for reasonably attributable visibility impairment as part of a certification under paragraph (a) of this section:

(1) A determination, based on the factors set forth in § 51.308(d)(1)(i)(A), of the control measures, if any, that are necessary with respect to the source or sources in order for the plan to make reasonable progress toward natural visibility conditions in the affected Class I Federal area;

(2) Emission limitations that reflect the degree of emission reduction achievable by such control measures and schedules for compliance as expeditiously as practicable; and

(3) Monitoring, recordkeeping, and reporting requirements sufficient to ensure the enforceability of the emission limitations.

(c) If a source that the Federal Land Manager has identified as responsible in whole or in part for reasonably attributable visibility impairment as part of a certification under paragraph (a) of this section is a BART-eligible source, and if there is not in effect as of the date of the certification a fully or conditionally approved implementation plan addressing the BART requirement for that source (which existing plan may incorporate either source-specific emission limitations reflecting the emission control performance of BART, an alternative program to address the BART requirement under § 51.308(e)(2), (3), and (4), or for sources of SO₂ a program approved under paragraph § 51.309(d)(4)), then the State shall revise its regional haze implementation plan to meet the requirements of § 51.308(e) with respect to that source, taking into account current conditions related to the factors listed in § 51.308(e)(1)(ii)(A). This requirement is in addition to the requirement of paragraph (b) of this section.

Proposed Paragraph (d): Option One

(d) For any existing reasonably attributable visibility impairment the Federal Land Manager certifies to the State(s) under paragraph (a) of this section, the State(s) shall submit a revision to its regional haze implementation plan that includes the elements described in paragraph (b) and

(c) no later than 3 years after the date of the certification. The State(s) is not required at that time to also revise its reasonable progress goals to reflect the additional emission reductions required from the source or sources.]

Proposed Paragraph (d): Option Two

(d) For any existing reasonably attributable visibility impairment the Federal Land Manager certifies to the State(s) under paragraph (a) of this section more than 2 years prior to the due date for a regional haze implementation plan revision required under § 51.308(f) or the due date for a regional haze progress report required under § 51.308(g), the State(s) shall include the elements described in paragraphs (b) and (c) in a plan revision by the due date for that implementation plan revision as part of such revision or by the due date for the progress report,

whichever is due first, provided that the earlier date is at least 2 years after the certification. For plan revisions submitted by the due date for the progress report, the State(s) is not required at that time to also revise its reasonable progress goals to reflect the additional emission reductions required from the source or sources.]

Proposed Paragraph (d): Option Three

(d)(1) For any existing reasonably attributable visibility impairment the Federal Land Manager certifies to the State(s) under paragraph (a) of this section more than 2 years prior to the due date for a regional haze implementation plan revision required under § 51.308(f), the State(s) shall include the elements described in paragraphs (b) and (c) in such revision and such elements shall be considered a required part of such revision.

(2) For any existing reasonably attributable visibility impairment the Federal Land Manager certifies to the State(s) under paragraph (a) of this section less than 2 years prior to the due date for a regional haze implementation plan revision required under § 51.308(f), but no more than 6 months subsequent to the submission date of that implementation plan revision or no more than 6 months subsequent to a further plan revision that changes the emission limitation for the subject source, the State(s) shall submit a revision to its regional haze implementation plan that includes the elements described in paragraph (b) and (c) no later than 2 years after the date of the certification. The State(s) is not required at that time to also revise its reasonable progress goals to reflect the additional emission reductions required from the source or sources.]

■ 5. Revise § 51.304 to read as follows:

§ 51.304 Identification of integral vistas.

(a) Federal Land Managers were required to identify any integral vistas on or before December 31, 1985, according to criteria the Federal Land Managers developed. These criteria must have included, but were not limited to, whether the integral vista was important to the visitor's visual experience of the mandatory Class I Federal area.

(b) The following integral vistas were identified by Federal Land Managers: at Roosevelt Campobello International Park, from the observation point of Roosevelt cottage and beach area, the viewing angle from 244 to 256 degrees; and at Roosevelt Campobello International Park, from the observation point of Friar's Head, the viewing angle from 154 to 194 degrees.

(c) The State must list in its implementation plan any integral vista listed in paragraph (b) of this section.

(d) [Reserved]

■ 6. Section 51.305 is revised to read as follows:

§ 51.305 Monitoring for reasonably attributable visibility impairment.

For the purposes of addressing reasonably attributable visibility impairment, if the Administrator, Regional Administrator, or the affected Federal Land Manager has advised a State containing a mandatory Class I Federal area of a need for monitoring to assess reasonably attributable visibility impairment at a mandatory Class I Federal area in addition to the monitoring currently being conducted to meet the requirements of § 51.308(d)(4), the State must include in the next implementation plan revision to meet the requirement of § 51.308(f) an appropriate strategy for evaluating reasonably attributable visibility impairment in the mandatory Class I Federal area by visual observation or other appropriate monitoring techniques. Such strategy must take into account current and anticipated visibility monitoring research, the availability of appropriate monitoring techniques, and such guidance as is provided by the Agency.

§ 51.306 [Removed and Reserved]

■ 7. Section 51.306 is removed and reserved.

■ 8. In § 51.307, revise paragraphs (a) introductory text and (b)(1) and (2) to read as follows:

§ 51.307 New source review.

(a) For purposes of new source review of any new major stationary source or major modification that would be constructed in an area that is designated attainment or unclassified under section 107(d) of the CAA, the State plan must, in any review under § 51.166 with respect to visibility protection and analyses, provide for:

* * * * *

(b) * * *

(1) That may have an impact on any integral vista of a mandatory Class I Federal area listed in § 51.304(b), or

(2) That proposes to locate in an area classified as nonattainment under section 107(d)(1) of the Clean Air Act that may have an impact on visibility in any mandatory Class I Federal area.

* * * * *

■ 9. In § 51.308:

■ a. Revise paragraph (b);

■ b. Add paragraph (c);

■ c. Revise paragraphs (d)(2)(iv), (d)(3), (e)(2)(v), (e)(4) and (5), and (f);

■ d. Revise paragraphs (g) introductory text, (g)(3) through (7), (h) introductory text, (h)(1), (i)(2) introductory text, and (i)(3) and (4).

The revisions and additions read as follows:

§ 51.308 Regional haze program requirements.

* * * * *

(b) *When are the first implementation plans due under the regional haze program?* Except as provided in § 51.309(c), each State identified in § 51.300(b) must submit, for the entire State, an implementation plan for regional haze meeting the requirements of paragraphs (d) and (e) of this section no later than December 17, 2007.

(c) *What is the relationship between requirements for regional haze and requirements for reasonably attributable visibility impairment?* A State must address any reasonably attributable visibility impairment certified by a Federal Land Manager under § 51.302(a) in its regional haze implementation plan, as required by § 51.302(b)–(d). A State must also meet the requirements of § 51.305 if the Administrator, Regional Administrator, or the Federal Land Manager has advised a State under § 51.305 of a need for additional monitoring to assess reasonably attributable visibility impairment at a mandatory Class I Federal area.

(d) * * *

(2) * * *

(iv) For the first implementation plan addressing the requirements of paragraphs (d) and (e) of this section, the number of deciviews by which baseline conditions exceed natural visibility conditions for the most impaired and least impaired days.

