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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0571; Directorate Identifier 2014–NM–059–AD; Amendment 39–18782; AD 2017–02–03]

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 767–200, –300, and –400ER series airplanes. This AD was prompted by a report of a malfunction of the engine indication and crew alerting system (EICAS) during flight. This AD requires, for certain airplanes, a general visual inspection of the spray shield, and related investigative and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 16, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 16, 2017.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0571.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0571; 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: 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 issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 767–200, –300, and –400ER series airplanes. The SNPRM published in the **Federal Register** on April 13, 2016 (81 FR 21762) (''the SNPRM''). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on August 14, 2014 (79 FR 47597) (''the NPRM''). The NPRM proposed to require an inspection for plastic couplings, corrective actions if necessary, and installation of new spray shrouds. The NPRM was prompted by a report of a malfunction of the engine indication and crew alerting system (EICAS) during flight. The SNPRM proposed, for certain airplanes, a general visual inspection of the spray shield and related investigative and corrective actions if necessary. We are issuing this AD to prevent an uncontrolled water leak from a defective potable water system coupling, which could cause the main equipment center (MEC) line replaceable units (LRUs) to become wet, resulting in an electrical short and potential loss of several functions essential for safe flight.

Comments

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

Request To Include Latest Service Information

Boeing requested that we revise the SNPRM to include the latest service information—Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016, which added 10 airplanes to the effectivity. The revised service information also added Part 5 of the Work Instructions to enhance the hose installation between location 6 and location 9 for an airplane on which a post-production configuration change had been made. Boeing noted that future revisions could be published as conditions dictate.

We partially agree with the request.

To require Revision 3 in this AD would necessitate issuing another supplemental NPRM to solicit comments on the merits of this change. We have determined that an unsafe condition exists, and delaying this action further would be inappropriate.

However, we have added new content to paragraph (i) of this AD to specify an additional method of compliance that was not part of the SNPRM. This additional method of compliance allows the use of Revision 3 for the coupling inspection and spray shroud installation specified in paragraph (g) of this AD.

This AD retains the applicability specified in paragraph (c) of the proposed AD (in the SNPRM). That is, this AD affects Model 767–200, –300, and –400ER series airplanes that are identified in Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015.

Likewise, this AD retains the specific compliance method specified in paragraphs (g) and (h) of the proposed AD (in the SNPRM). That is, the actions must be done in accordance with Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015. (See ''Request to Revise Description of

Affected Airplanes'' for an explanation of the revision of paragraphs (g) and (h) of the proposed AD (in the SNPRM).)

For the 10 airplanes added in Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016, we might consider additional rulemaking to mandate the actions specified in this AD.

Request To Revise Description of Affected Airplanes

Boeing requested that we revise paragraphs (g) and (h) of the proposed AD (in the SNPRM) to remove the references to airplane groups. Boeing explained that this change would simplify the wording of the AD and avoid a potential mismatch between the AD and the service information if grouping is adjusted in the future. Boeing stated that the release of Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016, makes paragraph (g) of the proposed AD (in the SNPRM) incorrect because it does not account for newly added groups 14 and 15. Boeing also noted that future revisions could be published as conditions indicate.

We partially agree with the request. Paragraphs (g) and (h) of the proposed AD (in the SNPRM) have been revised to restructure the content into paragraph (g) in this AD and remove the references to specific airplane groups. As stated previously, we might consider future rulemaking to mandate the actions in this AD for the airplanes identified as Groups 14 and 15 in Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016.

Request for Clarification of Requirements

Boeing requested that we revise paragraph (h) of the proposed AD (in the SNPRM) (now paragraph (g)(2) in this AD) to change the phrase ''applicable related investigative and corrective actions'' to ''applicable corrective actions.'' Boeing indicated that this change would clarify the intent of the proposed AD because, as written, the proposed AD could be misinterpreted as requiring both the inspection for discrepant shields and the resulting corrective action before further flight.

We disagree to remove the phrase ''related investigative [actions],'' as requested. As explained in the SNPRM, 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. Specifically, in this AD, the phrase ''related investigative actions'' includes testing and repairing potable water system leaks. We have not changed this final rule regarding this issue.

Request To Clarify Incorporation by Reference

Paragraph (k) of the proposed AD (in the SNPRM) stated that Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013; and Boeing Service Bulletin 767–38A0073, Revision 1, dated November 5, 2014; are not ''incorporated by reference in this AD.'' Boeing requested that we delete that statement because its intent is unclear and could be misinterpreted.

We agree that clarification is necessary. Paragraph (k) in the proposed AD (in the SNPRM) provides credit for compliance with the AD for work completed using earlier revisions of the service information that are not specifically mandated by the AD, while the latest revision of the service information would be mandated. Although Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013, and Boeing Service Bulletin 767–38A0073, Revision 1, dated November 5, 2014, will not be incorporated by reference in this AD, we agree to remove that statement from paragraph (k) of the AD.

Request To Revise Phrasing in ''Credit for Previous Actions'' Paragraph

Boeing requested that we revise paragraph (k) of the proposed AD (in the SNPRM) to account for additional revisions that may be necessary to identify in the AD, depending on the effective date of the AD. Boeing stated that the proposed AD (in the SNPRM) would exclude some groups from being given credit for accomplishment of the referenced service information. Boeing stated that if airlines have completed all actions in accordance with Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015, or Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016, no groups should be excluded.

We do not agree that it is necessary to revise the service information identified in paragraph (k) of this AD. As stated previously, Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016, is included in paragraph (i) of this AD to provide an additional method of compliance for the requirements of paragraph (g) of this AD. Additional credit for accomplishment of Revision 3 is therefore unnecessary. This AD will provide credit for only the accomplishment of Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013; and Boeing Service Bulletin 767–38A0073, Revision 1, dated November 5, 2014.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that the installation of winglets per supplemental type certificate (STC) ST01920SE does not affect the accomplishment of the manufacturer's service instructions.

We agree with the commenter that STC ST01920SE does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST01920SE does not affect the ability to accomplish the actions required by this AD. We have not changed this AD in this regard.

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 SNPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

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 767–38A0073, Revision 2, dated August 10, 2015; and Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016. The service information describes procedures for a general visual inspection for plastic potable water couplings, and applicable related investigative and corrective actions; installation of new spray shrouds; and a general visual inspection of the spray shield to determine if it has two slits and is installed correctly, and applicable related investigative and corrective actions. These documents are distinct since they are revisions of the same service information and have different airplane groupings for different configurations. 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 136 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
Part 1—inspection (Groups 1–3, 9, and 11, Configuration 1; Groups 4–8, 10, and 12–13) (136 airplanes).	Up to 3 work-hours × $85 per hour = $255.	$0	Up to $255	Up to $34,680.
Part 2—inspection (Group 9, Configuration 1; and Group 10) (32 airplanes).	2 work-hours × $85 per hour = $170.	0	$170	$5,440.
Part 3—installation of spray shrouds (136 airplanes) ...	3 work-hours × $85 per hour = $255.	330	$585	$79,560.
Part 4—inspection (Groups 1–3, 9, and 11, Configuration 2) (30 airplanes).	2 work-hours × $85 per hour = $170.	0	$170	$5,100.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Related investigative actions	3 work-hours × $85 per hour = $255	$0	$255.
Corrective actions	Up to 1 work-hour × $85 per hour = $85	53	Up to $138.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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):

2017–02–03 The Boeing Company: Amendment 39–18782; Docket No. FAA–2014–0571; Directorate Identifier 2014–NM–059–AD.

(a) Effective Date

This AD is effective March 16, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, and –400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/Waste.

(e) Unsafe Condition

This AD was prompted by a report of a malfunction of the engine indication and crew alerting system (EICAS) during flight. We are issuing this AD to prevent an uncontrolled water leak from a defective potable water system coupling, which could cause the main equipment center (MEC) line replaceable units (LRUs) to become wet, resulting in an electrical short and potential loss of several functions essential for safe flight.

(f) Compliance

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

(g) Inspection of Couplings and Installation of Spray Shrouds

For Groups and Configurations as identified in Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015, as applicable: At the applicable times identified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015, except as required by paragraph (h) of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) Do a general visual inspection for plastic potable water couplings; do all applicable related investigative and corrective actions; and install new spray shrouds, including a new hose assembly, as applicable; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015. Do all applicable related investigative and corrective actions within the applicable compliance time identified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015, except as required by paragraph (h) of this AD.

(2) Within 72 months after the effective date of this AD, do a general visual inspection of the spray shield to determine if it has two slits and is installed correctly, and before further flight, do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015.

Note 1 to paragraph (g) of this AD: Operators can take optional protective measures to cover or shield their equipment against water spray when performing the Potable Water System Leakage Test, as specified in Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015.

(h) Exception to the Service Information

Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 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) Additional Method of Compliance

Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016, is acceptable for compliance with the requirements of paragraph (g) of this AD, as applicable to the Groups and Configurations as identified in Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install any plastic potable water coupling having part number (P/N) CA620 series or P/N CA625 series on any airplane.

(k) Credit for Previous Actions

For airplanes in Groups 4 through 8, 10, 12, and 13, as identified in Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015: This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 767–38A0073, dated November 12, 2013; or Boeing Service Bulletin 767–38A0073, Revision 1, dated November 5, 2014.

(l) 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 (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(4)(i) and (l)(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. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. 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.

(m) Related Information

(1) For more information about this AD, 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.*

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

(n) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 767–38A0073, Revision 2, dated August 10, 2015.

(ii) Boeing Alert Service Bulletin 767–38A0073, Revision 3, dated September 8, 2016.

(3) For Boeing 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 January 11, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–01338 Filed 2–13–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6984; Airspace Docket No. 16–ANM–5]

Amendment of Class E Airspace, Salem, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace extending upward from 700 feet above the surface at McNary Field, Salem, OR. After a review of the airspace, the FAA found additional airspace is required to support the current standard instrument approach and departure procedures for the safety

and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, April 27, 2017. 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 7400.11A and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line 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 this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

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 modifies controlled airspace at McNary Field, Salem, OR.

History

The airspace in the area of McNary Field, Salem, Oregon has been the subject of three recent airspace actions. In June 2015, the FAA issued a final rule modifying Class D airspace, Class E surface area airspace, Class E airspace extending upward from 700 feet above the surface, and removing Class E surface area airspace designated as an extension at McNary Field, Salem, OR (80 FR 37153, June 30, 2015). The FAA explained that due to the proposed cancellation of the Turno non-directional radio beacon (NDB) and cancellation of the NDB approach, a review of the airspace was completed, revealing an increase and reconfiguration of the airspace was needed for IFR operations. The final rule was effective August 20, 2015.

After August 20, 2015 the FAA received and considered additional public comments recommending further airspace changes. The FAA published a notice of proposed rulemaking (NPRM) on September 21, 2015 (80 FR 56935), proposing to modify Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at McNary Field. The FAA determined that some airspace was unnecessary for Standard Instrument Approach Procedures (SIAP) for instrument flight rules (IFR) operations at the airport. The FAA received 71 comments including 24 comments requesting that the airspace be returned to the configuration that was in place prior to August 20, 2015. The FAA issued another final rule on March 8, 2016 (81 FR 12002), explaining in response to the public comments that returning to the prior airspace configuration would not protect the IFR arrivals and departures or account for existing terrain.

After March 8, 2016, the FAA received additional public comments citing a potential safety issue with the Localizer (LOC) Y runway (RWY) 31, and the LOC/Distance Measuring Equipment (DME) Back Course (BC) approach to RWY 13. The FAA investigated this issue and on June 29, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM), (81 FR 42293) Docket FAA–2016–6984, to modify Class E airspace extending upward from 700 feet above the surface at McNary Field, Salem, OR, to provide additional airspace to support the Localizer (LOC) Y runway (RWY) 31, and the LOC/Distance Measuring Equipment (DME) Back Course (BC) approach to RWY 13. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Ten comments were received.

Discussion of Comments

There were ten comments received from seven commenters; one individual provided three separate comments. One comment was a duplicate and one provided feedback on the two earlier final rules and not the current proposal. To the extent that commenters raised concerns pertaining to the earlier airspace actions (*e.g.,* modifications to Class D airspace), the FAA notes that those comments are outside the scope of this proposal.

One commenter supported the current proposal. Six commenters requested the airspace be returned to the configuration that existed prior to August 20, 2015. The FAA does not agree; the airspace that existed prior to August 20, 2015 did not comply with FAA Order 7400.2K, Procedures for Handling Airspace Matters in that it overstated some airspace areas necessary for Instrument Flight Rules (IFR) arrivals and did not provide sufficient airspace in other areas to protect IFR departures until reaching 700 feet above the surface due to rising terrain.

Four commenters recommended the use of Class E4 arrival extensions. The FAA does not agree. FAA Order 7400.2 states that Class E4 arrival extensions are to be employed at the point where an aircraft descends below 1,000 feet if it is farther than two miles from, and outside the surface airspace. IFR aircraft at McNary Field, Salem, OR, descend to 1,000 feet above ground level within Class D airspace on all approaches.

Four commenters cited that the FAA did not comply with guidance in five of their own directives: FAA Orders 8260.3C, United States Standard for Terminal Instrument Procedures (TERPS); 8200.44A, Flight Inspection Services Instrument Flight Procedure Coordination; 8260.19G, Flight Procedures and Airspace; 8260.26F, Establishing Submission Cutoff Dates for Civil Instrument Flight Procedures; and 7400.2K, Procedures for Handling Airspace Matters. No specific examples were provided, except two commenters stated the FAA was not in compliance with Order 7400.2K page 17–2–4 when designing the Class D airspace. The FAA disagrees as the current Class D airspace is in compliance with this guidance. Further, the Class D airspace is not relevant to this rulemaking action.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A 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 E airspace extending upward from 700 feet above the surface at McNary Field, Salem, OR, by adding segments extending from the 6.7-mile radius to 13.50 miles northwest of the airport, and extending from the 8.2-mile radius to 16.5 miles southeast of the airport. After a review, the FAA discovered additional airspace was necessary to accommodate the LOC Y RWY 31, and the LOC/DME BC RWY 13 instrument approach procedures for the safety and management of IFR operations at the airport.

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.

List 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

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

* * * * *

ANM OR E5 Salem, OR [Modified]

Salem, McNary Field, OR
(Lat. 44°54′34″ N., long. 123°00′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of McNary Field from the 168° bearing from the airport clockwise to the 311° bearing from the airport, and that airspace within a 6.7-mile radius of McNary Field from the 311° bearing from the airport clockwise to the 074° bearing from the airport, and that airspace within an 8.2-mile radius of McNary Field from the 074° bearing from the airport clockwise to the 168° bearing from the airport, and that airspace 2 miles either side of the 330° bearing extending from the 6.7-mile radius of the airport to 13.5 miles northwest of the airport, and that airspace 4 miles southwest and 5 miles northeast of the 150° bearing extending from the 8.2-mile radius of the airport to 16.5 miles southeast of the airport.

Issued in Seattle, Washington, on January 19, 2017.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–02489 Filed 2–13–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Docket No. CRM 116; AG Order No. 3847–2017]

Delegation of Authority Concerning Mutual Legal Assistance

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Attorney General has delegated to the Assistant Attorney General for the Criminal Division, with certain restrictions, the authority to perform the functions of the ''Central Authority'' or ''Competent Authority'' under treaties and executive agreements between the United States and other countries on mutual assistance in criminal matters that designate the Attorney General or the Department of Justice as such authority. The Assistant Attorney General for the Criminal Division is authorized to re-delegate this authority to the Deputy Assistant Attorneys General and to the Director and Deputy Directors of the Office of International Affairs (OIA). This final rule will expand the scope of persons to whom this authority may be re-delegated to include OIA's Associate Directors.

DATES: Effective February 14, 2017.

FOR FURTHER INFORMATION CONTACT: Vaughn Ary, Director, Office of International Affairs, Criminal Division, U.S. Department of Justice, Washington, DC 20005; Telephone (202) 616–1503.

SUPPLEMENTARY INFORMATION: The Office of International Affairs (OIA) serves as the United States Central Authority with respect to all requests for information and evidence received from and made to foreign authorities under Mutual Legal Assistance Treaties and multilateral conventions regarding assistance in criminal matters. OIA's inventory of pending mutual legal assistance (MLA) requests has grown substantially in recent years. OIA received over 6,000 new requests in FY16, the most since OIA's inception in 1979. With only three senior leaders (the Director and two Deputy Directors) authorized to sign outgoing MLA requests, it can be difficult for OIA to process these MLA requests expeditiously. To address this issue, the Department of Justice is modifying its delegation of authority in 28 CFR 0.64–1 to add the Associate Directors who supervise OIA's regional teams and designated units as persons who may sign MLA requests. Associate Directors represent the most

experienced attorneys within the organization and are responsible for providing legal and policy guidance to the Assistant Attorney General and Deputy Assistant Attorney General, approving the arrest of international fugitives, providing oversight of extradition litigation in U.S. and foreign courts, and participating in the negotiation of bilateral and multilateral law enforcement treaties. Authorizing these senior supervisory attorneys to sign outgoing MLA requests is commensurate with their existing duties and provides OIA with the capability to more efficiently process these requests, avoid unnecessary delays, and effectively satisfy MLA requests.

Administrative Procedure Act—5 U.S.C. 553

This rule is a rule of agency organization and relates to a matter relating to agency management and is therefore exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), 553(b)(3)(A).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis is not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. 5 U.S.C. 604(a).