(3) *Long-term strategy for regional haze.* Each State listed in § 51.300(b) must submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State that may be affected by emissions from the State. The long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by States having mandatory Class I Federal areas. In establishing its long-term strategy for regional haze, the State must meet the following requirements:

* * * * *

(e) * * *

(2) * * *

(v) At the State's option, a provision that the emissions trading program or other alternative measure may include a

geographic enhancement to the program to address the requirement under § 51.302(b) related to reasonably attributable impairment from the pollutants covered under the emissions trading program or other alternative measure.

* * * * *

(4) A State subject to a trading program established in accordance with § 52.38 or § 52.39 under a Transport Rule Federal Implementation Plan need not require BART-eligible fossil fuel-fired steam electric plants in the State to install, operate, and maintain BART for the pollutant covered by such trading program in the State. A State that chooses to meet the emission reduction requirements of the Transport Rule by submitting a SIP revision that establishes a trading program and is approved as meeting the requirements of § 52.38 or § 52.39 also need not require BART-eligible fossil fuel-fired steam electric plants in the State to install, operate, and maintain BART for the pollutant covered by such trading program in the State. A State may adopt provisions, consistent with the requirements applicable to the State for a trading program established in accordance with § 52.38 or § 52.39 under the Transport Rule Federal Implementation Plan or established under a SIP revision that is approved as meeting the requirements of § 52.38 or § 52.39, for a geographic enhancement to the program to address any requirement under § 51.302(b) related to reasonably attributable impairment from the pollutant covered by such trading program in that State.

(5) After a State has met the requirements for BART or implemented emissions trading program or other alternative measure that achieves more reasonable progress than the installation and operation of BART, BART-eligible sources will be subject to the requirements of paragraphs (d) and (f) of this section, as applicable, in the same manner as other sources.

* * * * *

(f) *Requirements for periodic comprehensive revisions of implementation plans for regional haze.* Each State identified in § 51.300(b) must revise and submit its regional haze implementation plan revision to EPA by July 31, 2021, July 31, 2028, and every 10 years thereafter. The plan revision due on or before July 31, 2021 must include a commitment by the State to meet the requirements of paragraph (g). In each plan revision, the State must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory

Class I Federal area located outside the State that may be affected by emissions from within the State. To meet the core requirements for regional haze for these areas, the State must submit an implementation plan containing the following plan elements and supporting documentation for all required analyses:

(1) *Calculations of baseline, current, and natural visibility conditions; progress to date; and the uniform rate of progress.* For each mandatory Class I Federal area located within the State, the State must determine the following:

(i) *Baseline visibility conditions for the most impaired and clearest days.* The period for establishing baseline visibility conditions is 2000 to 2004. For purposes of calculating and displaying the uniform rate of progress, baseline visibility conditions must be associated with the last day of this period. Baseline visibility conditions must be calculated, using available monitoring data, by establishing the average deciview index for the most impaired and clearest days for each calendar year from 2000 to 2004. The baseline visibility conditions are the average of these annual values. For mandatory Class I Federal areas without onsite monitoring data for 2000–2004, the State must establish baseline values using the most representative available monitoring data for 2000–2004, in consultation with the Administrator or his or her designee. For mandatory Class I Federal areas with incomplete data availability for 2000–2004, the State must establish baseline values using the closest 5 complete years of monitoring data.

(ii) *Natural visibility conditions for the most impaired and clearest days.* Natural visibility conditions must be calculated by estimating the deciview index existing under natural conditions for the most impaired and clearest days, based on available monitoring information and appropriate data analysis techniques; and

(iii) *Current visibility conditions for the most impaired and clearest days.* The period for calculating current visibility conditions is the most recent 5-year period for which data are available. Current visibility conditions must be calculated based on the annual average level of visibility impairment for the most impaired and clearest days for each of these 5 years. Current visibility conditions are the average of these annual values.

(iv) *Progress to date for the most impaired and clearest days.* Actual progress made towards natural conditions since the baseline period, and actual progress made during the previous implementation period up to and including to the period for

calculating current visibility conditions, for the most impaired and clearest days, must be calculated.

(v) *Difference between current visibility conditions and natural visibility conditions.* The number of deciviews by which current visibility conditions exceed natural visibility conditions, for the most impaired and clearest days, must be calculated.

(vi) *Uniform rate of progress.* (A) The uniform rate of progress for each mandatory Class I Federal area in the State must be calculated. To calculate this uniform rate of progress, the State must compare baseline visibility conditions to natural visibility conditions in the mandatory Class I Federal area and determine the uniform rate of visibility improvement (measured in deciviews of improvement per year) that would need to be maintained during each implementation period in order to attain natural visibility conditions by the end of 2064.

(B) The State may submit a request to the Administrator seeking an adjustment to the uniform rate of progress for a mandatory Class I Federal area to account for impacts from (1) anthropogenic sources outside the United States and/or (2) wildland prescribed fires that were conducted with the objective to establish, restore, and/or maintain sustainable and resilient wildland ecosystems, to reduce the risk of catastrophic wildfires, and/or to preserve endangered or threatened species during which appropriate basic smoke management practices were applied. To calculate the proposed adjustment, the State must add the estimated impacts to natural visibility conditions and compare the resulting value to baseline visibility conditions. If the Administrator determines that the State has estimated the impacts from anthropogenic sources outside the United States or wildland prescribed fires using scientifically valid data and methods, the Administrator may approve the proposed adjustment to the uniform rate of progress for use in the State's implementation plan.

(2) *Long-term strategy for regional haze and reasonably attributable visibility impairment.* Each State must submit a long-term strategy that addresses regional haze visibility impairment, and if necessary any reasonably attributable visibility impairment certified by the Federal Land Manager under § 51.302(a), for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State that may be affected by emissions from the State. The long-term strategy must include the enforceable emissions

limitations, compliance schedules, and other measures that are necessary to achieve reasonable progress, as determined pursuant to (f)(2)(i) through (vi). In establishing its long-term strategy for regional haze, the State must meet the following requirements:

(i) The State must consider and analyze emission reduction measures based on the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected major or minor stationary source or group of sources. The State must document the criteria used to determine which sources or groups of sources were evaluated, and how these four factors were taken into consideration in selecting the measures for inclusion in its long-term strategy.

(ii) The State must consider the uniform rate of improvement in visibility, the emission reduction measures identified in (f)(2)(i), and additional measures being adopted by other contributing states in (f)(2)(iii) as needed to make reasonable progress towards natural visibility conditions for the period covered by the implementation plan.

(iii) The State must consult with those States which may reasonably be anticipated to cause or contribute to visibility impairment in the mandatory Class I Federal area.

(A) *Contributing States.* Where the State has emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal area located in another State or States, the State must consult with the other State(s) in order to develop coordinated emission management strategies. The State must demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to provide for reasonable progress towards natural visibility conditions in the mandatory Class I Federal area located in the other State or States. If the State has participated in a regional planning process, the State must also ensure that it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.

(B) *States affected by contributing States.* A State with a mandatory Class I Federal area must consult with any other State having emissions that are reasonably anticipated to contribute to visibility impairment in that area regarding the emission reductions needed in each State to provide for reasonable progress towards natural

visibility conditions in that area. If the State has participated in a regional planning process, the State must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.

(C) In any situation in which a State cannot agree with another State or group of States on the emission reductions needed for reasonable progress towards natural visibility conditions in any mandatory Class I Federal area, each involved State must describe in its submittal the actions taken to resolve the disagreement. In reviewing the State's implementation plan submittal, the Administrator will take this information into account in determining whether the State's implementation plan provides for reasonable progress towards natural visibility conditions at each mandatory Class I Federal area that is located in the State or that may be affected by emissions from the State. All substantive interstate consultations must be documented.