Executive Order 12866—Regulatory Planning and Review

This action has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management, and personnel as described in section 3(d)(3) of Executive Order 12866 and, therefore, is not a ''regulation'' or ''rule'' as defined by the order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This rule was drafted in accordance with the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organizations and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act, 5 U.S.C. 804(3)(B). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Counterterrorism, Crime, Government employees, Law enforcement, National security information, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Terrorism, Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. Revise the last sentence of § 0.64–1 to read as follow:

§ 0.64–1 Central or Competent Authority under treaties and executive agreements on mutual assistance in criminal matters.

* * * The Assistant Attorney General, Criminal Division, is authorized to re-delegate this authority to the Deputy Assistant Attorneys General, Criminal Division, and to the Director, Deputy Directors, and Associate Directors of the Office of International Affairs, Criminal Division.

Dated: February 8, 2017.

Dana J. Boente,

Acting Attorney General.

[FR Doc. 2017–02955 Filed 2–13–17; 8:45 am]

BILLING CODE 4410–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0795, EPA–HQ–OPP–2015–0796 and EPA–HQ–OPP–2015–0797; FRL–9957–22]

Hexythiazox; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the ovicide/miticide hexythiazox in or on beet, sugar, root, and beet, sugar, dried pulp and establishes tolerances associated with regional registrations for residues on Bermuda grass, forage and Bermuda grass, hay. This regulation also modifies the existing tolerances associated with regional registrations in or on alfalfa, forage; and alfalfa, hay. Gowan Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). The regulation also removes the existing time-limited tolerance for residues on beet, sugar, root because it is superseded by the new beet, sugar, root tolerance and removes the tolerance for residues ''Fruit, citrus group 10'' of 0.35 ppm because it is superseded by the existing tolerance for ''Fruit, citrus group 10–10'' of 0.6 ppm.

DATES: This regulation is effective February 14, 2017. Objections and requests for hearings must be received on or before April 17, 2017, 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 dockets for this action, identified by docket identification (ID) numbers EPA–HQ–OPP–2015–0795, EPA–HQ–OPP–2015–0796 and EPA–HQ–OPP–2015–0797, are 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:

Michael L. Goodis, P.E., 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 numbers EPA–HQ–OPP–2015–0795, EPA–HQ–OPP–2015–0796 and EPA–HQ–OPP–2015–0797 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 April 17, 2017. 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 numbers EPA–HQ–OPP–2015–0795, EPA–HQ–OPP–2015–0796 and EPA–HQ–OPP–2015–0797, 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 March 16, 2016 (81 FR 14030) (FRL–9942–86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of three (3) pesticide petitions (PP 5F8396, 5F8412 & 5F8413) by Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. These petitions requested that 40 CFR 180.448 be amended by (1) establishing tolerances for residues of the hexythiazox in or on Bermuda grass, forage at 40 parts per million (ppm) (PP 5F8412); Bermuda grass, hay at 70 ppm (PP 5F8412); beet, sugar, dried pulp at 0.60 ppm (PP 5F8413); beet, sugar, molasses at 0.21 ppm (PP 5F8413); beet, sugar, roots at 0.15 ppm (PP 5F8413); and beet, sugar, tops at 1.5 ppm (PP5F8413); and (2) modifying the existing tolerances for residues in or on alfalfa, forage from 15 ppm to 20 ppm (PP 5F8396) and alfalfa, hay from 30 ppm to 60 ppm (PP 5F8396). These documents referenced a summary of the petitions prepared by Gowan Company, the registrant, which are available in the docket, *http://www.regulations.gov.* Several comments were received in response to the notice of filing, objecting generally to the presence of pesticide residues in food. Because none of the comments provided any information for the Agency to consider in its review of the requested hexythiazox tolerances and because the Agency has concluded based on available data that the tolerances requested meet the FFDCA safety standard, EPA is not granting the commenters' requests to deny the petition.

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 hexythiazox including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with hexythiazox 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.

Hexythiazox has low acute toxicity by the oral, dermal, and inhalation routes of exposure. It produces mild eye irritation and is not a skin irritant or skin sensitizer. Hexythiazox is associated with toxicity of the liver and adrenals following subchronic and chronic exposure to dogs, rats, and mice, with the dog being the most sensitive species. The prenatal developmental studies in rabbits and rats and the 2-generation reproduction study in rats showed no indication of increased susceptibility to *in utero* or postnatal exposure to hexythiazox. Reproductive toxicity was not observed. There is no concern for immunotoxicity or neurotoxicity following exposure to hexythiazox. The toxicology database for hexythiazox does not show any evidence of treatment-related effects on the immune system.

Hexythiazox is classified as ''Likely to be Carcinogenic to Humans'' based on a treatment-related increase in benign and malignant liver tumors in female mice and the presence of mammary gland tumors (fibroadenomas) in male rats; however, the evidence as a whole was not strong enough to warrant the use of a linear low dose extrapolation model applied to the animal data (Q_1*) for a quantitative estimation of human risk because the common liver tumors (benign and malignant) were only observed in high-dose female mice, and benign mammary gland tumors were only observed in high-dose male rats. Since the effects seen in the study that serves as the basis for the chronic reference dose (cRfD) occurred at doses substantially below the lowest dose that induced tumors (and there is no mutagenic concern for hexythiazox), the cRfD is considered protective of all chronic effects, including potential carcinogenicity.

Specific information on the studies received and the nature of the adverse effects caused by hexythiazox 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* within the document entitled ''Hexythiazox. Human Health Risk Assessment for Section 3 Registration on Bermuda Grass and Amended Registrations for Use on Beet, sugars, Alfalfa, and Potatoes,'' which can be found in docket ID numbers EPA–HQ–OPP–2015–0795, EPA–HQ–OPP–2015–0796 and EPA–HQ–OPP–2015–0797.

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://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for hexythiazox used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR HEXYTHIAZOX 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 (All populations)	No risk is expected from this exposure scenario as no hazard was identified in any toxicity study for this duration of exposure.		
Chronic Dietary (All populations).	NOAEL= 2.5 mg/kg/day. UF_A = 10x ..... UF_H = 10x ..... FQPA SF = 1x	Chronic RfD = 0.025 mg/kg/day. cPAD = 0.025	One-Year Feeding Toxicity Study—Dogs LOAEL = 12.5 mg/kg/day based on increased absolute and relative adrenal weights, and associated adrenal histopathology.
Incidental Oral Short-Term (1 to 30 days) and Intermediate-Term (1 to 6 months).	NOAEL= 30 mg/kg/day. UF_A = 10x ..... UF_H = 10x ..... FQPA SF = 1x	Residential LOC for MOE = 100.	2-Generation Reproduction Study—Rat LOAEL = 180 mg/kg/day, based on decreased pup body weight during lactation and delayed hair growth and/or eye opening, and decreased parental body-weight gain and increased absolute and relative liver, kidney, and adrenal weights.
Dermal Short- and Intermediate-term.	A quantitative dermal risk assessment is not necessary since no dermal hazard is anticipated. There is no evidence of increased quantitative or qualitative susceptibility of the young following *in utero* and pre- and post-natal exposure to hexythiazox.		

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR HEXYTHIAZOX FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Inhalation Short-Term (1 to 30 days) and Intermediate-Term (1 to 6 months).	Oral NOAEL = 30 mg/kg/day. UF_A = 10x ..... UF_H = 10x ..... FQPA SF = 1x	Residential LOC for MOE = 100.	2-Generation Reproduction Study—Rat LOAEL = 180 mg/kg/day, based on decreased pup body weight during lactation and delayed hair growth and/or eye opening, and decreased parental body-weight gain and increased absolute and relative liver, kidney, and adrenal weights.
Cancer (oral, dermal, and inhalation).	Classification: "Likely to be Carcinogenic to Humans." A quantification of risk using a non-linear approach; *i.e.,* RfD, for hexythiazox will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to hexythiazox.		

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 hexythiazox, EPA considered exposure under the petitioned-for tolerances as well as all existing hexythiazox tolerances in 40 CFR 180.448. EPA assessed dietary exposures from hexythiazox 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. No such effects were identified in the toxicological studies for hexythiazox; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary (food and drinking water) exposure assessment, EPA used the Dietary Exposure Evaluation Model (DEEM–FCID), Version 3.16, which uses food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA) from 2003–2008. As to residue levels in food, EPA used tolerance-level residues, assumed 100 percent crop treated (PCT), and incorporated DEEM 7.81 default processing factors when processing data were not available.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to hexythiazox. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *Chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for hexythiazox. Tolerance-level residues and/or 100 PCT 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 hexythiazox in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of hexythiazox. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Because surface water and groundwater estimated drinking water concentrations (EDWCs) from the proposed new uses on Bermuda grass and sugar beets (ranging from 1.29 to 2.78 µg/L) do not produce EDWCs greater than those produced from a recent drinking water assessment (D429192, 9/21/2015) (ranging from 3.5 to 7.3 µg/L) using the Mississippi soybeans scenario, the Agency is relying on the EDWCs from that previous drinking water assessment. Based on that assessment, the EDWCs of hexythiazox for chronic exposures are estimated to be 4.3 ppb for surface water and 2.4 ppb for ground water. The higher of these numbers was directly entered into the dietary exposure model for the chronic dietary risk assessment.

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). Hexythiazox is currently registered for the following residential uses, including ornamental landscape plantings, turf, and fruit and nut trees in residential sites.

EPA assessed residential exposure using the following assumptions: Residential handler exposures are expected to be short-term (1 to 30 days) via either the dermal or inhalation routes of exposures. Since a quantitative dermal risk assessment is not needed for hexythiazox, handler MOEs were calculated for the inhalation route of exposure only. Both adults and children may be exposed to hexythiazox residues from contact with treated lawns or treated residential plants. Post application exposures are expected to be short-term (1 to 30 days) and intermediate-term (1 to 6 months) in duration. Adult post-application exposures were not assessed since no quantitative dermal risk assessment is needed for hexythiazox and inhalation exposures are typically negligible in outdoor settings. The exposure assessment for children included incidental oral exposure resulting from transfer of residues from the hands or objects to the mouth, and from incidental ingestion of soil.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

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 hexythiazox to share a common mechanism of toxicity with any other substances, and hexythiazox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action; therefore, EPA has assumed that hexythiazox 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://www.epa.gov/pesticides/cumulative*.

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.* The prenatal and postnatal toxicology data base indicates no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to hexythiazox.

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 hexythiazox is complete.

ii. There is no indication that hexythiazox is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that hexythiazox 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. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to hexythiazox in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by hexythiazox.

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.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected; therefore, hexythiazox is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to hexythiazox from food and water will utilize 93% of the cPAD for children 1 to 2 years of age, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of hexythiazox is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Hexythiazox is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to hexythiazox. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, drinking water, and residential inhalation exposures result in an aggregate MOE for adults (7,700) that greatly exceeds the LOC of 100, and is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Hexythiazox is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to hexythiazox. Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded the combined intermediate-term food, drinking water, and residential oral exposures result in an aggregate MOE for children (1,150) that greatly exceeds the LOC of 100, and is not of concern.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III. C.1.iii., EPA concluded that regulation based on the cRfD will be protective for both chronic and carcinogenic risks. As noted in this unit, there are no chronic risks of concern.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. general population, or to infants and children from aggregate exposure to hexythiazox residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate analytical enforcement methodology, high performance liquid chromatography method with UV detection (HPLC/UV), is available to enforce the tolerance expression for hexythiazox and its metabolites containing the PT–1–3 moiety in crop and livestock commodities. This method is listed in the U.S. EPA Index of Residue Analytical Methods under hexythiazox as method AMR–985–87.

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 hexythiazox for alfalfa, forage and hay; and beet, sugar roots and top.

C. Revisions to Petitioned-For Tolerances

The petitioner requested tolerances for beet, sugar, molasses and beet, sugar, dried pulp based on the raw agricultural commodity (RAC) tolerance level instead of the HAFT (Highest Average Field Trial). Using the HAFT to determine the tolerance for these processed commodities, EPA determined that residues in the molasses would be covered by the tolerance on the beet, sugar, root; therefore, a separate molasses tolerance is not required. Using the HAFT for beet, sugar, dried pulp, EPA determined that the tolerance should be reduced to 0.30 ppm. Beet, sugar, tops are no longer considered a major livestock food commodity for regulatory purposes; therefore, a tolerance is not required for beet, sugar, tops.

V. Conclusion

Therefore, tolerances are established for residues of the ovicide/miticide hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on beet, sugar, root at 0.15 ppm and beet, sugar, dried pulp at 0.30 ppm. Tolerances associated with regional registrations are established for Bermuda grass, forage (EPA Regions 9–10 only) at 40 parts per million (ppm) and Bermuda grass, hay (EPA Regions 9–10 only) at 70 ppm. Also, existing tolerances are modified for residues in or on Alfalfa, forage (EPA Regions 7–11 only) at 20 ppm and Alfalfa, hay (EPA Regions 7–11 only) at 60 ppm.

Because the new tolerance for beet, sugar, root (in 40 CFR 180.448(a)) supersedes the existing time-limited tolerance for beet, sugar, root (in 40 CFR 180.448(b)), the Agency is removing the time-limited tolerance.

In addition, in the previous rulemaking establishing hexythiazox tolerances, EPA instructed the **Federal Register** staff to revise the existing entry in the table in paragraph (c) for ''Fruit, citrus group 10 (CA, AZ, TX only)'' at 0.35 ppm to ''Fruit, citrus group 10–10 (CA, AZ, TX only)'' at 0.6 ppm. (April 6, 2016, 81 FR 19891). Instead of revising the existing entry, a separate entry was created for ''Fruit, citrus group 10–10 (CA, AZ, TX only).'' The result is that the table in paragraph (c) now contains two overlapping entries: ''Fruit, citrus group 10 (CA, AZ, TX only)'' of 0.35 ppm and an entry for ''Fruit, citrus group 10–10 (CA, AZ, TX only)'' of 0.6 ppm. Because ''Fruit, citrus group 10 (CA, AZ, TX only)'' is superseded by ''Fruit, citrus group 10–10 (CA, AZ, TX only),'' EPA is removing ''Fruit, citrus group 10 (CA, AZ, TX only)'' as a housekeeping measure.

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: January 10, 2017.

Michael Goodis,

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 § 180.448:

■ i. Add alphabetically the entries for ''Beet, sugar, dried pulp'' and ''Beet, sugar, root'' to the table in paragraph (a).

■ ii. Revise paragraph (b).

■ iii. Revise the two entries for ''Alfalfa'' in the table in paragraph (c);

■ iv. Add alphabetically the entries for ''Bermuda grass, forage (EPA Regions 9–10 only)'' and ''Bermuda grass, hay (EPA Regions 9–10 only)'' to the table in paragraph (c); and

■ v. Remove the entry for ''Fruit, citrus group 10 (CA, AZ, TX only)'' in the table in paragraph (c).

The additions and revisions read as follows:

§ 180.448 Hexythiazox; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Beet, sugar, dried pulp	0.30
Beet, sugar, root	0.15
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved]

(c) * * *

Commodity	Parts per million
Alfalfa, forage (EPA Regions 7–11 only)	20
Alfalfa, hay (EPA Regions 7–11 only)	60
* * * * *	
Bermuda grass, forage (EPA Regions 9–10 only)	40
Bermuda grass, hay (EPA Regions 9–10 only)	70
* * * * *	

* * * * *

[FR Doc. 2017–02481 Filed 2–13–17; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604–1758–02]

RIN 0648–XF151

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2017 Commercial Run-Around Gillnet Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) through this temporary rule for commercial harvest of king mackerel in the Florida west coast southern subzone of the eastern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) using run-around gillnet gear. NMFS has determined that the commercial annual catch limit (ACL, equivalent to the commercial quota) for king mackerel using run-around gillnet gear in the Florida west coast southern subzone of the Gulf EEZ will be reached by February 10, 2017. Therefore, NMFS closes the Florida west coast southern subzone to commercial king mackerel fishing using run-around gillnet gear in the Gulf EEZ. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective from 12:01 p.m., eastern standard time, February 10, 2017, until 6 a.m., eastern standard time, January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Florida west coast subzone of the Gulf eastern zone for Gulf migratory group king mackerel (Gulf king mackerel) is divided into northern and southern subzones, each with separate commercial quotas. From November 1 through March 31, the southern subzone encompasses an area of the EEZ south of a line extending due west of the Lee and Collier County, Florida, boundary on the Florida west coast, and south of a line extending due east of the Monroe and Miami-Dade County, Florida, boundary on the Florida east coast, which includes the EEZ off Collier and Monroe Counties, Florida. From April 1 through October 31, the southern subzone is reduced to the EEZ off Collier County, and the EEZ off Monroe County becomes part of the Atlantic migratory group area (50 CFR 622.369(a)(1)(ii)(A)(*2*)).

The commercial quota for Gulf king mackerel in the Florida west coast southern subzone is 551,448 lb (250,133 kg) for vessels using run-around gillnet gear (50 CFR 622.384(b)(1)(i)(B)(*1*)), for the current fishing year, July 1, 2016, through June 30, 2017.

Regulations at 50 CFR 622.8(b) and 622.388(a)(1) require NMFS to close any segment of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. NMFS has determined that the Gulf king mackerel commercial quota of 551,448 lb (250,133 kg) for vessels using run-around gillnet gear in the Florida west coast southern subzone will be reached by February 10, 2017. Accordingly, commercial fishing using such gear in the Florida west coast southern subzone is closed at 12:01 p.m., eastern standard time, February 10, 2017, until 6 a.m., eastern standard time, January 16, 2018, the beginning of the next fishing season, *i.e.,* the day after the 2018 Martin Luther King, Jr. Federal holiday. Accordingly, the vessel operator that has been issued a Federal commercial permit to harvest Gulf king mackerel using run-around gillnet gear in the Florida west coast southern subzone must have landed ashore and bartered, traded, or sold such king mackerel prior to 12:01 p.m., eastern standard time, February 10, 2017.

Persons aboard a vessel for which a commercial permit for king mackerel has been issued, except persons who also possess a king mackerel gillnet permit, may fish for or retain Gulf king mackerel harvested using hook-and-line gear in the Florida west coast southern subzone unless the commercial quota for hook-and-line gear has been met and the hook-and-line segment of the commercial sector has been closed. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel harvested using run-around gillnet gear in the Florida west coast southern subzone may not be purchased or sold. This prohibition does not apply to king mackerel harvested using run-around gillnet gear in the Florida west coast southern subzone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(b) and 622.388(a)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without prior notice and opportunity for public comment.

This action responds to the best scientific information available. The NOAA Assistant Administrator for Fisheries (AA) finds that the need to immediately implement this action to close the fishery segment that uses run-around gillnet gear constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary rule is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AM has already been subject to notice and comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment is contrary to the public interest, because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource, because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment on this action would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 9, 2017.

Karen H. Abrams,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–02969 Filed 2–9–17; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XF224

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 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 pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2017 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 10, 2017, through 1200 hrs, A.l.t., March 10, 2017.

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 A season allowance of the 2017 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 2,232 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish in the GOA (81 FR 14740, March 18, 2016) and inseason adjustment (81 FR 95063, December 27, 2016).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2017 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,132 mt and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the 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 Acting 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 directed fishing for pollock in Statistical Area 610 of 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 February 9, 2017.

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 § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 2017.

Karen H. Abrams,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–03039 Filed 2–10–17; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 29
Tuesday, February 14, 2017

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Doc. No. AMS–SC–16–0109; SC17–923–1 CR]

Sweet Cherries Grown in Designated Counties in Washington; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible Washington sweet cherry growers to determine whether they favor continuance of the marketing order regulating the handling of sweet cherries grown in designated counties in Washington.

DATES: The referendum will be conducted from April 21 through May 5, 2017. Only current growers of sweet cherries within the designated counties in Washington that have grown sweet cherries during the period April 1, 2016, through March 31, 2017, are eligible to vote in this referendum.

ADDRESSES: Copies of the marketing order may be obtained from the Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1220 SW 3rd Avenue, Suite 305, Portland, OR 97204; Telephone: (503) 326–2724; from the Office of the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; or on the Internet: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary D. Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov,* respectively.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 923 (7 CFR part 923), hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted from April 21 through May 5, 2017, among eligible Washington sweet cherry growers. Only current growers that were also engaged in the production of sweet cherries in designated counties in Washington during the period of April 1, 2016, through March 31, 2017, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of Washington sweet cherries represented in the referendum favor continuance of their program. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information regarding operation of the order and relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189, Generic Fruit Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 1,500 Washington sweet cherry growers to cast a ballot. Participation is voluntary. Ballots postmarked after May 5, 2017, will not be included in the vote tabulation.

Teresa Hutchinson and Gary Olson of the Northwest Marketing Field Office, Specialty Crops Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR part 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents or from their appointees.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: February 8, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–02904 Filed 2–13–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–1086]

RIN 1625–AA08

Special Local Regulation; Chesapeake Bay, Between Sandy Point and Kent Island, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for certain waters of the Chesapeake Bay. This action is necessary to provide for the safety of life on these navigable waters located between Sandy Point, Anne Arundel County, MD and Kent Island, Queen Anne's County, MD, during a paddling event on April 29, 2017. In the case of inclement weather, the paddling event is scheduled for April 30, 2017. This proposed rulemaking would prohibit persons and vessels from being in the regulated area

unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 16, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2016–1086 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
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, Purpose, and Legal Basis

On December 13, 2016, ABC Events, Inc. of Arnold, MD notified the Coast Guard that it will be conducting the Bay Bridge Paddle from 7:30 a.m. to 12:30 p.m. on April 29, 2017. Details of the proposed event were provided to the Coast Guard on January 11, 2017. The second annual kayak and stand up paddle board event will be used to both showcase the water sport for intermediate and elite paddlers, and benefit the Annapolis Chapter of the Foundation for Community Betterment. The event includes up to 800 paddlers in two classes operating on two race courses in the Chesapeake Bay. The first course is adjacent to Sandy Point State Park at Annapolis, Maryland, and the second is under and between the north and south bridges that consist of the William P. Lane, Jr. (US–50/301) Memorial Bridges, located between Sandy Point, Anne Arundel County, MD and Kent Island, Queen Anne's County, MD. Elite paddlers will operate on a 9-statute mile/14.5-kilometer race course that starts at the east beach area of Sandy Point State Park, proceeds southerly along the shoreline to a point on the course located between north bridge piers 13 and 13A, then easterly along and between the bridges toward the eastern shore at Kent Island and turns around upon reaching a point near Kent Island, then proceeds westerly along and between the bridges toward the western shore, turns upon reaching a point on the course located between north bridge piers 24 and 25, proceeds northerly to the Sandy Point Shoal Lighthouse, and proceeds westerly to a finish at the east beach area of Sandy Point State Park. Intermediate paddlers will operate on a 3.1-statute mile/5-kilometer course that starts at the east beach area of Sandy Point State Park and follows the elite paddlers to the north bridge, then easterly along and between the bridges toward the eastern shore at Kent Island and turns northerly upon reaching a point on the course located between north bridge piers 24 and 25, and proceeds to a finish at the north beach area of Sandy Point State Park. In the case of inclement weather, the event is scheduled from 7:30 a.m. to 12:30 p.m. on April 30, 2017. Hazards from the paddle race include numerous event participants crossing designated shipping channels and interfering with vessels intending to operate within those channels. The COTP Maryland-National Capital Region has determined that potential hazards associated with the paddle race would be a safety concern for anyone intending to operate within certain waters of the Chesapeake Bay between Sandy Point and Kent Island, MD.

The purpose of this rulemaking is to protect event participants, spectators and transiting vessels on certain waters of the Chesapeake Bay before, during, and after the scheduled event.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations.

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 7 a.m. to 1 p.m. on April 29, 2017, and, if necessary due to inclement weather, from 7 a.m. to 1 p.m. on April 30, 2017. The regulated area would cover all navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01′05.23″ N., longitude 076°23′47.93″ W.; thence eastward to latitude 39°01′02.08″ N., longitude 076°22′58.38″ W.; thence southward to latitude 38°59′57.02″ N., longitude 076°23′02.79″ W.; thence eastward and parallel and 500 yards north of the north bridge span to eastern shoreline at latitude 38°59′13.70″ N., longitude 076°19′58.40″ W.; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00′17.08″ N., longitude 076°24′28.36″ W.; thence southward to latitude 38°59′38.36″ N., longitude 076°23′59.67″ W.; thence eastward to latitude 38°59′26.93″ N., longitude 076°23′25.53″ W.; thence eastward to the eastern shoreline at latitude 38°58′40.32″ N., longitude 076°20′10.45″ W., located between Sandy Point and Kent Island, MD. The duration of the regulated area is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 8 a.m. until noon paddle event. Except for Bay Bridge Paddle participants, no vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or a designated representative. 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 (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 NPRM has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Chesapeake Bay for six hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the

COTP Coast Guard Patrol Commander deems it safe to do so.

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 regulated area 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 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 proposed 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 proposed rule does not have tribal implications under E.O. 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 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 6 hours. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.501T05–1086 to read as follows:

§ 100.501T05–1086 Special Local Regulation; Chesapeake Bay, between Sandy Point and Kent Island, MD.

(a) *Regulated area.* The following location is a regulated area: All navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01′05.23″ N., longitude 076°23′47.93″ W.; thence eastward to latitude 39°01′02.08″ N., longitude 076°22′58.38″ W.; thence southward to latitude 38°59′57.02″ N., longitude 076°23′02.79″ W.; thence eastward and parallel and 500 yards north of the north bridge span to eastern shoreline at latitude 38°59′13.70″ N., longitude 076°19′58.40″ W.; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00′17.08″ N., longitude 076°24′28.36″ W.; thence southward to latitude 38°59′38.36″ N., longitude 076°23′59.67″ W.; thence eastward to latitude 38°59′26.93″ N., longitude 076°23′25.53″ W.; thence eastward to the eastern shoreline at latitude 38°58′40.32″ N., longitude 076°20′10.45″ W., located between Sandy Point and Kent Island, MD. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Captain of the Port Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

(3) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Participant* means all persons and vessels participating in the Bay Bridge Paddle event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Maryland-National Capital Region.

(c) *Special local regulations:* (1) The COTP or Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(2) Except for participants and vessels already at berth, all persons and vessels within the regulated area at the time it is implemented are to depart the regulated area.

(3) Persons and vessels desiring to transit, moor, or anchor within the regulated area must first obtain authorization from the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. Prior to the enforcement period, to seek permission to transit, moor, or anchor within the area, the Captain of the Port Maryland-National Capital Region can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). During the enforcement period, to seek permission to transit, moor, or anchor within the area, the Coast Guard Patrol Commander can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) for direction.

(4) The Coast Guard may be assisted in the patrol and enforcement of the regulated area by other Federal, State, and local agencies. The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 1 p.m. on April 29, 2017, and, if necessary due to inclement weather, from 7 a.m. to 1 p.m. on April 30, 2017.

Dated: January 25, 2017.

Lonnie P. Harrison, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2017–02957 Filed 2–13–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0799]

RIN 1625–AA87

Safety and Security Zones; New York Marine Inspection and Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Coast Guard is reopening the comment period for the Advance notice of proposed rulemaking (ANPRM) it published on November 3, 2016, regarding the modification of the security zone between Liberty State Park and Ellis Island. In response to public requests, the Coast Guard is extending the comment period until April 17, 2017.

DATES: Comments and related material must be received by the Coast Guard on or before April 17, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0799 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 on this document, call or email MST1 Kristina Pundt, Waterways Management at U.S. Coast Guard Sector New York, telephone (718) 354–4352, email *Kristina.H.Pundt@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Acronyms

ANPRM Advance notice of proposed rulemaking
DHS Department of Homeland Security
FR Federal Register

A. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and

will consider all comments and material received due on or before April 17, 2017. Your comments can help shape the outcome of this possible 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, indicate the specific question number 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 the ANPRM 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 and if we publish rulemaking documents related to the ANPRM.

B. Basis and Purpose

The Coast Guard is responsible for considering adjustments to improve navigational and environmental safety of waterways, including those requested by groups of mariners. On November 3, 2016, the Coast Guard published an ANPRM in the **Federal Register** (81 FR 76545) entitled, ''Safety and Security Zone; New York Marine Inspection Zone and Captain of the Port Zone.'' With its publication, we initiated the early stage of a methodical and public rulemaking process to learn all possible navigational, environmental, terrestrial, and other effects caused by a modification of the security zone around the Ellis Island Bridge. The ANPRM is a preliminary step, the goal of which is to gather information that defines the multiple stakeholder considerations we need to incorporate when considering a proposed rule for modification of the security zone around the Ellis Island Bridge. To continue encouraging this important public discussion, we are adding an additional 60 days to the comment period.

C. Information Requested

Public participation is requested to assist in determining the best way forward with respect to modifying the existing security zone surrounding the Ellis Island Bridge. To aid us in developing a possible proposed rule, we seek any comments, whether positive or negative, including but not limited to, the impacts the existing security zone surrounding the Ellis Island Bridge has on navigational safety.

Please submit comments or concerns you may have in accordance with the ''Public Participation and Request for Comments'' section above.

We are also seeking comments on the current vessel traffic and the types of vessels that transit in this area.

Dated: December 27, 2016.

M.H. Day,

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

[FR Doc. 2017–02934 Filed 2–13–17; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 16–306, GN Docket No. 12–268; DA 17–34]

Media Bureau Seeks Comment on Requiring the Filing of Transition Progress Reports by Stations That Are Not Eligible for Reimbursement From the TV Broadcast Relocation Fund

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comment.

SUMMARY: In this document, the Federal Communications Commission seeks comment on a proposed Transition Progress Report (FCC Form 2100—Schedule 387 (Transition Progress Report)) and proposed filing requirements for periodic progress reports by full power and Class A television stations that are not eligible to receive payment of relocation expenses from the TV Broadcast Relocation Fund in connection with their being assigned to a new channel through the Incentive Auction. The Commission tentatively concludes that this mechanism is needed to help the Commission, broadcasters, those involved in construction of broadcast facilities, other interested parties, and the public to monitor the construction of the stations that are not eligible for reimbursement.

DATES: Comments due on or before March 1, 2017; and reply comments are due on or before March 13, 2017.

ADDRESSES: You may submit comments, identified by GN Docket No. 12–268 and MB Docket No. 16–306, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: https://www.fcc.gov/.* Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *Joyce.Bernstein@fcc.gov,* (202) 418–1647.

SUPPLEMENTARY INFORMATION: In the Incentive Auction R&O, the Commission adopted rules and procedures for conducting the broadcast television incentive auction. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* GN Docket No. 12–268, Report and Order, 79 FR 48442, August 15, 2014. The incentive auction is composed of a reverse auction in which

broadcasters offer to voluntarily relinquish some or all of their spectrum usage rights, and a forward auction of new, flexible-use licenses suitable for providing mobile broadband services. The reverse auction incorporates a repacking process to reorganize the broadcast television bands so that the television stations that remain on the air after the transition will occupy a smaller portion of the ultra-high frequency (UHF) band, thereby clearing contiguous spectrum that will be repurposed as the 600 MHz Band for flexible wireless use. After bidding concludes, the Media and Wireless Telecommunications Bureaus will release the *Closing and Reassignment Public Notice* which, among other things, will announce the results of the repacking process and identify the channel reassignments of television channels. The *Closing and Reassignment Public Notice* will also establish the beginning of the 39-month post-auction transition period (transition period). By the end of the transition period, all stations reassigned to new channels must complete construction of their post-auction channel facilities, commence operation on their post-auction channel, cease operation on their pre-auction channel, and file a license application.

Most stations that incur costs as a result of being reassigned to new channels will be eligible for reimbursement from the Reimbursement Fund and the Commission determined in the *Incentive Auction R&O,* that reimbursable stations will be required, on a regular basis, to provide progress reports to the Commission showing how the disbursed funds have been spent and what portion of their construction is complete. In this document the Bureau announces that each full power and Class A television station that is eligible for reimbursement of its relocation costs from the TV Broadcast Relocation Fund established by the Middle Class Tax Relief and Job Creation Act of 2012 must periodically file an FCC Form 2100—Schedule 387 (Transition Progress Report) that is attached as Appendix A to the Public Notice. The appendix is available at *https://apps.fcc.gov/edocs_public/attachmatch/DA-17-34A1.pdf.* Reimbursable stations must file Transition Progress Reports using the Commission's electronic filing system starting with first full calendar quarter after completion of the Incentive Auction and on a quarterly basis thereafter. In addition to these quarterly reports, reimbursable stations must file the reports: (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post-auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel. Once a station has filed Transition Progress Reports certifying that it has completed all work related to construction of its post-auction facilities and has ceased operating on its pre-auction channel, it will no longer be required to file reports.

Other stations that will be relocating to new channels are not eligible for reimbursement, including stations with a winning reverse auction bid to move to the low or high very-high frequency (VHF) band, stations requesting a waiver of the Commission's service rules in lieu of reimbursement, and a small number of Class A stations that may be displaced as a result of repacking. This document tentatively concludes that a similar mechanism is needed to help the Commission, broadcasters, those involved in construction of broadcast facilities, other interested parties, and the public to monitor the construction of the stations that are not eligible for reimbursement, and seeks comment on the Transition Progress Report as it relates to non-reimbursable stations, including whether the same questions asked of reimbursable stations should be asked of non-reimbursable stations, or whether different filing intervals or different filing requirements would be advisable.

Paperwork Reduction Act of 1995 Analysis: This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, the general public and the Office of Management and Budget (OMB) are invited to comment on the information collection requirements contained in this document as required by the Paperwork Reduction Act of 1995, Public Law 104–13, *see* 44 U.S.C. 3507.

Initial Regulatory Flexibility Act Analysis: As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities of the policies and rules proposed in the this PN (*Progress Report Form PN*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Progress Report Form PN.* The Commission will send a copy of the *Progress Report Form PN,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *Progress Report Form PN* and IRFA (or summaries thereof) will be published in the **Federal Register**.