(iv) As part of the demonstration required by (f)(2)(i), the State must document the technical basis, including information on the factors listed in (f)(2)(i) and modeling, monitoring, and emissions information, on which the State is relying to determine the emission reductions from anthropogenic sources in the State that are necessary for achieving reasonable progress towards natural visibility conditions in each mandatory Class I Federal area it affects. The State may meet this requirement by relying on technical analyses developed by a regional planning process and approved by all State participants. The State must identify the baseline emissions inventory on which its strategies are based. The baseline emissions inventory year shall be the most recent year for which the State has submitted emission inventory information to the Administrator in compliance with the triennial reporting requirements of subpart A of this part unless the State adequately justifies the use of another inventory year.

(v) The State must identify all anthropogenic sources of visibility impairment considered by the State in developing its long-term strategy and the criteria used to select the sources considered. The State should consider major and minor stationary sources, mobile sources, and area sources.

(vi) The State must consider, at a minimum, the following factors in developing its long-term strategy:

(A) Emission reductions due to ongoing air pollution control programs, including measures to address

reasonably attributable visibility impairment;

(B) Measures to mitigate the impacts of construction activities;

(C) Emissions limitations and schedules for compliance to achieve the reasonable progress goal;

(D) Source retirement and replacement schedules;

(E) Basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs as currently exist within the State for these purposes;

(F) Enforceability of emissions limitations and control measures; and

(G) The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.

(3) *Reasonable progress goals.* (i) A state in which a mandatory Class I Federal area is located must establish reasonable progress goals (expressed in deciviews) that reflect the visibility conditions that are projected to be achieved by the end of the applicable implementation period as a result of all enforceable emissions limitations, compliance schedules, and other measures required under paragraph (f)(2) and the implementation of other requirements of the CAA. The long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days and ensure no degradation in visibility for the clearest days since the baseline period.

(ii)(A) If a State in which a mandatory Class I Federal area is located establishes a reasonable progress goal for the most impaired days that provides for a slower rate of improvement in visibility than the uniform rate of progress calculated under paragraph (f)(1)(vi) of this section, the State must demonstrate, based on the analysis required by paragraph (f)(2)(i) of this section, that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the State that may reasonably be anticipated to contribute to visibility impairment in the Class I area that would be reasonable to include in the long-term strategy. The State must provide a robust demonstration, including documenting the criteria used to determine which sources or groups of sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy. The State must provide to the public for review as part of its implementation plan an

assessment of the number of years it would take to attain natural visibility conditions if visibility improvement were to continue at the rate of progress selected by the State as reasonable for the implementation period.

(B) If a State contains sources which are reasonably anticipated to contribute to visibility impairment in a mandatory Class I Federal area in another State for which a demonstration by the other State is required under (f)(3)(ii)(A), the State must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the State that may reasonably be anticipated to contribute to visibility impairment in the Class I area that would be reasonable to include in its own long-term strategy.

(iii) The reasonable progress goals established by the State are not directly enforceable but will be considered by the Administrator in evaluating the adequacy of the measures in the implementation plan in providing for reasonable progress towards achieving natural visibility conditions at that area.

(iv) In determining whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions, the Administrator will also evaluate the demonstrations developed by the State pursuant to paragraphs (f)(2) and (f)(3)(ii)(A) of this section and the demonstrations provided by other States pursuant to paragraphs (f)(2) and (f)(3)(ii)(B) of this section.

(4) If the Administrator, Regional Administrator, or the affected Federal Land Manager has advised a State of a need for additional monitoring to assess reasonably attributable visibility impairment at a mandatory Class I Federal area in addition to the monitoring currently being conducted, the State must include in the plan revision an appropriate strategy for evaluating reasonably attributable visibility impairment in the mandatory Class I Federal area by visual observation or other appropriate monitoring techniques.

(5) So that the plan revision will serve also as a progress report, the State must address in the plan revision the requirements of paragraphs (g)(1) through (5) of this section. However, the period to be addressed for these elements shall be the period since the past progress report.

(6) *Monitoring strategy and other implementation plan requirements.* The State must submit with the implementation plan a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all

mandatory Class I Federal areas within the State. Compliance with this requirement may be met through participation in the Interagency Monitoring of Protected Visual Environments network. The implementation plan must also provide for the following:

(i) The establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the State are being achieved.

(ii) Procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the State.

(iii) For a State with no mandatory Class I Federal areas, procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to regional haze visibility impairment at mandatory Class I Federal areas in other States.

(iv) The implementation plan must provide for the reporting of all visibility monitoring data to the Administrator at least annually for each mandatory Class I Federal area in the State. To the extent possible, the State should report visibility monitoring data electronically.

(v) A statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. The State must also include a commitment to update the inventory periodically.

(vi) Other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility.

(g) *Requirements for periodic reports describing progress towards the reasonable progress goals.* Each State identified in § 51.300(b) must periodically submit a report to the Administrator evaluating progress towards the reasonable progress goal for each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State. The first progress report is due 5 years from submittal of the initial implementation plan addressing paragraphs (d) and (e) of this section. The first progress reports must be in the form of implementation

plan revisions that comply with the procedural requirements of § 51.102 and § 51.103. Subsequent progress reports are due by January 31, 2025, July 31, 2033, and every 10 years thereafter. Subsequent progress reports must be made available for public inspection and comment for at least 60 days prior to submission to EPA and all comments received from the public must be submitted to EPA along with the subsequent progress report, along with an explanation of any changes to the progress report made in response to these comments. Periodic progress reports must contain at a minimum the following elements:

* * * * *

(3) For each mandatory Class I Federal area within the State, the State must assess the following visibility conditions and changes, with values for most impaired, least impaired and/or clearest days as applicable expressed in terms of 5-year averages of these annual values. The period for calculating current visibility conditions is the most recent 5-year period preceding the required date of the progress report for which data are available as of a date 6 months preceding the required date of the progress report.

(i)(A) Progress reports due before January 31, 2025. The current visibility conditions for the most impaired and least impaired days.

(B) Progress reports due on and after January 31, 2025. The current visibility conditions for the most impaired and clearest days;

(ii)(A) Progress reports due before January 31, 2025. The difference between current visibility conditions for the most impaired and least impaired days and baseline visibility conditions.

(B) Progress reports due on and after January 31, 2025. The difference between current visibility conditions for the most impaired and clearest days and baseline visibility conditions.

(iii)(A) Progress reports due before January 31, 2025. The change in visibility impairment for the most impaired and least impaired days over the period since the period addressed in the most recent plan required under paragraph (f) of this section.

(B) Progress reports due on and after January 31, 2025. The change in visibility impairment for the most impaired and clearest days over the period since the period addressed in the most recent plan required under paragraph (f) of this section.

(4) An analysis tracking the change over the period since the period addressed in the most recent plan required under paragraph (f) of this

section in emissions of pollutants contributing to visibility impairment from all sources and activities within the State. Emissions changes should be identified by type of source or activity. With respect to all sources and activities, the analysis must extend at least through the most recent year for which the state has submitted emission inventory information to the Administrator in compliance with the triennial reporting requirements of subpart A of this part. With respect to sources that report directly to a centralized emissions data system operated by the Administrator, the analysis must extend through the most recent year for which the Administrator has provided a State-level summary of such reported data or an internet-based tool by which the State may obtain such a summary. The State is not required to backcast previously reported emissions to be consistent with more recent emissions estimation procedures, and may draw attention to actual or possible inconsistencies created by changes in estimation procedures.