The Regulatory Flexibility Act of 1980, as amended (''RFA''), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rule Changes

The Federal Communications Commission (Commission) adopted a 39-month transition period during which television stations that are assigned to new channels in the incentive auction must construct their new facilities. The Commission determined that reassigned television stations that are eligible for reimbursement from the TV Broadcast Relocation Fund are required, on a regular basis, to provide progress reports to the Commission showing how the disbursed funds have been spent and what portion of construction is complete. The Commission directed the Media Bureau (Bureau) to develop a form for such progress reports and set the filing deadlines for such reports. The *Progress Report Form PN* describes the information that must be provided by these stations, and when and how the progress reports must be filed. The Bureau proposes to require that reassigned television stations that are not eligible for reimbursement from the TV Broadcast Relocation Fund provide the same progress reports to the Commission on the same schedule as that specified for stations eligible for reimbursement. The Transition Progress Report in Appendix A requires reassigned stations to certify that certain steps toward construction of their post-auction channel either have been completed or are not required, and to identify potential problems which they believe may make it difficult for them to meet their construction deadlines. The

information in the progress reports will be used by the Commission, stations, and other interested parties to monitor the status of reassigned stations' construction during the 39-month transition period.

B. Legal Basis

The proposed action is authorized pursuant to sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

Television Broadcasting. This economic census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of $25,000,000 or less, and 99 had annual receipts of more than $25,000,000. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,386 stations. Of this total, 1,221 stations (or about 88 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of television broadcast stations are small entities. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

Class A TV Stations. The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations. As noted above, the SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts. The Commission has estimated the number of licensed Class A television stations to be 418. Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Bureau proposes that reassigned stations that are not eligible for reimbursement file the Transition Progress Report in Appendix A on a quarterly basis, beginning for the first full quarter after the release of a public notice announcing the completion of the incentive auction, as well as 10 weeks before their construction deadline, 10 days after they complete construction of their post-auction facility, and five days after they cease broadcasting on their pre-auction channel. Once a station has ceased operating on its pre-auction channel, it would no longer need to file reports. We seek comment on the possible burdens the reporting requirement would place on small entities. Entities, especially small businesses, are encouraged to quantify, if possible, the costs and benefits of the proposed reporting requirement.

E. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In general, alternatives to proposed rules or policies are discussed only when those rules pose a significant adverse economic impact on small entities. We believe the burdens of the proposed reporting requirement are minimal and, in any event, are outweighed by the potential benefits of allowing for monitoring of the post-auction transition. In particular, the intent is to allow the Commission, broadcasters, and other interested parties to more closely monitor that status of construction during the transition, and focus resources on ensuring successful completion of the transition by all reassigned stations and continuity of over-the-air television service. Although the proposal to require reassigned stations that are not eligible for reimbursement to file regular progress reports during the transition may impose additional burdens on these stations, we believe the benefits of the proposal (such as further facilitating the successful post-incentive auction transition) outweigh any burdens associated with compliance.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2017–02926 Filed 2–13–17; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 82, No. 29

Tuesday, February 14, 2017

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

Food Safety and Inspection Service

[Docket No. FSIS–2017–0005]

Preventing Undeclared Allergens: A Strategic Approach To Reducing Recalls

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notification of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS), with participation from the Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), international partners, and academic institutions, is hosting a public meeting to discuss the prevention of undeclared allergens in FSIS-regulated product. Specifically, the meeting will address the continued occurrence of product recalls due to undeclared allergens and best practices for preventing the presence of undeclared allergens in FSIS-regulated products. Topics will focus on FSIS policy and enforcement regarding undeclared allergens, labeling compliance, best practices for prevention, and emerging issues. Industry and interested individuals, organizations, and other stakeholders are invited to participate in the meeting and comment on these topics.

DATES: The public meeting will be held on Thursday, March 16, 2017, 8:00 a.m. to 5:30 p.m. EST.

ADDRESSES: The meeting will be held at the Jefferson Auditorium in the South Building, U.S. Department of Agriculture (USDA), 14th & Independence Avenue SW., Washington, DC 20250. The South Building is a Federal facility, and attendees should plan adequate time to pass through the security screening systems. Attendance is free. Non-USDA employees must enter through the Wing 3 entrance on Independence Avenue. Attendees must be pre-registered for the meeting (and check-in onsite the day of the meeting) and show a valid photo ID to enter the building. See the pre-registration instructions under ''Registration and Meeting Materials.'' Only registered attendees will be permitted to enter the building.

FOR FURTHER INFORMATION CONTACT: Evelyn Arce, Outreach and Partnership Analyst, Office of Outreach, Employee Education and Training, FSIS, 1400 Independence Ave. SW., Mail Stop 3778, Washington, DC 20250; Telephone: (202) 418–8903; Fax: (202) 690–6519; Email: *Evelyn.Arce@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

More than 170 foods have been reported to cause allergic reactions. However, eight of the most common allergenic foods, usually referred to as the ''Big 8,'' account for 90 percent of all food allergic reactions and are the sources from which many other allergenic ingredients are derived. The Big 8 food allergens are wheat, crustacean shellfish (*e.g.,* shrimp, crab, lobster), eggs, fish, peanuts, milk, tree nuts (*e.g.,* almonds, pecans, walnuts), and soybeans.

Food allergies are increasing in reported prevalence and present a significant public health problem that affects both adults and children. Food allergens may be ingredients in meat, poultry, and egg products and thus the presence of undeclared allergens in these products may result in adverse health outcomes for certain individuals. FSIS-regulated establishments are required to declare all ingredients, including allergens, on the product label (9 CFR 317.2(f)(1), 381.118(a)(1), and 590.411(c)(1)). If FSIS finds that product under its jurisdiction in commerce contains undeclared allergens, FSIS will request that the establishment recall the product.

Since 2008, FSIS has seen a notable increase in the number of recalls due to undeclared allergens in FSIS-regulated products. Under the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, meat, poultry, and egg products that contain an allergen not declared on the product label are adulterated because, to individuals who are allergic to the allergen, the products bear or contain a poisonous or deleterious substance (21 U.S.C. 453(g)(1), 601(m)(1), and 1033(a)(1)). Furthermore, the meat, poultry, and egg products also are misbranded because the labeling is false and misleading (21 U.S.C. 453(h)(1), 601(n)(1) and 1033(l)). The presence of undeclared allergens in product is often preventable, as it results from incorrect labeling or packaging of products, due to unexpected product and ingredient changes, cross-contamination of product during processing, and other types of procedural and human error.

To address the presence of undeclared allergens in product and the increasing number of recalls involving undeclared allergens, FSIS, with speakers from FDA, CDC, international partners and academic institutions, is hosting a public meeting to highlight the problem of undeclared allergens in food, food allergy trends, and best practices for preventing undeclared allergen-related recalls.

In addition to holding this public meeting, FSIS has developed a compliance guideline to assist establishments in addressing the hazards posed by allergens in their products, available at: *https://www.fsis.usda.gov/wps/wcm/connect/f9cbb0e9-6b4d-4132-ae27-53e0b52e840e/Allergens-Ingredients.pdf?MOD=AJPERES.* FSIS updates this guidance as necessary as new information becomes available.

II. Registration and Meeting Materials

There is no fee to register for the public meeting, but pre-registration is mandatory for participants attending in-person. On-site registration will not be permitted. Early registration is recommended as space is limited. All attendees must register online by emailing *AllergenPublicMeeting@fsis.usda.gov* by March 9, 2017.

FSIS will finalize an agenda on or before the meeting dates and post it on the FSIS Web page at *http://www.fsis.usda.gov/meetings.*

III. Public Comments and Participation in Meetings

Public Comments: Oral Comments

Stakeholders will have an opportunity to provide oral comments during the public meeting. Due to the anticipated high level of interest in the opportunity to make public comments and the

limited time available to do so, FSIS will do its best to accommodate all persons who wish to express an opinion. FSIS encourages persons and groups who have similar interests to consolidate their information for presentation by a single representative.

Public Comments: Written Comments

Any stakeholders wishing to submit written comments before or after the meeting can do so on or before April 17, 2017, using any of the following methods: Electronically—go to *http://www.regulations.gov* and follow the online instructions for submitting comments; Mail, including CD–ROMS—send to Docket Clerk, USDA, FSIS Docket Room, 1400 Independence Avenue SW., Patriots Plaza III, Mailstop 3782, Room 8–163A, Washington, DC 20250–3700; Hand- or courier-delivered items—deliver to the Docket Clerk, USDA, FSIS Docket Room at Patriots Plaza III, 355 E Street SW., Room 8–164, Washington, DC 20250, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

All items submitted by mail or electronic mail must include the Agency name and docket number: FSIS–2017–0005. Written comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.* For access to background documents or written comments received, go to the FSIS Docket Room at Patriots Plaza III, 355 E Street SW., Room 8–164, Washington, DC 20250, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Question-and-Answer Periods: Time has been allotted for audience questions after most presentations delivered during the meeting. Participants will have the opportunity to ask questions via a microphone in the auditorium.

IV. Transcripts

The transcript of the proceedings from the public meeting will become part of the administrative record. As soon as the meeting transcripts are available they will be accessible on the FSIS Web site at *http://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings.* The transcripts may also be viewed at the FSIS Docket Room at the address listed above.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on: February 9, 2017.

Alfred V. Almanza,

Administrator.

[FR Doc. 2017–02939 Filed 2–13–17; 8:45 am]

BILLING CODE 3410–DM–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Iowa Advisory Committee for an Orientation Meeting and To Discuss Civil Rights Topics 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 Iowa Advisory Committee (Committee) will hold a meeting on Wednesday, February 22, 2017, at 1:00 p.m. CST for the purpose of committee orientation and a discussion on civil rights topics affecting the state.

DATES: The meeting will be held on Wednesday, February 22, 2017, at 1:00 p.m. CST.

Public Call Information: Dial: 888–747–4660, Conference ID: 4797897.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–747–4660, conference ID: 4797897. 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 as time allows. 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. 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.

Members of the public are also 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 Midwestern Regional Office, 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 Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link (*http://facadatabase.gov/committee/meetings.aspx?cid=248*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions
Committee Orientation
Civil Rights Topics in Iowa
Public Comment
Future Plans and Actions: Civil Rights in Iowa
Adjournment

Exceptional Circumstance: Pursuant to the Federal Advisory Committee Management Regulations (41 CFR 102–3.150), the notice for this meeting cancelation is given less than 15 calendar days prior to the meeting due to exceptional circumstance of the GPO's change to a new electronic filing system.

Dated: February 8, 2017.

David Mussatt

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–02919 Filed 2–13–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meeting

AGENCY: U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for a public meeting of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: This conference call meeting will be held on Wednesday, March 8, 2017, from 11:00 a.m. to 12:00 p.m. Eastern Daylight Time. The deadline for members of the public to register to participate in or listen to the meeting is 5:00 p.m., Friday, March 3, 2017.

Call in Information: The meeting will be held by conference call with webinar capabilities. The Web site, call-in number and passcode will be provided by email to registrants. Requests to register and any written comments should be submitted to: Richard Boll and John Miller, Office of Supply Chain, Professional & Business Services, International Trade Administration by email: *john.miller@trade.gov* and *richard.boll@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: John Miller and Richard Boll, Office of Supply Chain, Professional & Business Services, International Trade Administration by email: *john.miller@trade.gov* and *richard.boll@trade.gov* or phone 202–482–1316 and 202–482–1135.

SUPPLEMENTARY INFORMATION: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and provides advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *http://trade.gov/td/services/oscpb/supplychain/acscc/.*

Matters to be Considered: Committee members are expected to deliberate and vote on a Committee letter outlining its priority recommendations for this Administration and a Committee letter outlining its recommendations for NAFTA negotiations. These letters will highlight the important issues that the Committee recommends that the Secretary of Commerce, in coordination with the Administration, address to improve the competitiveness of U.S. supply chains, facilitate new job growth within the United States, and increase U.S. exports. The Office of Supply Chain, Professional & Business Services will post the draft recommendations and the final agenda on the Committee Web site (*http://trade.gov/td/services/oscpb/supplychain/acscc/*) at least one week prior to the meeting. Please provide any comments on the draft recommendations to: John Miller and Richard Boll, Office of Supply Chain, Professional & Business Services, International Trade Administration by email: *john.miller@trade.gov* and *richard.boll@trade.gov* at least five days prior to the conference call, in order to ensure adequate time to distribute the comments for Committee review. The conference call will be open to the public for comments on a first-come, first-served basis, with up to thirty minutes available for public comments. Access lines are limited. The minutes of the meetings will be posted on the Committee Web site within 60 days of the meeting.

Dated: February 8, 2017.

Maureen Smith,

Director, OSCPBS.

[FR Doc. 2017–02905 Filed 2–13–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF223

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the Advisory Panel Selection Committee (Closed Session); Southeast Data, Assessment and Review (SEDAR) Committee; Protected Resources Committee; Spiny Lobster Committee; Habitat Protection and Ecosystem-Based Management Committee; Dolphin Wahoo Committee; Snapper Grouper Committee; Mackerel Cobia Committee; Citizen Science Committee; and Executive Finance Committee. There will also be a meeting of the full Council. The Council will take action as necessary. The Council will also hold a formal public comment session.

DATES: The Council meeting will be held from 8:30 a.m. on Monday, March 6, 2017 until 12 p.m. on Friday, March 10, 2017.

ADDRESSES:

Meeting address: The meeting will be held at the Westin Jekyll Island, 110 Ocean Way, Jekyll Island, GA 31527; phone: (888) 627–8316 or (912) 635–4545; fax: (912) 319–2838.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.* Meeting information is available from the Council's Web site at: *http://safmc.net/meetings/council-meetings/.*

SUPPLEMENTARY INFORMATION:

Public comment: Written comments may be directed to Gregg Waugh, Executive Director, South Atlantic Fishery Management Council (see *Council address*) or electronically via the Council's Web site at: *http://safmc.net/safmc-meetings/council-meetings/safmc-meeting-march2017/.* The public comment form is open for use when the briefing book is posted to the Web site on the Friday, two weeks prior to the Council meeting. Comments received by close of business the Monday before the meeting (February 27, 2017) will be compiled, posted to the Web site as part of the meeting materials, and included in the administrative record; please use the Council's online form available from the Web site. For written comments received after the Monday before the meeting (after 2/27), individuals sending the comment must use the Council's online form available from the Web site. Comments will automatically be posted to the Web site and available for Council consideration. Comments received prior to noon on Thursday, March 9, 2017 will be a part of the meeting administrative record.

The items of discussion in the individual meeting agendas are as follows:

Advisory Panel Selection Committee (Closed Session), Monday, March 6, 2017, 8:30 a.m. Until 10 a.m.

The Committee will review applications for open advisory panel seats and provide recommendations.

SEDAR Committee, Monday, March 6, 2017, 10 a.m. Until 11 a.m.

1. The Committee will receive an update on SEDAR projects including the status of on-going projects, discuss long-term assessment priorities, and review the NOAA Fisheries Prioritization Tool application and take action as necessary.

2. The Committee will also discuss 2020 preliminary assessment priorities and the Research Track process for conducting stock assessments and provide guidance for consideration by the SEDAR Steering Committee.

Protected Resources Committee, Monday March 6, 2017, 11 a.m. Until 12 p.m.

The Committee will receive an update from NOAA Fisheries Protected Resources Office, an update on the Atlantic States Marine Fisheries Commission's (ASMFC) Atlantic Sturgeon stock assessment, and an update from the U.S. Fish and Wildlife Service and take action as necessary.

Spiny Lobster Committee, Monday, March 6, 2017, 1:30 p.m. Until 2:30 p.m.

The Committee will review Spiny Lobster Regulatory Amendment 4 addressing management parameters including Acceptable Biological Catch (ABC) and annual catch limits (ACLs), and the use of traps to recreationally harvest spiny lobster. The Committee will provide recommendations for approving the amendment for public hearing.

Habitat Protection and Ecosystem-Based Management Committee, Monday, March 6, 2017, 2:30 Until 5 p.m.

1. The Committee will review the Council's Fishery Ecosystem Plan II sections and provide direction to staff.

2. The Committee will receive an update on the Habitat and Ecosystem Tools and Model Development, Council actions pertaining to Habitat, and the South Atlantic Regional Climate Action Plan, and provide recommendations as appropriate.

Dolphin Wahoo Committee, Tuesday, March 7, 2017, 8:30 a.m. Until 11 a.m.

1. The Committee will receive updates from NOAA Fisheries on commercial catches versus quota for dolphin and wahoo and take action as necessary.

2. The Committee will review Dolphin Wahoo Amendment 10 addressing the definition of Optimum Yield, quota sharing, operator card requirements, and allowable gear for the dolphin fishery and provide recommendations as appropriate.

Snapper Grouper Committee, Tuesday, March 7, 2017, 11 a.m. Until 5 p.m. and Wednesday, March 8, 2017 From 8:30 a.m. Until 3:30 p.m.

1. The Committee will receive updates from NOAA Fisheries on commercial catches versus quotas for species under ACLs and the status of amendments under formal Secretarial review and take action as necessary. The Committee will also discuss guidance on re-opening a fishery when the landings are close to the annual catch limits (ACLs) and take action as necessary.

2. The Committee will review public scoping comments for Vision Blueprint Regulatory Amendment 26 addressing recreational management options and Vision Blueprint Regulatory Amendment 27 addressing commercial management options, modify the documents as necessary and provide guidance to staff.

3. The Committee will receive overviews regarding discards for red snapper and southeast barotrauma workshops, review public scoping comments for Snapper Grouper Amendment 43 addressing management options for red snapper and recreational reporting, modify the document as necessary, and provide direction to staff.