(5) An assessment of any significant changes in anthropogenic emissions within or outside the State that have occurred since the period addressed in the most recent plan required under paragraph (f) of this section including whether or not these changes in anthropogenic emissions were anticipated in that most recent plan and whether they have limited or impeded progress in reducing pollutant emissions and improving visibility.

(6) For a state with a long-term strategy that includes a smoke management program for prescribed fires on wildland, a summary of the most recent periodic assessment of the smoke management program including conclusions that were reached in the assessment as to whether the program is meeting its goals regarding improving ecosystem health and reducing the damaging effects of catastrophic wildfires.

(7) An assessment of whether the current implementation plan elements and strategies are sufficient to enable the State, or other States with mandatory Class I Federal areas affected by emissions from the State, to meet all established reasonable progress goals for the period covered by the most recent plan required under paragraph (f) of this section.

(h) *Determination of the adequacy of existing implementation plan.* At the same time the State is required to submit any progress report to EPA in accordance with paragraph (g) of this section, the State must also take one of the following actions based upon the

information presented in the progress report:

(1) If the State determines that the existing implementation plan requires no further substantive revision at this time in order to achieve established goals for visibility improvement and emissions reductions, the State must provide to the Administrator a declaration that revision of the existing implementation plan is not needed at this time.

* * * * *

(i) * * *

(2) The State must provide the Federal Land Manager with an opportunity for consultation, in person at a point early enough in the State's technical and policy analyses of its long-term strategy emission reduction obligation and prior to development of reasonable progress goals so that information and recommendations provided by the Federal Land Manager can meaningfully inform the State's development of the long-term strategy. The opportunity for consultation will be deemed to have been early enough if the consultation has taken place at least 120 days prior to holding any public hearing or other public comment opportunity on an implementation plan (or plan revision) or progress report for regional haze required by this subpart. The opportunity for consultation must be provided no less than 60 days prior to said public hearing or public comment opportunity. This consultation must include the opportunity for the affected Federal Land Managers to discuss their:

* * * * *

(3) In developing any implementation plan (or plan revision) or progress report, the State must include a description of how it addressed any comments provided by the Federal Land Managers.

(4) The plan (or plan revision) must provide procedures for continuing consultation between the State and Federal Land Manager on the implementation of the visibility protection program required by this subpart, including development and review of implementation plan revisions and progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in mandatory Class I Federal areas.

■ 10. In § 51.309, revise paragraphs (d)(4)(v), (d)(10) introductory text, (d)(10)(i) introductory text, (d)(10)(ii) introductory text, add paragraphs (d)(10)(iii) and (iv), and revise paragraph (g)(2)(iii) to read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

* * * * *

(d) * * *

(4) * * *

(v) Market Trading Program. The implementation plan must include requirements for a market trading program to be implemented in the event that a milestone is not achieved. The plan shall require that the market trading program be activated beginning no later than 15 months after the end of the first year in which the milestone is not achieved. The plan shall also require that sources comply, as soon as practicable, with the requirement to hold allowances covering their emissions. Such market trading program must be sufficient to achieve the milestones in paragraph (d)(4)(i) of this section, and must be consistent with the elements for such programs outlined in § 51.308(e)(2)(vi). Such a program may include a geographic enhancement to the program to address the requirement under § 51.302(b) related to reasonably attributable impairment from the pollutants covered under the program.

* * * * *

(10) *Periodic implementation plan revisions and progress reports.* Each Transport Region State must submit to the Administrator periodic reports in the years 2013 and as specified for subsequent progress reports in § 51.308(g). The progress report due in 2013 must be in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103.

(i) The report due in 2013 will assess the area for reasonable progress as provided in this section for mandatory Class I Federal area(s) located within the State and for mandatory Class I Federal area(s) located outside the State that may be affected by emissions from within the State. This demonstration may be based on assessments conducted by the States and/or a regional planning body. The progress report due in 2013 must contain at a minimum the following elements:

* * * * *

(ii) At the same time the State is required to submit the 5-year progress report due in 2013 to EPA in accordance with paragraph (d)(10)(i) of this section, the State must also take one of the following actions based upon the information presented in the progress report:

* * * * *

(iii) The requirements of § 51.308(g) regarding requirements for periodic reports describing progress towards the

reasonable progress goals apply to States submitting plans under this section, with respect to subsequent progress reports due after 2013.

(iv) The requirements of § 51.308(h) regarding determinations of the adequacy of existing implementation plans apply to States submitting plans under this section, with respect to subsequent progress reports due after 2013.

* * * * *

(g) * * *

(2) * * *

(iii) The Transport Region State may consider whether any strategies necessary to achieve the reasonable progress goals required by paragraph (g)(2) of this section are incompatible with the strategies implemented under paragraph (d) of this section to the extent the State adequately demonstrates that the incompatibility is related to the costs of the compliance, the time necessary for compliance, the energy and non air quality environmental impacts of compliance, or the remaining useful life of any existing source subject to such requirements.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

§ 52.26 [Removed and Reserved]

■ 12. Section 52.26 is removed and reserved.

§ 52.29 [Removed and Reserved]

■ 13. Section 52.29 is removed and reserved.

§ 52.61 [Amended]

■ 14. In § 52.61, remove and reserve paragraph (b).

■ 15. In § 52.145, revise paragraph (b) and remove and reserve paragraph (c).

The revision reads as follows:

§ 52.145 Visibility protection.

* * * * *

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.27 and 52.28 are hereby incorporated and made part of the applicable plan for the State of Arizona.

* * * * *

§ 52.281 [Amended]

■ 16. In § 52.281, remove and reserve paragraphs (b) and (e).

■ 17. In § 52.344, revise paragraph (b) to read as follows:

§ 52.344 Visibility protection.

* * * * *

(b) The Visibility NSR regulations are approved for industrial source categories regulated by the NSR and PSD regulations which have previously been approved by EPA. However, Colorado's NSR and PSD regulations have been disapproved for certain sources as listed in 40 CFR 52.343(a)(1). The provisions of 40 CFR 52.28 are hereby incorporated and made a part of the applicable plan for the State of Colorado for these sources.

■ 18. In § 52.633, revise paragraph (b) and remove and reserve paragraph (c).

The revision reads as follows:

§ 52.633 Visibility protection.

* * * * *

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.27 and 52.28 are hereby incorporated and made part of the applicable plan for the State of Hawaii.

* * * * *

§ 52.690 [Amended]

■ 19. In § 52.690, remove and reserve paragraphs (b) and (c).

§ 52.1033 [Amended]

■ 20. In § 52.1033, remove and reserve paragraphs (a) and (c).

■ 21. In § 52.1183, revise paragraph (b) and remove and reserve paragraphs (a) and (c).

The revision reads as follows:

§ 52.1183 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of Michigan.

* * * * *

■ 22. In § 52.1236, revise paragraph (b) remove and reserve paragraph (c).

The revision reads as follows:

§ 52.1236 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of Minnesota.

* * * * *

§ 52.1339 [Amended]

■ 23. In § 52.1339, remove and reserve paragraph (b).

§ 52.1387 [Amended]

■ 24. In § 52.1387, remove and reserve paragraph (b).

- 25. In § 52.1488, revise paragraph (b) and remove and reserve paragraph (c).
The revision reads as follows:

§ 52.1488 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of Nevada except for that portion applicable to the Clark County Department of Air Quality and Environmental Management.

* * * * *

- 26. In § 52.1531, revise paragraph (b) and remove and reserve paragraph (c).
The revision reads as follows:

§ 52.1531 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of New Hampshire.