4. The Committee will review public hearing comments for Snapper Grouper Amendment 44 addressing allocation measures for yellowtail snapper, modify the document as necessary, and provide direction to staff.

5. The Committee will receive projection results from NOAA Fisheries Southeast Fisheries Science Center for golden tilefish, discuss Snapper Grouper Amendment 45 addressing management measures for golden tilefish, and provide direction to staff.

6. The Committee will review a white paper on Limited Entry for the Snapper Grouper For-Hire fishery, discuss, and provide direction to staff.

Mackerel Cobia Committee, Wednesday, March 8, 2017, 3:30 p.m. Until 4:30 p.m. and Thursday, March 9, 2017, 8 a.m. Until 9 a.m.

1. The Committee will receive an update on ASMFC's development of the Interstate Fishery Management Plan for Cobia, receive an update from NOAA Fisheries on the 2017 recreational fishing season for cobia in federal waters, and updates on state regulation and management measures for cobia in 2017, and take action as necessary.

2. The Committee will receive status updates from NOAA Fisheries on commercial catches versus quotas for species under ACLs and amendments

currently under Secretarial review and take action as necessary.

3. The Committee will discuss tracking CMP landings in a common unit and take action as necessary.

4. The Committee will receive a report on the Gulf of Mexico Fishery Management Council's January/February 2017 meeting.

5. The Committee will receive an overview of Amendment 29 to the Coastal Migratory Pelagic (CMP) Fishery Management Plan for the Gulf of Mexico and South Atlantic Region addressing allocations of Gulf Group king mackerel, modify as necessary, and provide recommendations to approve/disapprove the amendment for formal Secretarial Review.

6. The Committee will also provide direction to staff for agenda items for the spring meeting of the Council's Mackerel Cobia Advisory Panel and Cobia Sub-panel.

Formal Public Comment, Wednesday, March 8, 2017, 4:30 p.m.—Public comment will be accepted on items on the Council agenda. Comment will be accepted first on items before the Council for Secretarial approval: (1) Coastal Migratory Pelagic Amendment 29 (Gulf of Mexico king mackerel allocations); and (2) the Gulf of Mexico Fishery Management Council's For-Hire Amendment. The Council Chair, based on the number of individuals wishing to comment, will determine the amount of time provided to each commenter.

Citizen Science Committee, Thursday, March 9, 2017, 9 a.m. Until 10 a.m.

The Committee will receive a program update on the Council's Citizen Science Program, review research priorities to include in the South Atlantic Research Plan, discuss, and take action as necessary.

Executive/Finance Committee, Thursday, March 9, 2017, 10 a.m. Until 12 p.m.

1. The Committee will receive a report on the February 2017 Council Coordinating Committee meeting and take action as necessary, and a final report for expenditures for Calendar Year (CY) 2016; review the Draft CY 2017 Budget and approve if budget numbers are available; and review, modify, and approve the Council Follow-up and work priorities.

2. The Committee will discuss options for an advisory panel/workgroup for the System Management Plan for the Council's managed areas and take action as necessary.

3. The Committee will discuss standards and procedures for participating in Council webinar meetings and take action as appropriate.

4. The Committee will review and discuss meeting materials provided to Council members for Council meetings and provide direction to staff.

Council Session: Thursday, March 9, 2017, 1:30 p.m. Until 5 p.m. and Friday, March 10, 2017, 8:30 a.m. Until 12 p.m. (Partially Closed Session)

The Full Council will convene beginning on Thursday afternoon with a Call to Order, announcements and introductions, and approve the December 2016 meeting minutes. The Council will receive a Legal Briefing on Litigation from NOAA General Counsel (if needed) during Closed Session. The Council will receive a report from the Executive Director, an update on the Status of the joint Council and Atlantic Coastal Cooperative Statistics Program For-Hire Electronic Logbook Pilot Project, and an overview of the Gulf Council's For-Hire Amendment and approve/disapprove the Gulf Council's amendment for formal Secretarial review.

The Council will receive presentations on the Bycatch Reporting Final Rule and status of Bycatch Collection Programs from NOAA Fisheries and take action as necessary. The Council will also receive reports on any remaining commercial catches versus ACLs, the status of the South Atlantic Council's For-Hire Amendment, and any Experimental Fishing Permits received by NMFS and take action as necessary.

The Council will receive a report from the Mackerel Cobia Committee, approve/disapprove Coastal Migratory Pelagic Amendment 29 (Gulf of Mexico king mackerel allocations) for Secretarial review, consider other Committee recommendations, and take action as appropriate.

The Council will continue to receive committee reports from the Advisory Panel Selection, SEDAR, Protected Resources, Spiny Lobster, Habitat and Ecosystem-Based Management, Dolphin Wahoo, Snapper Grouper, Citizen Science, and Executive Finance Committees, review recommendations, and take action as appropriate.

The Council will receive agency and liaison reports; and discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 9, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–02930 Filed 2–13–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–835–001.
Applicants: Power Authority of the State of New York, New York Independent System Operator, Inc.
Description: Compliance filing: NYPA NTAC compliance with settlement to be effective 4/1/2016.
Filed Date: 2/2/17.
Accession Number: 20170202–5230.
Comments Due: 5 p.m. ET 2/23/17.

Docket Numbers: ER16–1751–001.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: Notice of effective date for DCR Process provisions in MST 23 to be effective 2/16/2017.
Filed Date: 2/2/17.
Accession Number: 20170202–5228.
Comments Due: 5 p.m. ET 2/23/17.

Docket Numbers: ER17–725–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Errata to amend certain OATT Schedule 12-Appendix sections submitted in ER17–725 to be effective 1/1/2017.
Filed Date: 2/2/17.
Accession Number: 20170202–5208.
Comments Due: 5 p.m. ET 2/23/17.

Docket Numbers: ER17–922–000.
Applicants: Arizona Public Service Company.
Description: Cancellation of Service Agreement Nos. 91, 137, and 144 of Arizona Public Service Company.
Filed Date: 2/2/17.
Accession Number: 20170202–5238.
Comments Due: 5 p.m. ET 2/23/17.

Docket Numbers: ER17–923–000.
Applicants: Ashley Energy LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate Tariff to be effective 2/20/2017.
Filed Date: 2/3/17.
Accession Number: 20170203–5043.
Comments Due: 5 p.m. ET 2/24/17.

Docket Numbers: ER17–924–000.
Applicants: Wisconsin Electric Power Company.
Description: § 205(d) Rate Filing: Wisconsin Electric Assignment of FERC Rate Schedule 106 020317 to be effective 2/4/2017.
Filed Date: 2/3/17.
Accession Number: 20170203–5064.
Comments Due: 5 p.m. ET 2/24/17.

Docket Numbers: ER17–925–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: Part 1 of Two-Part Filing to Remove Active Demand Resource Types to be effective 2/24/2017.
Filed Date: 2/3/17.
Accession Number: 20170203–5069.
Comments Due: 5 p.m. ET 2/24/17.

Docket Numbers: ER17–926–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Service Agreement No. 4608; Queue No. AB1–027 to be effective 1/4/2017.
Filed Date: 2/3/17.
Accession Number: 20170203–5080.
Comments Due: 5 p.m. ET 2/24/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02952 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL17–46–000]

Basin Electric Power Cooperative; Notice of Petition for Partial Waiver

Take notice that on February 6, 2017, pursuant to section 292.402 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations,[1] Basin Electric Power Cooperative (Basin Electric) on its own behalf and on behalf of 72 rural electric cooperative member-owners (collectively, the Participating Members),[2] filed a Petition for Partial Waiver (Petition) of certain obligations imposed on the Participating Members and on Basin Electric under sections 292.303(a) and 292.303(b) of the Commission's Regulations [3] implementing section 210 of the Public Utility Regulatory Policies Act of 1978, as amended, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on February 27, 2017.

[1] 18 CFR 292.402 (2016).

[2] Basin Electric's Participating Member-owners joining in this petition are Agralite Electric Cooperative, Big Flat Electric Co-op, Inc., Black Hills Electric Cooperative, Inc., Bon Homme Yankton Electric Association, Inc., Burke-Divide Electric Cooperative, Inc., Butte Electric Cooperative, Inc., Cam Wal Electric Cooperative, Inc., Capital Electric Cooperative, Inc., Central Electric Cooperative, Inc., Central Montana Electric Power Cooperative, Inc., Central Power Electric Cooperative, Inc., Charles Mix Electric Association, Inc., Cherry-Todd Electric Cooperative, Inc., City of Elk Point, Clay-Union Electric Corporation, Codington-Clark Electric Cooperative, Inc., Crow Wing Cooperative Power and Light Company, Dakota Valley Electric Cooperative, Inc., Douglas Electric Cooperative, Inc., East River Electric Power Cooperative, Inc., FEM Electric Association, Inc., Fergus Electric Cooperative, Inc., Goldenwest Electric Coop., Inc., Grand Electric Cooperative, Inc., H–D Electric Cooperative, Inc., Hill County Electric Cooperative, Inc., KEM Electric Cooperative, Inc., Kingsbury Electric Cooperative, Inc., L & O Power Cooperative, Lacreek Electric Association, Inc., Lake Region Electric Association, Inc., Lower Yellowstone Rural Electric Cooperative, Lyon Rural Electric Cooperative, Lyon-Lincoln Electric Cooperative, Inc., Marias River Electric Cooperative, Inc., McCone Electric Co-op., Inc., McKenzie Electric Cooperative, Inc., McLean Electric Cooperative, Inc., Mid-Yellowstone Electric Cooperative, Minnesota Valley Cooperative Light & Power Association, Mor-Gran-Sou Electric Cooperative, Inc., Moreau-Grand Electric Cooperative, Inc., Mountrail-Williams Electric Cooperative, North Central Electric Cooperative, Inc., Northern Electric Cooperative, Inc., Northern Plains Electric Cooperative, Inc., NorVal Electric Cooperative, Inc., Oahe Electric Cooperative, Inc., Osceola Electric Cooperative, Inc., Park Electric Cooperative, Inc., Powder River Energy Corporation, Redwood Electric Cooperative, Renville-Sibley Co-op Power Association, Rosebud Electric Cooperative, Inc., Roughrider Electric Cooperative, Inc., Rushmore Electric Power Cooperative, Inc., Sheridan Electric Co-op., Inc., Sioux Valley- Southwestern Electric Cooperative, Inc., Slope Electric Cooperative, Inc., South Central Electric Association, Southeast Electric Cooperative, Inc.,

Southeastern Electric Cooperative, Inc., Sun River Electric Cooperative, Inc., Tongue River Electric Cooperative, Inc., Traverse Electric Cooperative, Inc., Union County Electric Cooperative, Inc., Upper Missouri G & T Electric Cooperative, Inc., Verendrye Electric Cooperative, West Central Electric Cooperative, Inc., West River Electric Association, Inc., Whetstone Valley Electric Cooperative, Inc., and Yellowstone Valley Electric Cooperative, Inc.

[3] 18 CFR 292.303(a) and (b) (2016).

Dated: February 6, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02948 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No., AD17–10–000]

Agency Operations in the Absence of a Quorum; Order Delegating Further Authority to Staff in Absence of Quorum

Before Commissioners: Cheryl A. LaFleur, Acting Chairman; Norman C. Bay, and Colette D. Honorable.

I. Introduction

1. Pursuant to section 401(b) of the Department of Energy Organization Act,[1] the Commission is composed of five members, and pursuant to section 401(e) of the Department of Energy Organization Act,[2] ''a quorum for the transaction of business shall consist of at least three members present.'' The Commission anticipates that it will lack a quorum for an indeterminate period in the near future. The Commission also recognizes that it has a continuing responsibility to carry out its regulatory obligations under the various statutes that the Commission administers, including among other statutes, the Federal Power Act (FPA), the Natural Gas Act (NGA), and the Interstate Commerce Act (ICA), in an effective and efficient manner consistent with the public interest.[3] For example, companies subject to the Commission's jurisdiction will continue to make rate filings under the FPA and NGA with the Commission that, in the absence of Commission action, would take effect without suspension, refund protection, or the ability for protesting parties to appeal.[4] The Commission's general practice has been not to allow such filings to go into effect by operation of law. Similarly, the Commission's intention is to ensure that staff has authority to prevent such filings from going into effect by operation of law during the period in which the Commission lacks a quorum.

2. Accordingly, the Commission by this order, issued while the Commission has a quorum, delegates further authority[5] to its staff[6] to take action, as provided below,[7] effective February 4, 2017. The authority delegated herein is effective until such time as the Commission again has a quorum and takes action to lift the delegation, and in no event will this delegation extend beyond days 14 days following the date a quorum is reestablished (Delegation Period).[8]

II. Delegation of Agency Authority

A. Notice

3. Given the anticipated loss of a quorum,[9] an immediate plan for the orderly delegation of agency functions to the Commission's staff is required. Public notice of this action, otherwise required by 5 U.S.C. 553(b) (2012), is impracticable because of the timeframe for the anticipated loss of quorum. The Commission's requirement to protect the public interest creates an immediate need for this action.

B. Action on Rate and Other Filings

4. If the date by which the Commission is required to act on rate and other filings[10] made pursuant to section 4 of the NGA, 15 U.S.C. 717c (2012), section 205 of the FPA, 16 U.S.C. 824d (2012), and section 6(3) of the ICA, 49 App. U.S.C. 6(3) (1988), falls during the Delegation Period, the Commission in this order delegates to its staff (a delegation to the Director of the Office of Energy Market Regulation (OEMR)) the further authority: (1) o accept and suspend such filings and to make them effective, subject to refund and further order of the Commission;[11] or (2) to accept and suspend such filings and to make them effective, subject to refund, and to set them for hearing and settlement judge procedures. For initial rates or rate decreases filed pursuant to section 205 of the FPA, for which suspension and refund protection are unavailable, we also delegate to Commission staff authority, pursuant to section 206 of the FPA,[12] to institute a proceeding to protect the interests of customers.

C. Extensions of Time

5. The Commission delegates the authority to extend the time for action on matters where such extension of time is permitted by statute.

D. Waiver Requests

6. During the Delegation Period, the Commission in this order delegates to its staff (a delegation to the Director of OEMR) the further authority to take appropriate action on uncontested filings made pursuant to section 4 of the NGA, 15 U.S.C. 717c (2012), section 205 of the FPA, 16 U.S.C. 824d (2012), and section 6(3) of the ICA, 49 App. U.S.C. 6(3) (1988), seeking waivers of the terms and conditions of tariffs, rate schedules and service agreements, including waivers related to, *e.g.,* capacity release and capacity market rules.

E. Uncontested Settlements

7. During the Delegation Period, the Commission in this order delegates to its staff (a delegation to the Director of

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[1] 42 U.S.C. 7171(b) (2012).

[2] 42 U.S.C. 7171(e) (2012); *accord* 18 CFR 375.101(e) (2016).

[3] 16 U.S.C. 791a *et seq.;* 15 U.S.C. 717 *et seq.;* 49 App. U.S.C. 1 *et seq.* (1988).

[4] *See Public Citizen, Inc.* v. *FERC,* 839 F.3d 1165 (D.C. Cir. 2016).

[5] All pre-existing delegations of authority by the Commission to its staff continue to be effective. 18 CFR 375.301–.315 (2016). This includes the authority of the Secretary to toll the time for action on requests for rehearing. 18 CFR 375.302(v) (2016).

[6] This delegation of authority is to the relevant office director, but such authority may be further delegated to his or her designee consistent with 18 CFR 375.301(b) (2016).

[7] As to emergency functions, the Commission will look to the Anti-Deficiency Act to guide its decision as to what actions may continue to be pursued notwithstanding the absence of a quorum and even if it were not to delegate authority to its staff. Specifically, the Anti-Deficiency Act allows work to continue even during a lapse in appropriations on activities the suspension of which would ''imminently threaten the safety of human life or the protection of property.'' 31 U.S.C. 1342 (2012); *see also* 31 U.S.C. 1341 (2012). Thus, during the Delegation Period even in the absence of this delegation of authority to its staff, limited Commission operations can continue: inspecting and responding to incidents at liquefied natural gas facilities or jurisdictional hydropower projects; and other activities involving the safety of human life or protection of property.

[8] 41 U.S.C. 7171(f) (2012) (authorizing the Commission ''to establish such procedural and administrative rules as are necessary to the exercise of its functions''); *accord, e.g.,* 15 U.S.C. 717o (2012); 16 U.S.C. 825h (2012); s*ee generally* 18 CFR 375.301–.315 (2016) (pre-existing delegations of authority by Commission to its staff); *cf. NLRB* v. *Bluefield Hospital Co., LLC,* 821 F.3d 534 (4th Cir. 2016) (upholding the authority of the Board's staff to act pursuant to delegated authority when the Board did not have a quorum); *Advanced Disposal Services East, Inc.* v. *NLRB,* 820 F.3d 592 (3d Cir. 2016) (same); *UC Health* v. *NLRB,* 803 F.3d 669 (D.C. Cir. 2015) (same); *SSC Mystic Operating Co., LLC* v. *NLRB,* 801 F.3d 302 (D.C. Cir. 2015) (same).

The Commission, when previously facing similar circumstances, has taken similar action to delegate further authority to its staff to act in the absence of a quorum. *Order Delegating Authority to the Secretary and Certain Office Directors,* 63 FERC ¶ 61,073 (1993).

[9] At present, the Commission has three sitting members, but will lose a quorum after February 3, 2017.

[10] Decisions made pursuant to delegated authority may be challenged on rehearing, *see* 18 CFR 385.1902 (2016), and authority to act on requests for rehearing is not being delegated (authority to issue tolling orders already rests with the Secretary, *see supra* note 5), and so timely requests for rehearing will be addressed when the Commission again has a quorum.

[11] The acceptance for filing and suspension and making effective subject to refund and to further Commission order of these filings is without prejudice to any further action of the Commission with respect to these filings once the Commission again has a quorum.

[12] 16 U.S.C. 824e (2012).

OEMR) the further authority to accept settlements not contested by any party or participant, including Commission Trial Staff, filed pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 (2016).[13]

The Commission Orders

(A) The Commission hereby delegates to its staff further authority to act, effective February 4, 2017, until the Commission again has a quorum, as discussed in the body of this order.

(B) The Secretary is hereby directed to promptly publish this order in the **Federal Register**.

By the Commission.

Issued: February 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02943 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL17–45–000]

California Public Utilities Commission; Northern California Power Agency; State Water Contractors; Transmission Agency of Northern California v. Pacific Gas and Electric Company; Notice of Complaint

Take notice that on February 2, 2017, pursuant to sections 206 and 306 of the Federal Power Act [1] and Rules 206 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[2] California Public Utilities Commission, Northern California Power Agency, State Water Contractors and Transmission Agency of Northern California (collectively, the Complainants), filed a formal complaint against Pacific Gas and Electric Company (PG&E or Respondent) alleging that PG&E has violated its obligation under Order No. 890 to conduct an open, coordinated, and transparent transmission planning process by approving more than 80 percent of its transmission projects on an entirely internal basis, as more fully explained in the complaint.

Complainants certify that copies of the Complaint were served on contacts for Pacific Gas and Electric Company as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on February 22, 2017.

Dated: February 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02947 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–923–000]

Ashley Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Ashley Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02949 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

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[13] *See, e.g.,* 16 U.S.C. 824b(a)(5) (2012) (providing for extensions of 180-day period for consideration of FPA section 203 filings); 18 CFR 375.302(a)(2)(vi) (2016) (providing for extensions of time to consider FPA section 215 Notices of Penalties).

[1] 16 U.S.C. 824e and 825e.

[2] 18 CFR 385.206 and 385.212.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP17–3–000]

Dominion Carolina Gas Transmission LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line A Abandonment Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line A Abandonment Project (Project) involving abandonment and modification of natural gas facilities by Dominion Carolina Gas Transmission LLC (DCG) in Chester, Kershaw, Lancaster, and York Counties, South Carolina. The Commission will use this EA in its decision-making process.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before March 9, 2017.

If you sent comments on this Project to the Commission before the opening of this docket on October 13, 2016, you will need to file those comments in Docket No. CP17–3–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

DCG should have provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three basic methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents & Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents & Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP17–3–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

DCG proposes to abandon, remove, and modify certain natural gas facilities, under Section 7(b) of the Natural Gas Act, along its currently existing mainline Line A in South Carolina. After taking Line A out-of-service, customers would then be provided with natural gas through DCG's existing Line A–1–A that parallels Line A. Line A was originally installed in 1958, and now has integrity issues. The underground pipeline would be capped, filled with nitrogen, and abandoned in place.

The facilities to be abandoned include:

- 55 miles of 10-inch-diameter pipe in Chester, Kershaw, Lancaster, and York Counties;
- 5 miles of 12-inch-diameter pipe in York County; and
- Aboveground facilities (including valves, regulators, or meters) would be removed at 8 existing stations.

DCG would also install new taps, piping, meters, and regulators at 12 existing stations in order to transfer the current feeds off of Line A into Line A–1–A.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Since this is an abandonment Project, DCG will not be acquiring new permanent rights-of-way. In cases where Line A is not directly adjacent to Line 1–A–1, the existing easement may be relinquished to the landowner. Most of the abandonment activities would take place within DCG's existing right-of-way, with the exception of disturbance of a total of about 2 acres at additional temporary workspaces at 21 existing station locations. Eight existing stations would be removed. Crossover piping, new taps, regulators, or meters would be installed at 12 existing stations. Construction at those aboveground facilities would disturb a total of about 7 acres of land. Following removal or construction, DCA would restore the right-of-way, and return the land to its original condition and use. Less than 1 acre would be retained for Project operation.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the abandonment, removal, and modification of Project facilities under these general headings:

- Geology and soils;
- land use, recreation, and visual resources;
- water resources, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- public safety; and
- cumulative impacts

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various environmental resources.

The EA will present our independent analysis of the issues. The EA will be available in the public record through our eLibrary system. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this Project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice below.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for Section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the South Carolina State Historic Preservation Office (SHPO), and to solicit their views, and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA will summarize the status of consultations under Section 106, and efforts to identify historic properties in the APE and assess Project-related impacts.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; interested Indian Tribes; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov.* On the FERC Web site, go to ''Documents & Filings,'' and click on the eLibrary link, click on ''General Search'' and enter the docket number (excluding the last three digits, *i.e.,* CP17–3). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 7, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02944 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4093–035]

McMahan Hydroelectric, L.L.C.; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor license.

b. *Project No.:* 4093–035.

c. *Date filed:* March 30, 2015.

d. *Applicant:* McMahan Hydroelectric, L.L.C.

e. *Name of Project:* Bynum Hydroelectric Project.

f. *Location:* On the Haw River, near the Town of Pittsboro and the Town of

[3] The Council on Environmental Quality regulations for implementing the National Environmental Policy Act address the responsibilities of cooperating agencies at Title 40 Code of Federal Regulations Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36 Code of Federal Regulations Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Chapel Hill, in Chatham County, North Carolina. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Andrew J. McMahan, President, McMahan Hydroelectric, L.L.C., 105 Durham Eubanks Road, Pittsboro, NC 27312; (336) 509–2148; email-*mcmahanhydro@gmail.com.*

i. *FERC Contact:* Sean Murphy at (202) 502–6145; or email at *sean.murphy@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–4093–035.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis.

l. The existing Bynum Project includes: (1) A 900-foot-long, 10-foot-high stone masonry dam (Bynum Dam, or Odell Lake Dam), consisting of a 750-foot-long uncontrolled spillway section and a 150-foot-long non-overflow section that contains canal intake facilities; (2) a reservoir with a surface area of 20 acres (referred to as Odell Lake), with gross storage of 100 acre-feet at elevation 315.0 feet mean sea level; (3) two 6-foot-wide Tainter gates controlling the intake to the canal; (4) a 2,000-foot-long, 40-foot-wide power canal; (5) a powerhouse containing one 600 kilowatt generating unit; (6) a 500-foot-long, 50-foot-wide tailrace; (7) a 100-foot-long, 0.48 kilovolt transmission line to a utility company's transformer; and (9) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms, and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Dated: February 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02951 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2808–017]

KEI (Maine) Power Management (III) LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* P–2808–017.

c. *Date filed:* January 31, 2017.

d. *Applicant:* KEI (Maine) Power Management (III) LLC.

e. *Name of Project:* Lower Barker Hydroelectric Project.

f. *Location:* On the Little Androscoggin River, in the City of Auburn, Androscoggin County, Maine. The project does not occupy lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lewis Loon, Operations and Maintenance Manager, 37 Alfred Plourde Parkway, Suite 2, Lewiston, Maine 04240; (207) 786–8834.

i. *FERC Contact:* Karen Sughrue at (202) 502–8556 or email at *Karen.Sughrue@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if

any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: March 31, 2017.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2808–017.

m. The application is not ready for environmental analysis at this time.

n. The Lower Barker Project consists of the following existing facilities: (1) A 232-foot-long, 30-foot-high concrete dam with a 125-foot-long spillway with flashboards, a 46-foot-long non-overflow section with two waste gates along the left buttress, and a 61-foot-long non-overflow section with seven stop-logs adjacent to the intake canal; (2) a 16.5-acre reservoir with a storage capacity of 150-acre-feet; (3) a 60-foot-long, 20-foot-wide, 9.6-foot-deep intake canal on the right bank with seven stop-logs; (4) a 35-foot-long, 20-foot-wide gatehouse containing a single gate and fitted with trash racks; (5) a buried 650-foot-long, 10-foot-wide, 8-foot-high concrete penstock; (6) a 50-foot-long, 25-foot-wide concrete powerhouse containing a single semi-Kaplan-type turbine and generating unit with a rated capacity of 1.5 megawatts; (7) a tailrace; (8) a 250-foot-long, 4.2 kilovolt underground power line; (9) a substation; and (10) appurtenant facilities. The project produces an average of 5,087 megawatt-hours annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency/Additional Information Letter	April 2017.
Issue Scoping Document 1 for comment	June 2017.
Hold Scoping Meeting	July 2017.
Request Additional Information (if necessary)	July 2017.
Issue Scoping Document 2 (if necessary)	August 2017.
Issue notice of ready for environmental analysis	September 2017.
Notice of the availability of the draft NEPA document	March 2018.
Initiate the 10(j) process	April 2018.
Notice of the availability of the final NEPA document	July 2018.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: February 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02950 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–959–001.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance notice re: effective date for UDR tariff revisions to be effective 2/17/2017.

Filed Date: 2/3/17.

Accession Number: 20170203–5097

Comments Due: 5 p.m. ET 2/24/17.

Docket Numbers: ER17–703–001.

Applicants: PacifiCorp.

Description: Tariff Amendment: BPA NITSA (Yakama) Rev 7.1 to be effective 12/1/2016.

Filed Date: 2/3/17.

Accession Number: 20170203–5169.

Comments Due: 5 p.m. ET 2/24/17.

Docket Numbers: ER17–925–001.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Tariff Amendment: Part 2 of Two-Part Filing to Remove Active Demand Resource Types to be effective 6/1/2018.

Filed Date: 2/3/17.

Accession Number: 20170203–5134.

Comments Due: 5 p.m. ET 2/24/17.

Docket Numbers: ER17–927–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: Assignment—Ancillary Services AGMT Combined Locks to Appleton Coated to be effective 2/4/2017.

Filed Date: 2/3/17.

Accession Number: 20170203–5100.

Comments Due: 5 p.m. ET 2/24/17.

Docket Numbers: ER17–928–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: GIA & DSA AVS-Phase 2 Project SA Nos. 943 & 944 to be effective 2/4/2017.

Filed Date: 2/3/17.

Accession Number: 20170203–5107.

Comments Due: 5 p.m. ET 2/24/17.

Docket Numbers: ER17–929–000.

Applicants: Southern California Edison Company.

Description: Tariff Cancellation: Notice of Cancellation Distribution Service Agreement Pristine Sun Fund 9, LL to be effective 4/5/2017.

Filed Date: 2/3/17.

Accession Number: 20170203–5130.

Comments Due: 5 p.m. ET 2/24/17.

Docket Numbers: ER17–930–000.

Applicants: Guttman Energy Inc.

Description: Notice of Cancellation of Market-Based Rate Tariff of Guttman Energy Inc.

Filed Date: 2/2/17.
Accession Number: 20170202–5262.
Comments Due: 5 p.m. ET 2/23/17.
Docket Numbers: ER17–931–000
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: BPA General Transfer Agreement (West) Rev 7 to be effective 4/5/2017.
Filed Date: 2/3/17.
Accession Number: 20170203–5174.
Comments Due: 5 p.m. ET 2/24/17.
Docket Numbers: ER17–932–000.
Applicants: Algonquin Tinker Gen Co.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 2/3/2017.
Filed Date: 2/3/17.
Accession Number: 20170203–5180.
Comments Due: 5 p.m. ET 2/24/17.
Docket Numbers: ER17–933–000.
Applicants: Exelon Generation Company, LLC.
Description: Request for Additional Cost Recovery and Request for Limited Tariff Waiver of Exelon Generation Company, LLC.
Filed Date: 2/3/17.
Accession Number: 20170203–5192.
Comments Due: 5 p.m. ET 2/24/17.
Docket Numbers: ER17–934–000.
Applicants: PJM Interconnection, L.L.C., Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Revisions to PJM MISO JOA RE Change CTS Effective Date from 3/1/17 to 10/3/17 to be effective 10/3/2017.
Filed Date: 2/3/17.
Accession Number: 20170203–5197.
Comments Due: 5 p.m. ET 2/24/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02953 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–45–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

Take notice that on February 2, 2017, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 Highway 56, Owensboro, Kentucky 42301, filed a prior notice application pursuant to sections 157.205, and 157.216(b) of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Southern Star's blanket certificate issued in Docket No. CP82–479–000. Southern Star requests authorization to abandon a 310 horsepower compressor unit at its South Welda Compressor Station located in Anderson County, Kansas, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Ronnie C. Hensley II Manager, Regulatory Compliance, Southern Star Central Gas Pipeline, Inc., 4700 Highway 56, Owensboro, Kentucky 42301 or phone (270) 852–4658, or by email at *Ronnie.C.Hensley@sscgp.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: February 7, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02954 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL17–44–000]

Northern States Power Company, Minnesota; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 3, 2017, the Commission issued an order in Docket No. EL17–44–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the Zone 16 Joint Pricing Zone Revenue Allocation Agreement of Northern States Power Company, Minnesota is unjust and unreasonable. *Northern States Power Company, Minnesota,* 158 FERC 61,143 (2017).

The refund effective date in Docket No. EL17–44–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL17–44–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2016), within 21 days of the date of issuance of the order.

Dated: February 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02946 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL17–40–000]

Virginia Electric and Power Company; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 3, 2017, the Commission issued an order in Docket No. EL17–40–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the Reactive Service rates of Virginia Electric and Power Company are just and reasonable. *Virginia Electric and Power Company,* 158 FERC 61,134 (2017).

The refund effective date in Docket No. EL17–40–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL17–40–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: February 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02945 Filed 2–13–17; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 17–110]

Federal Advisory Committee Act; Broadband Deployment Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of intent to establish.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Federal Communications Commission (Commission) announces its intent to establish a Federal Advisory Committee, known as the ''Broadband Deployment Advisory Committee'' (hereinafter ''the Committee'').

FOR FURTHER INFORMATION CONTACT: Brian Hurley, Designated Federal Officer, Federal Communications Commission, Wireline Competition Bureau, (202) 418–2220, or email: *Brian.Hurley@fcc.gov;* or Paul D'Ari, Deputy Designated Federal Officer, Federal Communications Commission, Wireless Telecommunications Bureau, (202) 418–1550, or email: *Paul.DAri@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Chairman of the Federal Communications Commission (Commission) has determined that the establishment of the Committee is necessary and in the public interest in connection with the performance of duties imposed on the Commission by law, and the Committee Management Secretariat, General Services Administration, concurs with the establishment of the Committee. The purpose of the Committee is to make recommendations to the Commission on how to accelerate the deployment of high-speed Internet access, or ''broadband,'' by reducing and/or removing regulatory barriers to infrastructure investment. This Committee is intended to provide an effective means for stakeholders with interests in this area to exchange ideas and develop recommendations to the Commission on broadband deployment, which will in turn enhance the Commission's ability to carry out its statutory responsibility to encourage broadband deployment to all Americans. Issues to be considered by the Committee may include, but are not limited to, drafting for the Commission's consideration a model code covering local franchising, zoning, permitting, and rights-of-ways regulations; recommending further reforms of the Commission's pole attachment rules; identifying unreasonable regulatory barriers to broadband deployment; and recommending further reform within the scope of the Commission's authority (to include, but not limited to, sections 253 and 332(c)(7) of the Communications Act and section 6409 of the Spectrum Act).

Advisory Committee

The Committee will be organized under, and will operate in accordance with, the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The Committee will be solely advisory in nature. Consistent with FACA and its requirements, each meeting of the Committee will be open to the public unless otherwise noticed. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. All activities of the Committee will be conducted in an open, transparent and accessible manner. The Committee shall terminate two (2) years from the filing date of its charter, or earlier upon the completion of its work as determined by the Chairman, unless its charter is renewed prior to the termination date.

During the Committee's first term, it is anticipated that the Committee will meet in Washington, DC for at least three (3) one-day meetings. The first meeting date and agenda topics will be described in a Public Notice issued and published in the **Federal Register** at least fifteen (15) days prior to the first meeting date. In addition, as needed, working groups or subcommittees (ad hoc or steering) will be established to facilitate the Committee's work between meetings of the full Committee. All meetings, including those of working groups and subcommittees, will be fully accessible to individuals with disabilities.

Accessible Formats: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Federal Communications Commission.

Daniel Kahn,

Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2017–02931 Filed 2–13–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0433]

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, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission 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 March 16, 2017. 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 listed 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** 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: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0433.

Title: Basic Signal Leakage Performance Report.

Form Number: FCC Form 320.

**87556 Type of Review:* Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,265 respondents and 5,265 responses.

Frequency of Response: Recordkeeping requirement, Annual reporting requirement.

Estimated Time per Hours: 20 hours.