* * * * *

§ 52.2132 [Amended]

- 27. In § 52.2132, remove and reserve paragraphs (b) and (c).
■ 28. In § 52.2179, revise paragraph (b) and remove and reserve paragraph (c).
The revision reads as follows:

§ 52.2179 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of South Dakota.

* * * * *

§ 52.2304 [Amended]

- 29. In § 52.2304, remove and reserve paragraph (b).
■ 30. In § 52.2383, revise paragraph (b) to read as follows:

§ 52.2383 Visibility protection.

* * * * *

(b) Regulations for visibility monitoring and new source review. The provisions of § 52.27 are hereby incorporated and made part of the applicable plan for the State of Vermont.

- 31. In § 52.2452, revise paragraph (a) and remove and reserve paragraphs (b) and (c).

The revision reads as follows:

§ 52.2452 Visibility protection.

(a) Reasonably Attributable Visibility Impairment. The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for

meeting the requirements of 40 CFR 51.305 for protection of visibility in mandatory Class I Federal areas.

* * * * *

- 32. In § 52.2533, revise paragraphs (a) and (b) and remove and reserve paragraph (c).

The revisions read as follows:

§ 52.2533 Visibility protection.

(a) Reasonably Attributable Visibility Impairment. The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.305 and 51.307 for protection of visibility in mandatory Class I Federal areas.

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of West Virginia.

* * * * *

§ 52.2781 [Amended]

- 33. In § 52.2781, remove and reserve paragraphs (b) and (c).

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Part V

The President

Proclamation 9434—Asian American and Pacific Islander Heritage Month, 2016

Proclamation 9435—National Building Safety Month, 2016

Proclamation 9436—Older Americans Month, 2016

Proclamation 9437—National Charter Schools Week, 2016

Proclamation 9438—National Small Business Week, 2016

Proclamation 9439—National Teacher Appreciation Day and National Teacher Appreciation Week, 2016

Proclamation 9440—Public Service Recognition Week, 2016

Memorandum of April 29, 2016—Promoting Rehabilitation and Reintegration of Formerly Incarcerated Individuals

Presidential Documents

Title 3—

Proclamation 9434 of April 29, 2016

The President

Asian American and Pacific Islander Heritage Month, 2016

By the President of the United States of America

A Proclamation

Asian Americans and Pacific Islanders (AAPIs) are the fastest growing racial group in our country, growing over 4 times as rapidly as the population of the United States. As one of the most culturally and linguistically diverse groups in America, the AAPI community reminds us that though we all have distinct backgrounds and origins, we are bound in common purpose by our shared hopes and dreams for ourselves and our children. Our Nation's story would be incomplete without the voices of countless Asian Americans, Native Hawaiians, and Pacific Islanders who have called the land we all love home. This month, we honor the irreplaceable roles they have played in our past, and we recommit to ensuring opportunities exist for generations of AAPIs to come.

The AAPI community's long and deeply-rooted legacy in the United States reminds us of both proud and painful chapters of our history. Confronted with grueling and perilous working conditions, thousands of Chinese laborers on the transcontinental railroad pushed the wheels of progress forward in the West. Japanese American troops fought for freedom from tyranny abroad in World War II while their families here at home were interned simply on the basis of their origin. And many South Asian Americans in particular face discrimination, harassment, and senseless violence often in the communities in which they live and work.

Today, AAPIs lend their rich heritage to enhancing our communities and our culture. As artists and activists, educators and elected officials, service men and women and business owners, AAPIs help drive our country forward. Yet despite hard-won achievements, AAPIs continue to face obstacles to realizing their full potential. One in three AAPIs does not speak English fluently, and certain subgroups experience low levels of educational attainment and high levels of unemployment. AAPIs also often experience heightened health risks, and millions of AAPI men, women, and children in the United States live in poverty.

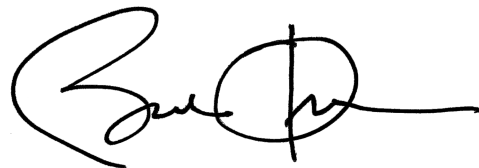
My Administration is committed to supporting and investing in AAPI communities. Thanks to the Affordable Care Act, 20 million uninsured adults have gained health insurance coverage, including 2 million AAPIs. Among Asian Americans under the age of 65, the uninsured rate has declined by 55 percent since 2013. Last year, we brought together thousands of AAPI artists; advocates; and business, community, and Federal leaders from across America for the first-ever White House Summit on AAPIs to discuss the key issues facing their communities. The Summit was hosted by the White House Initiative on AAPIs, which I reestablished during my first year in office and is housed within the Department of Education. We are working with Federal agencies to build stronger and more robust regional networks across our country that improve access to Federal resources and expand opportunities. We have worked to protect civil rights, foster educational equity, and create economic opportunity across our country. Because a lack of detailed data perpetuates the false notion of AAPIs as a model minority, we are working across Government to improve data collection to counter existing stereotypes and to shed light on the realities faced

and resources needed by the AAPI community. Through the White House Task Force on New Americans, Federal agencies are working with cities and counties around America to build welcoming communities that allow immigrants and refugees to thrive. And we will continue working to allow more high-skilled immigrants to stay in our country—too many talented AAPIs are held back from fully realizing our country's promise, and too many have suffered the consequences of our Nation's broken immigration system.

Peoples of diverse backgrounds and circumstances have long come to our country with the faith that they could build a better life in America, and spanning generations, the story of AAPIs in the United States embodies this promise. During Asian American and Pacific Islander Heritage Month, let us celebrate the many contributions our AAPI brothers and sisters have made to the American mosaic, and let us renew our commitment to creating more opportunities for AAPI youth as they grow up and embrace the hard work of active citizenship, adding their unique voices and experiences to our Nation's narrative.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2016 as Asian American and Pacific Islander Heritage Month. I call upon all Americans to visit www.WhiteHouse.gov/AAPI to learn more about our efforts on behalf of Asian Americans, Native Hawaiians, and Pacific Islanders, and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large, stylized "B" and a circular flourish.

Presidential Documents

Proclamation 9435 of April 29, 2016

National Building Safety Month, 2016

By the President of the United States of America

A Proclamation

Buildings across our country provide safety and shelter to our people. From high-rises that form our cities' skylines to ranch homes that blanket the countryside, our buildings offer places to gather and perform daily activities, and they must have sound, secure, and resilient structures. During National Building Safety Month, we recognize and pay tribute to those who ensure the safety and resilience of our Nation's buildings, and we reaffirm our commitment to upholding and abiding by strong and effective building safety standards.

Maintaining the safety and resilience of our homes and buildings is imperative. By using disaster-resistant building codes and standards, resilient construction materials, and safe and performance-based design methods, we can safeguard the workplaces, houses, schools, and other facilities that provide us with space to grow, live, and learn. Americans can also take steps to secure buildings before natural disasters strike by elevating properties where necessary, anchoring furniture and other materials, reinforcing doors, and covering windows. I encourage everyone to visit www.Ready.gov to learn about more ways to keep yourself and those around you safe in your homes and businesses.

The Federal Government is leading by example. To prepare for natural disasters, I have signed Executive Orders that strengthen the security of Federal buildings and assets and improve their resilience to floods and earthquakes, reduce the risks of harm to people, lower recovery costs, and make it easier for communities to recover faster and emerge stronger. Later this month, the White House will bring together collaborators from the public and private sectors at a Conference on Resilient Building Codes. This event will underscore the critical role building codes play in ensuring community resilience, and it will strengthen our national commitment to advancing resilience in the built environment, from codes and standards to building design and construction.