Total Annual Burden: 105,300 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Cable television system operators and Multichannel Video Programming Distributors (MPVDs) who use frequencies in the bands 108–137 and 225–400 MHz (aeronautical frequencies) are required to file a Cumulative Signal Leakage Index (CLI) derived under 47 CFR 76.611(a)(1) or the results of airspace measurements derived under 47 CFR 76.611(a)(2). This filing must include a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This yearly filing of FCC Form 320 is done in accordance with 47 CFR 76.1803. The records must be retained by cable operators.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–02924 Filed 2–13–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1089]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), 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 April 17, 2017. 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 Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC 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.

OMB Control No.: 3060–1089.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers; Internet-Based Telecommunications Relay Service Numbering, CG Docket No. 03–123, WC Docket No. 05–196, and WC Docket No. 10–191; FCC 08–151, FCC 08–275, FCC 11–123.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; and individuals and households.

Number of Respondents and Responses: 6 respondents; 3,450,036 responses.

Estimated Time per Response: 0.008 hours (about 30 seconds) to 250 hours.

Frequency of Response: On occasion and quarterly reporting requirements; Recordkeeping requirement; and Third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the collection is contained in sections 1, 2, 4(i), 4(j), 225, 251, 255, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 225, 251, 255, 303(r).

Total Annual Burden: 52,334 hours.

Annual Cost Burden: $2,206,200.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The telecommunications relay service (TRS) program enables access to the nation's telephone network by persons with hearing and speech disabilities. Between 2008 and 2011, the Commission adopted rules in three separate orders related to the telephone numbering system and enhanced 911 (E911) services for users of two forms of Internet-based TRS: Video Relay Service (VRS); and Internet Protocol Relay service (IP Relay). *See* document FCC 08–151, *Report and Order and Further Notice of Proposed Rulemaking* (*First Numbering Order*), published at 73 FR 41286, July 18, 2008; document FCC 08–275, *Second Report and Order and Order on Reconsideration* (*Second Numbering Order*), published at 73 FR 79683, December 30, 2008; and document FCC 11–123, *Report and Order* (*iTRS Toll Free Order*), published at 76 FR 59551, September 27, 2011.

The rules adopted in these three orders have the following information collection requirements:

(A) *Routing Information.* VRS and IP Relay providers must obtain and retain current routing information from their registered users.

(B) *Provision of Routing Information.* VRS and IP Relay providers must provision and maintain their registered users' routing information to the TRS Numbering Directory.

(C) *Registered Location.* VRS and IP Relay providers must obtain from each newly registered user the physical location at which the service will be utilized (the user's Registered Location) and offer their registered users one or more methods of updating their physical location.

(D) *Provision of Registered Location.* Each VRS and IP Relay provider must place its registered users' Registered Location and certain callback information into, or make that information available through, Automatic Location Information (ALI) databases across the country.

(E) *User Notification.* Every VRS or IP Relay provider must include an advisory on its Web site and in any promotional materials addressing numbering and E911 services for VRS or IP Relay.

(F) *Affirmative Acknowledgements.* VRS and IP Relay providers must obtain and keep a record of affirmative acknowledgement from each of their registered users of having received and understood the user notification.

(G) *Ascertaining Registration Status of VRS or IP Relay User.* Every VRS and IP Relay provider must verify whether a dial-around user is registered with another provider. Because there is only one IP Relay provider, dial-around service is not used with IP Relay at this time.

(H) *Verifying Registration and Eligibility Information.* Every VRS and IP Relay provider must institute procedures to verify the accuracy of registration information, and include a self-certification component requiring consumers to verify that they have a disability necessitating their use of TRS.

(I) *Commission Approval for the Pass Through of Numbering Costs.* Each VRS or IP Relay provider wishing to pass through certain numbering-related costs to its users must obtain Commission approval to do so.

(J) *Information Sharing After a Change in Default Providers.* Each VRS provider that provides equipment to a consumer must make available to other

VRS providers enough information about that equipment to enable another VRS provider selected as the consumer's default provider to perform all of the functions of a default provider.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–02964 Filed 2–13–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0589]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 17, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: 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.

OMB Control Number: 3060–0589.

Title: FCC Remittance Advice Forms, FCC Form 159/159–C, 159–B, 159–E, and 159–W.

Form Number(s): FCC Form 159 Remittance Advice, 159–C Remittance Advice Continuation Sheet, 159–B Remittance Advice Bill for Collection, 159–E Remittance Voucher, and 159–W Interstate Telephone Service Provider Worksheet.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; individuals or households; not-for-profit institutions; and State, Local, or Tribal Governments.

Number of Respondent and Responses: 102,405 respondents; 102,405 responses.

Estimated Time per Response: 15 minutes (0.25 hours).

Frequency of Response: On occasion and annual reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. Statutory Authority for this information collection is contained in the Communications Act of 1934, as amended; Section 8 (47 U.S.C. 158) for Application Fees; Section 9 (47 U.S.C. 159) for Regulatory Fees; Section 309(j) for Auction Fees; and the Debt Collection Improvement Act of 1996, Public Law 104–134, Chapter 10, Section 31001.

Total Annual Burden: 25,055 hours.

Total Annual Cost: No Cost.

Nature and Extent of Confidentiality: There is no need for confidentiality, except for personally identifiable information (PII) that individuals may submit on one or more of these forms. FCC Form 159 series instructions include a Privacy Act Statement. Furthermore, while the Commission is not requesting that the respondents submit confidential information to the FCC, respondents may request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules. The Commission has a system of records notice (SORN), FCC/OMD–25, Financial Operations Information System (FOIS), to cover any PII that individuals may submit. The SORN is posted on the FCC Privacy Web page at: *https://www.fcc.gov/general/privacy-act-information#systems*. Privacy Impact Assessment (PIA): A PIA is being drafted and posted on the FCC Privacy Web page at: *https://www.fcc.gov/general/privacy-act-information#systems*.

Needs and Uses: The FCC supports a series of remittance advice forms and a remittance voucher form that may be submitted in lieu of a remittance advice form when entities or individuals electronically submit a payment. A remittance advice form (or a remittance voucher form in lieu of an advice form) must accompany any payment to the Federal Communications Commission (*e.g.,* payments for regulatory fees, application filing fees, auctions, fines, forfeitures, Freedom of Information Act (FOIA) billings, or any other debt due to the FCC. Information is collected on these forms to ensure credit for full payment, to ensure entities and individuals receive any refunds due, to service public inquiries, and to comply with the Debt Collection Improvement Act of 1996. On August 12, 2013 the Commission released a Report and Order (R&O), In the Matter Assessment and Collection of Regulatory Fee for Fiscal Year 2013 and Procedures for Assessment and Collection of Regulatory Fees, MD Docket Nos. 13–140 and 12–201, FCC 13–110. In this R&O, the Commission requires that beginning in FY 2014, all regulatory fee payments be made electronically and that the Commission will no longer mail out initial regulatory fee assessments to CMRS providers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2017–02925 Filed 2–13–17; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 9½%, as fixed by the Secretary of the Treasury, is certified for the quarter ended December 31, 2016. This rate is based on the Interest Rates for Specific Legislation, ''National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))'' and ''National Research Service Award Program (42 U.S.C. 288(c)(4)(B)).'' This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

Dated: February 7, 2017.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2017–02916 Filed 2–13–17; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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: NIDCR Special Grants Review Committee.

Date: February 23–24, 2017.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Row Hotel, 2015 Massachusetts Ave. NW., Washington DC, 20036.

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 8, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–02914 Filed 2–13–17; 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: Healthcare Delivery and Methodologies Integrated Review Group; Biostatistical Methods and Research Design Study Section.

Date: February 23–24, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, Bethesda, MD 20892, 301–435–1116, *kozelp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: March 2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Kidney, Nutrition, Obesity and Diabetes.

Date: March 6, 2017.

Time: 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–356: Major Opportunities for Research in Epidemiology of Alzheimer's Disease and Cognitive Resilience.

Date: March 7, 2017.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS

Immunology and Pathogenesis Study Section.

Date: March 8, 2017.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Disorders.

Date: March 8, 2017.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Linking Provider Recommendation to Adolescent HPV Uptake.

Date: March 8, 2017.

Time: 10:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, *weikts@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Mechanisms of Brain Injury and Neurodegeneration.

Date: March 8, 2017.

Time: 10:00 a.m. to 12:00 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: Deborah L. Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Behavioral Genetic, Neurological and Musculoskeletal Epidemiology.

Date: March 8, 2017.

Time: 11:00 a.m. to 1:00 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: 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; PAR Panel: Research Related to Cancer Caregivers.

Date: March 8, 2017.

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: Ellen K. Schwartz, EDD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3144, MSC 7770, Bethesda, MD 20892, 301–828–6146, *schwarel@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–279 Strategies to Increase Delivery of Evidence-Based Care to Populations With Health Disparities.

Date: March 8, 2017.

Time: 12:00 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: Jessica Bellinger, Ph.D., Scientific Review Administrator, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, *bellingerjd@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-Associated Opportunistic Infections and Cancer Study Section.

Date: March 10, 2017.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin, Washington, DC, 1400 M Street NW., Washington, DC 20005.

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular and Surgical Devices for Reviewing Small Business Grants STTR, SBIR.

Date: March 10, 2017.

Time: 8:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109.

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301–402–9607, *Jan.Li@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; HIV Prevention and Treatment Through Implementation Science and Translational Research.

Date: March 10, 2017.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk, Prevention and Health Behavior.

Date: March 13–14, 2017.

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: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 435–3575, *faradaym@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Vaccines Study Section.

Date: March 14, 2017.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Georgetown, 2350 M Street NW., Washington, DC 20037.

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–435–0000, *bdey@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology.

Date: March 14–15, 2017.

Time: 8:00 a.m. to 11:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Discovery and Development of Therapeutics Study Section.

Date: March 14, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biology of Retina.

Date: March 14, 2017.

Time: 1:00 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: Maqsood A. Wani, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Orthopedic, Skeletal Muscle and Oral Sciences.

Date: March 15, 2017.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Greenbelt Marriott, 6400 Ivy Lane, Greenbelt, MD 20770.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@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: February 8, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–02913 Filed 2–13–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time Sensitive Obesity and Diabetes.

Date: February 24, 2017.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies.

Date: March 7, 2017.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Planning NIDDK Clinical Trials.

Date: March 21, 2017.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; HBRN Clinical Centers (U01).

Date: March 28, 2017.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 8, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–02912 Filed 2–13–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: March 8, 2017.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Peter R. Jackson, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, Room # 3G20, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5049, *pjackson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–02911 Filed 2–13–17; 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; Biostatistical Methods and Research Design Study Section.
Date: March 6, 2017.
Time: 9:00 a.m. to 11:00 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Yvonne Owens Ferguson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, Bethesda, MD 20892, 301–827–2950, *fergusonyo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Noise-Induced Cochlear Synaptopathy, Basic Studies Informing Potential Therapies.
Date: March 8, 2017.
Time: 9:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.
Date: March 9–10, 2017.
Time: 8:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.
Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dermatology and Rheumatology.
Date: March 10, 2017.
Time: 11:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Aruna K. Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: AIDS and AIDS-related applications.
Date: March 16, 2017.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn, 7335 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, Bethesda, MD 20892, 301–451–5953, *tuoj@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.
Date: March 16–17, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.
Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.
Date: March 16–17, 2017.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Suites, Tampa Bay, 3050 N Rocky Point Drive, Tampa, FL 33607.
Contact Person: Mei Qin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–875–2215, *qinmei@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–GM–17–004: Maximizing Investigators' Research Award for Early Stage Investigators.
Date: March 16–17, 2017.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psycho/Neuropathology, Lifespan Development, and STEM Education.
Date: March 16–17, 2017.
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: Elia E. Femia, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3108, Bethesda, MD 20892, *femiaee@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Hematology.
Date: March 16–17, 2017.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Bukhtiar H. Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, 301–806–7314, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–359: Biomarker Studies for Diagnosing Alzheimer's Disease and Predicting Progression.
Date: March 16, 2017.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, *schauweckerpe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Sciences.
Date: March 16, 2017.
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: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR16–027: Commercialization Readiness Pilot.
Date: March 17, 2017.
Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, *cbackman@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 9, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–02962 Filed 2–13–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Clinical Trials Review.

Date: March 22, 2017.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3An.12N, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 8, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–02915 Filed 2–13–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed 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 [[[REASON TO CLOSE TEXT IS MISSING]]] and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the [[[REASON TO CLOSE TEXT IS MISSING]]], the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: March 3, 2017.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda North Marriott Hotel and Conference Center, Bethesda, MD 20892750.

Contact Person: Minki Chatterji, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6710B Bethesda Drive, Bethesda, MD 20892, 301.806.2515, *chatterm@csr.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Best Pharmaceutical for Children Act (BPCA) Data Coordinating Center (DCC).

Date: April 11, 2017.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6710 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6710B Bethesda Drive, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Center for Public Information on Population Research.

Date: May 5, 2017.

Time: 4:00 p.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: Minki Chatterji, Scientific Review Administrator, Division of Scientific Review National Institute of Child Health And Human Development, 6710B Bethesda Drive, Bethesda, MD 20892, 301.806.2515, *chatterm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 9, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–02961 Filed 2–13–17; 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 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 of Neurological Disorder and Stroke Special Emphasis Panel; Recording and Modulation in the Human CNS.

Date: March 13, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Ernest W. Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056, *lyonse@ninds.nih.gov.*

Name of Committee: Neurological Sciences Training Initial Review Group; NST–2 Subcommittee.

Date: March 13–14, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Elizabeth A. Webber, Ph.D.; Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–1917, *webbere@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 9, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–02963 Filed 2–13–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2017–0069]

Cooperative Research and Development Agreement: Diesel Outboard Engine Development

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a Cooperative Research and Development Agreement (CRADA) with Mack Boring & Parts Co (hence forth referred to as Mack) to evaluate and test the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with diesel outboard engine technology. A test schedule has been proposed in which Mack will provide and install two of their diesel outboard engines onto a selected Coast Guard boat platform; the Coast Guard Research and Development Center (R&D Center) will outfit the platform with the necessary instrumentation to monitor power, speed, and fuel consumption; and a Coast Guard field unit will operate the boat for performance testing over a six-month period to collect information on reliability, maintenance requirements, and availability data. While the Coast Guard is currently considering partnering with Mack the agency is soliciting public comment on the possible nature of and participation of other parties in the proposed CRADA. In addition, the Coast Guard also invites other potential non-Federal participants to propose similar CRADAs.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before March 16, 2017.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before March 16, 2017.

ADDRESSES: Submit comments online at *http://www.regulations.gov* following Web site instructions.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact LT Carlon F. Brietzke, Project Official, Surface Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2891, email *Carlon.F.Brietzke@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to respond to comments in the **Federal Register**, we will respond directly to commenters and may modify our proposal in light of comments.

Comments should be marked with docket number USCG–2017–0069 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the Federal Register Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

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 Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice, and all public comments, are 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.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).[1] A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other type of agreements.

Under the proposed CRADA, the R&D Center will collaborate with one non-Federal participant. Together, the R&D Center and the non-Federal participant will collect information/data for performance, reliability, maintenance requirements, and other data on diesel outboard engines. After an initial performance test, the Coast Guard plans to operate to test and evaluate the designated platform outfitted with the diesel outboard engine technology for a period of six months.

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Work with non-Federal participant to develop the test plan to be executed under the CRADA;

(2) Provide the test platform, test platform support, facilities, and seek all required approvals for testing under the CRADA;

(3) Prepare the test platform for diesel outboard engine install and operations;

(4) Provide fuel and test platform operators for the performance and reliability, maintenance, and availability testing;

[1] The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

(5) Collect and analyze data in accordance with the CRADA test plan; and

(6) Work with non-Federal participant to develop a Final Report, which will document the methodologies, findings, conclusions, and recommendations of this CRADA work.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Work with R&D Center to develop the test plan to be executed under the CRADA;

(2) Provide the technical data package for all equipments, including dimensions, weight, power requirements, and other technical considerations for the additional components to be utilized under this CRADA;

(3) Provide for shipment, delivery, and install of diesel outboard engines required for testing under this CRADA;

(4) Provide technical oversight, technical engine, and operator training on the engines provided for testing under this CRADA; and

(5) Provide/pay for travel and other associated personnel costs and other required expenses.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than five single-sided pages (excluding cover page, DD 1494, JF–12, etc.). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering Mack for participation in this CRADA. This consideration is based on the fact that Mack has demonstrated its technical ability as a U.S. Distributor of diesel outboard engines. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology assessment effort. The goal of the Coast Guard for this CRADA is to better understand the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with diesel outboard engines. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S. This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: January 30, 2017.

Captain Dennis C. Evans, USCG,

Commanding Officer, U.S. Coast Guard Research and Development Center.

[FR Doc. 2017–02935 Filed 2–13–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–1073]

Chemical Transportation Advisory Committee; Vacancies

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Chemical Transportation Advisory Committee. The Chemical Transportation Advisory Committee provides advice and makes recommendations on matters relating to the safe and secure marine transportation of hazardous materials insofar as they relate to matters within the United States Coast Guard's jurisdiction.

DATES: Completed applications for the Chemical Transportation Advisory Committee should reach the Coast Guard on or before April 17, 2017.