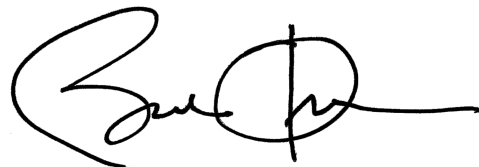
The consequences of natural disasters can be exacerbated by the effects of a changing climate—including through stronger storms and longer wildfire seasons—so it is crucial that we ensure our buildings are resilient to the impacts of climate change. My Administration has worked with communities to build climate-resilient infrastructure to prepare for the impacts of climate change that we can no longer prevent, and we are continuing to invest in energy efficiency in our buildings.

All people deserve to feel safe in the buildings we inhabit day in and day out. With care and attention, we can secure and protect the places we spend time in. This month, let us take action to safeguard America's homes, schools, and other buildings, and let us ensure those responsible for this important work have the tools and resources they need.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2016 as National Building Safety Month. I encourage citizens, government agencies, businesses,

nonprofits, and other interested groups to join in activities that raise awareness about building safety. I also call on all Americans to learn more about how they can contribute to building safety at home and in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish at the end.

Presidential Documents

Proclamation 9436 of April 29, 2016

Older Americans Month, 2016

By the President of the United States of America

A Proclamation

Through a lifetime of contribution, older Americans have helped ensure that the founding promise of our country remains within reach for their children and grandchildren, and their individual narratives reflect the extraordinary history of our Nation. This month, we celebrate our Nation's older citizens, and we show our appreciation for all they have done to enrich our communities and drive America forward.

Older Americans have unique knowledge and a breadth of insights that are tremendous assets to our country—and our seniors are eager to impart the wisdom learned from their experiences. Across our country, older Americans work and volunteer in their communities, challenging younger Americans' ambitions for what they can hope to achieve in their golden years. We must maximize the contributions of our seniors and ensure they have the resources and support they need to thrive and to keep shaping the future of the country they love.

The population of the United States is transforming rapidly. Within the next 13 years, more than one in five Americans will be of retirement age, and our Nation must make it a priority to ensure they are able to retire and live with dignity and respect. I remain committed to strengthening Medicare and Social Security—hallmark programs that enabled an entire generation of older Americans to live with stability and security. Aging affects us all, and I am dedicated to empowering more of today's seniors and future seniors. In 2014, I launched *myRA*, a new type of savings bond that allows more of our people to save for retirement. And earlier this year, I was proud to sign a reauthorization of the Older Americans Act—providing critical support for the services seniors depend on to maintain their health and independence.

Our country has an obligation to make sure older Americans can enjoy the opportunities that come with aging, and my Administration is committed to supporting our seniors. Last summer, we held the White House Conference on Aging, where we announced our plans to modernize Federal rules affecting older Americans, improve access to workplace-based retirement plans, and better utilize technology to enrich the lives of older Americans. We launched www.Aging.gov—a resource for government-wide information for older adults to lead independent and fulfilling lives. And we have proposed updating quality and safety requirements for thousands of nursing homes, making it easier for homebound individuals to get nutritional assistance, and training more prosecutors to combat elder abuse.

One of the best measures of a country is how it treats its older citizens. During Older Americans Month, let us pay tribute to the men and women who raised, guided, and inspired us, and let us honor their enduring contributions to our society by safeguarding their rights and the opportunities they deserve.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2016 as Older

Americans Month. I call upon Americans of all ages to celebrate the contributions of older Americans during this month and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish at the end.

Presidential Documents

Proclamation 9437 of April 29, 2016

National Charter Schools Week, 2016

By the President of the United States of America

A Proclamation

Our Nation has always been guided by the belief that all young people should be free to dream as big and boldly as they want, and that with hard work and determination, they can turn their dreams into realities. Schools help us uphold this ideal by offering a place for children to grow, learn, and thrive. During National Charter Schools Week, we celebrate the role of high-quality public charter schools in helping to ensure students are prepared and able to seize their piece of the American dream, and we honor the dedicated professionals across America who make this calling their life's work by serving in charter schools.

Charter schools play an important role in our country's education system. Supporting some of our Nation's underserved communities, they can ignite imagination and nourish the minds of America's young people while finding new ways of educating them and equipping them with the knowledge they need to succeed. With the flexibility to develop new methods for educating our youth, and to develop remedies that could help underperforming schools, these innovative and autonomous public schools often offer lessons that can be applied in other institutions of learning across our country, including in traditional public schools. We also must ensure our charter schools, like all our schools, are of high quality and are held accountable—when a charter school does not meet high standards, we need to act in the best interest of its students to help it improve, and if that does not prove possible, to close its doors.

Charter schools have been at the forefront of innovation and have found different ways of engaging students in their high school years—including by providing personalized instruction, leveraging technology, and giving students greater access to rigorous coursework and college-level courses. Over the past 7 years, my Administration's commitment of resources to the growth of charter schools has enabled a significant expansion of educational opportunity, enabling tens of thousands of children to attend high-quality public charter schools. I am committed to ensuring all of our Nation's students have the tools and skills they need to get ahead, and that begins with ensuring they are able to attend an effective school and obtain an excellent education.

Educating every American student and ensuring they graduate from high school prepared for college and beyond is a national priority. This week, we honor the educators working in public charter schools across our Nation who, each day, give of themselves to provide children a fair shot at the American dream, and we recommit to the basic promise that all our daughters and sons—regardless of background or circumstance—should be able to make of their lives what they will.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 1 through May 7, 2016, as National Charter Schools Week. I commend our Nation's

charter schools, teachers, and administrators, and I call on States and communities to support high-quality public schools, including charter schools, and the students they serve.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish at the end.

Presidential Documents

Proclamation 9438 of April 29, 2016

National Small Business Week, 2016

By the President of the United States of America

A Proclamation

Responsible for creating nearly two-thirds of net new jobs in the United States each year and employing more than half of all Americans, small businesses have always been a vital part of our country's economy. As outlets for creativity and ingenuity, small businesses do more than create jobs and foster growth—they represent the spirit that has always driven our Nation forward. Throughout National Small Business Week, we celebrate the irreplaceable role these enterprises play in our national life by pledging to support them and equip them with the tools and resources they need to succeed.

Across America, small businesses support economies, employ local residents, and contribute to the vibrancy of their communities. My Administration is dedicated to helping these businesses and the entrepreneurs who took a chance on turning ideas into realities. We have enacted 18 tax cuts for small businesses, and because of the Affordable Care Act, a tax credit of up to 50 percent is available for certain small businesses to help offset the cost of insurance. And our businesses have created jobs in every month since I signed this law.

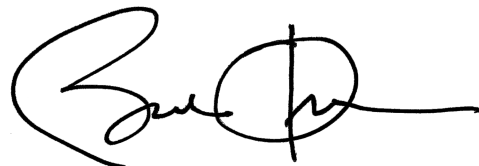
Our Nation does best when we help our startups and small businesses expand into new markets and offer goods and services to more people. Ninety-eight percent of the American companies that export are small and medium-sized businesses, but less than 5 percent of our country's small businesses export. In our 21st-century economy, it is imperative that we break down the trade barriers that too often hold small businesses back from extending their reach to those abroad to sell more goods made in the United States. Last year, we reached an agreement with 11 other nations that allows us to write the rules of our global economy and gives more of our people the fair shot at success they deserve. The Trans-Pacific Partnership will eliminate over 18,000 taxes imposed by other countries on our goods and services and level the playing field for American workers and businesses, and I look forward to working with the Congress to implement this agreement.

My Administration has taken action to ensure the Federal Government does its part to support our Nation's small businesses. During fiscal year 2015, we awarded an all-time high of more than a quarter of eligible Federal contracts to small businesses, and we made great strides in ensuring more Government contracts are given to women-owned small businesses—nearly \$18 billion worth. We have launched next-generation manufacturing hubs, and we have made more online tools available to entrepreneurs to give them the resources they need to start a business in a single day—and the Startup in a Day initiative is continuing to engage with all levels of government to streamline the process of beginning a business.

Our Nation's small businesses play a critical role in generating economic prosperity, and the effort poured into them by ordinary citizens across our country reflects the hard work and determination inherent to who we are as a people. This week, we renew our support for these engines of growth and recognize their incredible contributions to our country.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 1 through May 7, 2016, as National Small Business Week. I call upon all Americans to recognize the contributions of small businesses to the competitiveness of the American economy with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish and a horizontal line extending to the right.

Presidential Documents

Proclamation 9439 of April 29, 2016

National Teacher Appreciation Day and National Teacher Appreciation Week, 2016

By the President of the United States of America

A Proclamation

Our country's story, written over more than two centuries, is one of challenges, chances, and progress. As our Nation has advanced on our journey toward ensuring rights and opportunities are extended fully and equally to all people, America's teachers—from the front lines of our civil rights movement to the front lines of our education system—have helped steer our country's course. They witness the incredible potential of our youth, and they know firsthand the impact of a caring leader at the front of the classroom.

As our national narrative has progressed, we have become a more equal society, cleared paths to opportunity, and affirmed the extraordinary potential of all our people—regardless of their race, their gender, their sexual orientation, their religion, or the zip code they were born into. But there is still work to be done. If our country's story is going to reflect the diversity we draw strength from, it needs to be written by people that represent the wide range of backgrounds and origins that comprise our national mosaic, and as the next generation rises and prepares to shape that narrative, our teachers will be with them every step of the way—imparting critical knowledge and opening their minds to the possibilities tomorrow holds. In working to ensure all our daughters and sons have the chance to add their voice and perspective to America's story, our teachers help shape a Nation that better reflects the values we were founded upon.

When I took office, I did so with a bold vision to foster innovation and drive change within our education system, and to expand educational opportunities and outcomes for all America's learners. Central to that goal is our work to build and strengthen the teaching profession so our teachers are enabled and equipped to inspire rising generations. I have worked hard throughout my Presidency to make sure my Administration does its part to support our educators and our education system, but the incredible progress our country has seen—from achieving record high graduation rates to holding more students to high standards that prepare them for success in college and future careers—is thanks to the dedicated teachers, families, and school leaders who work tirelessly on behalf of our young people.

Just as we know a student's circumstances do not dictate his or her potential, we know that having an effective teacher is the most important in-school factor for student success. That is why my Administration has been committed to better recruiting, preparing, retraining, and rewarding America's teachers. Following the worst economic crisis our country has seen since the Great Depression, my Administration supported significant investments in education through the Recovery Act to keep more than 300,000 educators in the classroom. We have invested more than \$2.7 billion through competitive grants to better recruit, train, support, and reward talented teachers and educators, and we have worked to make sure teachers have a strong voice and a seat at the table in the policymaking process. At the urging of the Department of Education, all fifty States are advancing teacher equity plans to ensure that districts can support and retain educators in schools

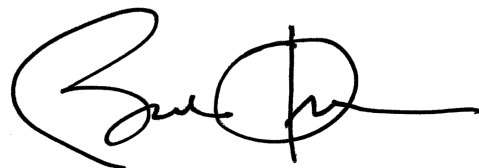
that need them most. In my State of the Union address in 2011, I announced a national goal to prepare 100,000 public school STEM teachers by 2021 to help ensure more of our young innovators can seize the opportunities of tomorrow—and I am proud that we are on track to meet that goal.

I recently signed the bipartisan Every Student Succeeds Act (ESSA), which ensures students are held to high standards that will better prepare them for college and careers. And because cookie-cutter solutions are not always effective considering the diversity of our communities and of the students in our classrooms, ESSA reflects my Administration's approach to education reform by empowering States and local decision makers, who know what their students need best, to shape their own progress with accountability. ESSA also aligns with the Testing Action Plan I announced last fall to help reduce the burden of standardized testing so educators can spend less time testing and more time teaching. This law will also allow more States and districts to support teachers and expand access to computer science, a critical skill our students need in the innovation economy.

Our future is written in schools across our country. It is likely that the first person who will go to Mars is in a classroom today. Our students are our future teachers, scientists, politicians, public servants, and parents—a generation that will steer the course we will take as a people and make possible things we have not even imagined yet. We look to the women and men standing in front of classrooms in all corners of our country—from cities to reservations to rural towns—to vest America's daughters and sons with the hard skills they will need to put their dreams within reach and to inspire them to dream even bigger. On National Teacher Appreciation Day and during National Teacher Appreciation Week, let us ensure our educators know how much we value their service in the classroom, how much we appreciate all they do for our students and families, and how thankful we are for their contributions to our national progress.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 3, 2016, as National Teacher Appreciation Day and May 1 through May 7, 2016, as National Teacher Appreciation Week. I call upon students, parents, and all Americans to recognize the hard work and dedication of our Nation's teachers and to observe this day and this week by supporting teachers through appropriate activities, events, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large, stylized initial "B" and a circular flourish.

Presidential Documents

Proclamation 9440 of April 29, 2016

Public Service Recognition Week, 2016

By the President of the United States of America

A Proclamation

Our Nation's progress has long been fueled by the efforts of selfless citizens who come together in service to their fellow Americans to change our country for the better. At the birth of our Nation, our Founders fought to secure a democracy that represents the people, and the civil servants who pour everything they have into making a difference are the individuals who keep that democracy running smoothly and effectively. During Public Service Recognition Week, we honor those who dedicate themselves to ensuring America's promise rings true in every corner of our country, and we recommit to upholding the values they fight for every day.

Civil servants demonstrate resolve and inspire optimism in sectors throughout our country. They are engineers and educators, military service members and social workers, and their individual and collective contributions drive us forward on the path toward an ever brighter tomorrow. Both at home and abroad, they carry forward the notion that as Americans, we are committed to looking out for one another and to working together to forge a bright future for generations to come. And the only way our Nation's civil service will remain at the forefront of our progress is for talented and patriotic young people to join in the effort of serving their fellow Americans—whether for 1 year or throughout their career.

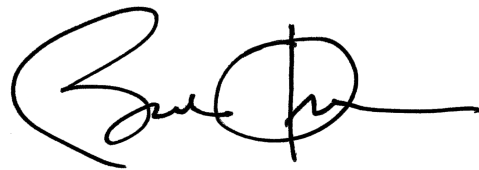
Throughout this week, we recognize the tireless efforts of the women and men who strive to make sure ours is a government that stays true to its founding ideals. With 85 percent of Federal Government jobs located outside of the Washington, DC area, our Federal workers, together with leaders and advocates from State and local levels, play key roles in ensuring the voices of the American people are heard. And even in the toughest of circumstances, including a politics that does not always fully recognize the value of their work, our public servants—often at great personal sacrifice—continue striving to build a better country and to bring lasting change to the lives of ordinary people across America. These selfless individuals tackle great challenges facing our country. Whether leading important scientific advances, helping homeless veterans get off the street and reclaim their lives, supporting small businesses and impoverished communities, or sustaining our environment by reducing harmful pollutants emitted into our air and waterways, these often unsung heroes make vital contributions to our country and help make our founding promise real for more people.

The well-being of our people depends on the passion and dedication of our workforce, and my Administration has worked to recruit, uplift, and empower exceptional civil servants. In an effort to fully realize the belief that all of us have the capacity to make a meaningful difference and contribute to our shared success, I have directed the Office of Personnel Management to begin taking action to “ban the box” on most Federal job applications so we are not disqualifying people with a criminal record simply because of a mistake they made in the past. Additionally, we are implementing programs that encourage Government-wide collaboration, giving workers a chance to lend and develop their talents across agencies and departments so our best ideas can flourish and grow to their fullest potential.

Serving the public is not just about a paycheck—it's about contributing to the steady effort to perfect our Union over time so our democracy works for everyone. This week, let us embrace the hopeful spirit that embodies the extraordinary work of our civil servants. It is the same spirit that built America, and because of the hard work of compassionate and determined public servants, it will continue to build us up for generations to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 1 through May 7, 2016, as Public Service Recognition Week. I call upon all Americans to recognize the hard work and dedication of our Nation's public servants and to observe this week by expressing their gratitude and appreciation through appropriate activities, events, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large, stylized initial "B" and a circular flourish.

Presidential Documents

Memorandum of April 29, 2016

Promoting Rehabilitation and Reintegration of Formerly Incarcerated Individuals

Memorandum for the Heads of Executive Departments and Agencies

America is a Nation of second chances. Promoting the rehabilitation and reintegration of individuals who have paid their debt to society makes communities safer by reducing recidivism and victimization; assists those who return from prison, jail, or juvenile justice facilities to become productive citizens; and saves taxpayer dollars by lowering the direct and collateral costs of incarceration. Policies that limit opportunities for people with criminal records create barriers to employment, education, housing, health care, and civic participation. This lack of opportunity decreases public safety, increases costs to society, and tears at the fabric of our Nation's communities.

Reducing the cycle of incarceration and recidivism requires coordinated action by government at all levels. Estimates are that as many as 70 million or more Americans have a record of arrest, criminal adjudication, or conviction. Each year, more than 600,000 individuals are released from Federal and State correctional facilities. Millions more are released each year from local jails. In many cases, a criminal record is an obstacle to obtaining employment or a license related to or necessary for employment. However, many individuals have criminal histories that should not automatically disqualify them from employment or licensing, but should instead be examined as part of a review of the person as a whole. Providing incarcerated individuals with job and life skills, education programming, and mental health and addiction treatment increases the likelihood that such individuals will be successful when released. And removing barriers to successful reentry helps formerly incarcerated individuals compete for jobs, attain stable housing, and support their families. All of these are critical to reducing recidivism and strengthening communities.

In 2011, the Attorney General formed the Federal Interagency Reentry Council, a Cabinet-level working group dedicated to the rehabilitation and reintegration of individuals returning to their communities from prisons and jails. I am issuing this memorandum to ensure that the Federal Government continues the important work of this council and builds on its successes.

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. *Establishing the Federal Interagency Reentry Council.* (a) There is hereby established the Federal Interagency Reentry Council (Reentry Council), to be co-chaired by the Attorney General and the Director of the White House Domestic Policy Council. In addition to the Co-Chairs, the Reentry Council shall include the heads of:

- (i) the Department of the Treasury;
- (ii) the Department of the Interior;
- (iii) the Department of Agriculture;
- (iv) the Department of Commerce;
- (v) the Department of Labor;
- (vi) the Department of Health and Human Services;
- (vii) the Department of Housing and Urban Development;

- (viii) the Department of Transportation;
- (ix) the Department of Energy;
- (x) the Department of Education;
- (xi) the Department of Veterans Affairs;
- (xii) the Department of Homeland Security;
- (xiii) the Small Business Administration;
- (xiv) the Office of Management and Budget;
- (xv) the Council of Economic Advisers;
- (xvi) the Office of National Drug Control Policy;
- (xvii) the Office of Personnel Management;
- (xviii) the Corporation for National and Community Service; and
- (xix) such other executive departments, agencies, and offices as the Co-Chairs may designate.

(b) The Co-Chairs may also invite representatives of the Consumer Financial Protection Bureau, the Court Services and Offender Supervision Agency, the Equal Employment Opportunity Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Internal Revenue Service, and the Social Security Administration to participate in the activities of the Reentry Council to the extent that such activities are relevant to their respective statutory authorities and legal obligations.

(c) As appropriate, the Co-Chairs may invite relevant representatives of the judicial branch, including representatives of the United States Probation and Pretrial Services System and Federal Public Defender Organizations, to attend and participate in meetings of the Reentry Council.

(d) The Reentry Council shall work across executive departments, agencies, and offices (agencies) to:

- (i) within 100 days of the date of this memorandum, develop and present a Federal strategic plan to make communities safer by reducing recidivism and victimization; assist individuals who return from prison or jail to become productive citizens; and save taxpayer dollars by lowering the direct and collateral costs of incarceration;
- (ii) identify, implement, and promote evidence-based research, policies, strategies, and programming to support successful reentry and reintegration, including improved access to criminal justice data for research and evaluation purposes;
- (iii) promote regional partnerships among Federal agencies and with State, tribal, and local governments and organizations to advance local reentry and reintegration efforts;
- (iv) identify ways to improve the accuracy of records of arrest, criminal adjudication, or conviction (criminal records); and
- (v) identify and address unwarranted barriers to successful reentry.

(e) The Reentry Council shall engage with Federal, State, local, and tribal officials, including corrections officials, as necessary to carry out its objectives. The Reentry Council shall engage with nongovernmental organizations, including those representing or composed of formerly incarcerated individuals, exonerees, victims, and criminal justice agencies, to ensure that these stakeholders have the opportunity to offer recommendations and information to the Reentry Council.

(f) The Attorney General shall designate an Executive Director, who is a full-time officer or employee of the Federal Government, to coordinate the day-to-day functions of the Reentry Council.

(g) The Co-Chairs shall convene a meeting of the Reentry Council at least once per year.

Sec. 2. *Reducing Barriers to Employment.* (a) Agencies making suitability determinations for Federal employment shall review their procedures for evaluating an applicant's criminal records to ensure compliance with 5 CFR part 731 and any related, binding guidance issued by the Office of Personnel Management, with the aim of evaluating each individual's character and conduct.

(b) Consistent with applicable law and the need to protect public safety, agencies with statutory authority to grant or deny occupational licenses and the discretion to define the criteria by which such licensing decisions are made shall undertake to revise their procedures to provide that such licenses are not denied presumptively by reason of an applicant's criminal record in the absence of a specific determination that denial of the license is warranted in light of all relevant facts and circumstances known to the agency, including:

(i) the nature and seriousness of the conduct resulting in the criminal record, including the circumstances surrounding the conduct and contributing societal conditions and the age of the individual at the time of the conduct;

(ii) the time that has passed since the individual's arrest, adjudication, or conviction, or the completion of the individual's sentence, and the absence or presence of rehabilitation efforts; and

(iii) the nature of the occupation requiring a license, including whether the criminal record is directly related to the occupation, whether the occupation offers the opportunity for the same or a similar offense to occur, and whether circumstances leading to the conviction will recur in the occupation.

(c) Independent agencies are encouraged to comply with the requirements of this section.

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

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

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

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

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

Sec. 4. *Publication.* The Attorney General is hereby authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "Eric Lipton", with a stylized circular flourish and a horizontal line extending to the right.

THE WHITE HOUSE,
Washington, April 29, 2016

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