ADDRESSES: Applicants should send their resume, and a cover letter identifying which of the five membership categories they wish to represent, to the Chemical Transportation Advisory Committee via one of the following methods:

- *By Email: Patrick.m.hilbert@uscg.mil.*
- *By Fax:* (202) 372–8380.
- *By Mail:* Commander Patrick Hilbert, Designated Federal Official of the Chemical Transportation Advisory Committee, Commandant, Hazardous Materials Division (CG–ENG–5), U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7509, Washington, DC 20593–7509.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Julie Blanchfield, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, *Julie.e.blanchfield@uscg.mil,* phone: 202–372–1419, fax: 202–372–8380.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee is established under the authority of Section 871 of the Homeland Security Act of 2002, 6 U.S.C. 451. The Chemical Transportation Advisory Committee is a federal advisory committee operating under the provisions of the Federal Advisory Committee Act (Title 5, U.S.C. Appendix).

The Chemical Transportation Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to the safe and secure marine transportation of hazardous materials insofar as they relate to matters within the United States Coast Guard's jurisdiction.

The Chemical Transportation Advisory Committee meets at least twice per year. It may also meet for extraordinary purposes. Its subcommittees may meet to consider specific problems as required.

The Coast Guard will consider applications for 10 positions that become vacant on September 17, 2017. The membership categories are: Chemical manufacturing, marine handling or transportation of chemicals, vessel design and construction, marine safety or security, and marine environmental protection. Each member serves for a term of three years, and may serve no more than two consecutive three-year terms. A member appointed to fill an unexpired term may serve the remainder of that term. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Commander Patrick Hilbert, Designated Federal Official of the Chemical Transportation Advisory Committee, via one of the transmittal methods in the

ADDRESSES section by the deadline in the **DATES** section of this notice. All email submittals will receive email receipt confirmation.

Dated: February 9, 2017.

F. J. Sturm,

Acting Director, Commercial Regulations and Standards.

[FR Doc. 2017–02927 Filed 2–13–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0072]

Agency Information Collection Activities: Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100, NACARA), Form I–881; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 17, 2016, at 81 FR 71520, allowing for a 60-day public comment period. USCIS did receive three comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 16, 2017. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. (This is not a toll-free number.) All submissions received must include the agency name and the OMB Control Number 1615–0072.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0077 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100, NACARA).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–881; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–881 is used by a nonimmigrant to apply for suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order for USCIS to determine if it has jurisdiction over an individual applying for this release as well as to elicit information regarding the eligibility of an individual applying for release.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–881 is approximately 1,013 and the estimated hour burden per response is 12 hours per response; and the estimated number of respondents providing biometrics is 1,674 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 14,115 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $399,766.

Dated: February 8, 2017.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2017–02922 Filed 2–13–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6001–N–05]

60-Day Notice of Proposed Information Collection: Comment Request; Condominium Project Approval Document Collection

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 17, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Elissa Saunders, Director, Office of Single Family Program Development, HUP; Collette Pollard, Reports Management Officer, QDAM, 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.

A. Overview of Information Collection

Title of Information Collection: Condominium Project Approval Document Collection.

OMB Approval Number: 2502–0610.

Type of Request: Revision of current collection.

Form Number: HUD–92541; HUD–935.2c; HUD 93201; and HUD–92544.

Description of the need for the information and proposed use:

The Housing and Economic Recovery Act of 2008 (HERA) moved the insurance of a single unit condominium from Section 234 to Section 203 of the National Housing Act (NHA). This change required that HUD establish new regulations for condominium project and unit approval. To approve a project and/or insure a unit within an FHA-approved project, certain documentation and data are required for review and approval or denial. Therefore, requiring a specific collection item is appropriate. Further, the information collected will be used for performance, risk, market trending, and other analyses.

Respondents (*i.e., affected public*): Mortgagees, Condominium Associations, Builders, Developers, Attorneys, Management Companies, Project Consultants.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses: 10,000.

Frequency of Response: Biennially.

Average Hours per Response: 3.

Total Estimated Burdens: $3,173,000.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 6, 2017.

Genger M. Charles,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2017–02936 Filed 2–13–17; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1058 (Second Review)]

Wooden Bedroom Furniture From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on wooden bedroom furniture from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on November 2, 2015 (80 FR 67417) and determined on February 5, 2016 that it would conduct a full review (81 FR 8991, February 23, 2016). Notice of the scheduling of the Commission's review 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 July 8, 2016 (81 FR 44659). The hearing was held in Washington, DC, on November 10, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on January 25, 2017. The views of the Commission are contained in USITC Publication 4665 (January 2017), entitled *Wooden Bedroom Furniture from China: Investigation No. 731–TA–1058 (Second Review).*

By order of the Commission.

Issued: January 25, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–02940 Filed 2–13–17; 8:45 am]

BILLING CODE P

[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] Commissioner Dean A. Pinkert did not participate in this review.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–476 and 731–TA–1179 (Review)]

Multilayered Wood Flooring From China; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping and countervailing duty orders on multilayered wood flooring from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: *Effective Date:* February 6, 2017.

FOR FURTHER INFORMATION CONTACT: Drew Dushkes (202–205–3229), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On February 6, 2017, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (81 FR 75854, November 1, 2016) were adequate and determined to proceed to full reviews of the orders. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 8, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–02903 Filed 2–13–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0051]

Manlifts; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Manlifts.

DATES: Comments must be submitted (postmarked, sent, or received) by April 17, 2017.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0051, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3653, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0051) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act

also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph 1910.68(e) of the Standard specifies two paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of the requirements is to reduce workers' risk of death or serious injury by ensuring that manlifts are in safe operating condition.

Periodic Inspections and Records. This provision requires that each manlift be inspected at least once every 30 days and it also requires that limit switches shall be checked weekly. The manlift inspection is to cover at least the following items: Steps; step fastenings; rails; rail supports and fastenings; rollers and slides; belt and belt tension; handholds and fastenings; floor landings; guardrails; lubrication; limit switches; warning signs and lights; illumination; drive pulley; bottom (boot) pulley and clearance; pulley supports; motor; driving mechanism; brake; electrical switches; vibration and misalignment; and any ''skip'' on the up or down run when mounting a step (indicating worn gears). A certification record of the inspection must be prepared upon completion of the inspection. The record must contain the date of the inspection, the signature of the person who performed the inspection, and the serial number or other identifier of the inspected manlift.

Disclosure of Inspection Certification Records. Employers are to maintain the certification record and make it available to OSHA compliance officers. This record provides assurance to employers, workers, and compliance officers that manlifts were inspected as required by the Standard. The inspections are made to keep equipment in safe operating condition thereby preventing manlift failure while carrying workers to elevated worksites. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency requests an adjustment decrease of 1 (one) burden hour associated with this Information Collection Request (from 37,801 hours to 37,800 hours). This is a result of the Agency no longer taking a burden or cost for disclosure of records during an OSHA inspection.

Type of Review: Extension of a currently approved collection.

Title: Manlifts (29 CFR 1910.68).

OMB Control Number: 1218–0226.

Affected Public: Business or other for-profits.

Number of Respondents: 18,372.

Frequency of Responses: 36,042.

Average Time per Response: Varies from 2 minutes (.03 hour) for an employer to disclose the inspection certification record to 1.05 hour to inspect a manlift.

Estimated Total Burden Hours: 37,800.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0051). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Dorothy Dougherty, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on January 27, 2017.

Dorothy Dougherty,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–02812 Filed 2–13–17; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of National Council on the Humanities

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Council on the Humanities will meet to advise the Chairman of the National Endowment for the Humanities (NEH) with respect to policies, programs and procedures for carrying out his functions; to review applications for

financial assistance under the National Foundation on the Arts and Humanities Act of 1965 and make recommendations thereon to the Chairman; and to consider gifts offered to NEH and make recommendations thereon to the Chairman.

DATES: The meeting will be held on Thursday, March 2, 2017, from 10:30 a.m. until 12:30 p.m., and Friday, March 3, 2017, from 9:00 a.m. until adjourned.

ADDRESSES: The meeting will be held at Constitution Center, 400 7th Street SW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** section for room numbers.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW., 4th Floor, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The National Council on the Humanities is meeting pursuant to the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended). The Committee meetings of the National Council on the Humanities will be held on March 2, 2017, as follows: The policy discussion session (open to the public) will convene at 10:30 a.m. until approximately 11:30 a.m., followed by the discussion of specific grant applications and programs before the Council (closed to the public) from 11:30 a.m. until 12:30 p.m.

Digital Humanities: Room 4085.

Education Programs: Room 4002.

Federal/State Partnership: Room 4089.

Preservation and Access: Room 2002.

Public Programs/Federal/State Partnership: Room P003.

Research Programs: Room P002.

In addition, the Humanities Medal Committee (closed to the public) will meet from 2:30 p.m. until 3:30 p.m. in Room P002.

The plenary session of the National Council on the Humanities will convene on March 3, 2017, at 9:00 a.m. in the Conference Center at Constitution Center. The agenda for the morning session (open to the public) will be as follows:

A. Minutes of the Previous Meeting
B. Reports
1. Chairman's Remarks
2. Deputy Chairman's Remarks
3. Presentation by guest speaker Deborah Hess Norris
4. Congressional Affairs Report
5. Reports on Policy and General Matters
a. Digital Humanities
b. Education Programs
c. Federal/State Partnership
d. Preservation and Access
e. Public Programs
f. Research Programs
g. Humanities Medals

The remainder of the plenary session will be for consideration of specific applications and therefore will be closed to the public.

As identified above, portions of the meeting of the National Council on the Humanities will be closed to the public pursuant to sections 552b(c)(4), 552b(c)(6) and 552b(c)(9)(b) of Title 5 U.S.C., as amended. The closed sessions will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, and discussion of certain information, the premature disclosure of which could significantly frustrate implementation of proposed agency action. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Please note that individuals planning to attend the public sessions of the meeting are subject to security screening procedures. If you wish to attend any of the public sessions, please inform NEH as soon as possible by contacting Ms. Katherine Griffin at (202) 606–8322 or *kgriffin@neh.gov.* Please also provide advance notice of any special needs or accommodations, including for a sign language interpreter.

Dated: February 8, 2017.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2017–02920 Filed 2–13–17; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0038]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from January 14 to January 30, 2017. The last biweekly notice was published on January 31, 2017.

DATES: Comments must be filed by March 16, 2017. A request for a hearing must be filed by April 17, 2017.

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–2017–0038. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paula Blechman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2242, email: *Paula.Blechman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0038, facility name, unit number(s), plant docket number, application date, and subject 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–2017–0038.

• *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.

B. Submitting Comments

Please include Docket ID NRC–2017–0038, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the

filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by April 17, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on

all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station Units 1, 2, and 3 (ONS), Oconee County, South Carolina

Date of amendment request: July 20, 2016. Publicly-available version is in ADAMS under Accession No. ML16209A222.

Description of amendment request: The proposed amendment requests to revise the Technical Specifications (TSs) associated with dry spent fuel storage cask loading and unloading requirements for ONS. Specifically, the license amendment request would revise TS 3.7.12, ''Spent Fuel Pool Boron Concentration''; TS 3.7.18, ''Dry Spent Fuel Storage Cask Loading and Unloading''; and TS 4.4, ''Dry Spent Fuel Storage Cask Loading and Unloading,'' to remove certain TS requirements that no longer pertain to the ONS Independent Spent Fuel Storage Facility general license, due to changes in 10 CFR 50.68, ''Criticality accident requirements.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC edits in square brackets:

1. Does the proposed change [amendment] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to Technical Specifications (TSs) 3.7.12, 3.7.18 and 4.4, do not modify the method of nuclear fuel storage or handling at Oconee Nuclear Station (ONS), or make any physical changes to the facility design, material, or construction standards. The proposed change revises the criticality requirements contained in the TSs, as allowed by 10 CFR 50.68(c), that are redundant to regulatory requirements provided in 10 CFR part 72 and the Nuclear Regulatory Commission (NRC)-approved Certificate of Compliance (CoC) for the spent fuel dry shielded canisters utilized at ONS. The proposed change to the TS requirements neither result[s] in operation that will increase the probability of initiating an analyzed event nor alter[s] assumptions relative to mitigation of an accident or transient event. The change has no effect on the process variables, structures, systems, and components that must be maintained consistent with the safety analyses and licensing basis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to TSs 3.7.12, 3.7.18 and 4.4, do not modify the method of nuclear fuel storage or handling at ONS, nor make any physical changes to the facility design, material, or construction standards. The change does not alter the plant configuration (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The proposed change to the ONS TS requirements does not adversely impact the results of the ONS safety analyses and is compliant with the current licensing basis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to TS 3.7.12, 3.7.18 and 4.4, do not modify the method of nuclear fuel storage or handling at ONS, nor make any physical changes to the facility design, material, or construction standards. The proposed changes comply with NRC approved regulations and the station's Part 72 and 50 licensing basis.

Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Vice President Nuclear & EHS Legal Support, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202–1802.

NRC Branch Chief: Michael T. Markley.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3 (ONS), Oconee County, South Carolina

Date of amendment request: July 21, 2016. Publicly-available version is in ADAMS under Accession No. ML16209A223.

Description of amendment request: The proposed amendment requests to revise the Technical Specifications (TSs) for ONS. Specifically, the license amendment request would revise TS 2.1.1.1, ''Reactor Core Safety Limits (SLs),'' and TS 5.6.5, ''Core Operating Limits Report (COLR),'' to allow the use of the COPERNIC fuel performance code.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds a limit on maximum local fuel pin centerline temperature to [the] ONS Technical Specifications that is based on a[n] NRC reviewed and approved fuel performance

code, and does not require a physical change to plant systems, structures or components. Plant operations and analysis will continue to be in accordance with the ONS licensing basis. The peak fuel centerline temperature is the basis for protecting the fuel and is consistent with the safety analysis.

The proposed change also adds a topical report for a[n] NRC reviewed and approved fuel performance code to the list of topical reports in [the] ONS Technical Specifications, which is administrative in nature and has no impact on a plant configuration or system performance relied upon to mitigate the consequences of an accident. The list of topical reports in the Technical Specifications used to develop the core operating limits does not impact either the initiation of an accident or the mitigation of its consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adds a limit on maximum local fuel pin centerline temperature to [the] ONS Technical Specifications that is based on a[n] NRC reviewed and approved fuel performance code, and does not require a physical change to plant systems, structures or components. Specifying maximum local fuel pin centerline temperature ensures that the fuel design limits are met. Operations and analysis will continue to be in compliance with NRC regulations. The addition of a new fuel pin centerline melt temperature versus burnup relationship does not affect any accident initiators that would create a new accident.

The proposed change also adds a topical report for a[n] NRC reviewed and approved fuel performance code to the list of topical reports in [the] ONS Technical Specifications, which is administrative in nature and has no impact on a plant configuration or on system performance. The proposed change updates the list of NRC-approved topical reports used to develop the core operating limits. There is no change to the parameters within which the plant is normally operated. The possibility of a new or different kind of accident is not created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to TS 2.1.1.1 adds a limit on maximum local fuel pin centerline temperature that is based on an NRC reviewed and approved fuel performance code, and does not require a physical change to plant systems, structures or components. Plant operations and analysis will continue to be in accordance with [the] ONS licensing basis.

Adding the local fuel pin centerline temperature and burnup relationship defined by the NRC reviewed and approved fuel performance code to the ONS Technical Specifications, does not impact the safety margins established in the ONS licensing basis.

The proposed change also adds a topical report for a[n] NRC reviewed and approved fuel performance code to the list of topical reports in [the] ONS Technical Specifications, which is administrative in nature and does not amend the cycle specific parameters presently required by the Technical Specifications. The individual Technical Specifications continue to require operation of the plant within the bounds of the limits specified in the Core Operating Limits Report. The proposed change to the list of analytical methods referenced in the Core Operating Limits Report does not impact the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Vice President Nuclear & EHS Legal Support, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202–1802.

NRC Branch Chief: Michael T. Markley.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2 (BSEP), Brunswick County, North Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2 (CNS), York County, South Carolina

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1 (HNP), Wake County, North Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2 (MNS), Mecklenburg County, North Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3 (ONS), Oconee County, South Carolina

Duke Energy Progress, LLC, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2 (RNP), Darlington County, South Carolina

Duke Energy Carolinas, LLC, Docket Nos. 52–018 and 52–019, William States Lee III Nuclear Station, Units 1, and 2 (WLS), Cherokee County, South Carolina

Date of amendment request: April 29, 2016, as supplemented by letters dated October 3, 2016, and January 16, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML16120A076, ML16277A521, and ML17017A210, respectively.

Description of amendment request: The NRC staff previously made a proposed determination that the amendment request dated April 29, 2016, involves no significant hazards considerations (81 FR 43650; July 5, 2016). Subsequently, by letter dated January 16, 2017, the licensee provided additional information that expanded the scope of the amendment request as originally noticed. Accordingly, this notice supersedes the previous notice in its entirety.

The amendments would (1) consolidate the Emergency Operations Facilities (EOFs) for BSEP, HNP, and RNP with the Duke Energy Progress, LLC (Duke Energy) corporate EOF in Charlotte, North Carolina; (2) decrease the frequency for a multi-site drill from once per 6 years to once per 8 years; (3) allow the multi-site drill performance with sites other than CNS, MNS, or ONS, (4) change the BSEP, HNP, and RNP augmentation times to be consistent with those of the sites currently supported by the Duke Energy corporate EOF, and (5) decrease the frequency of the unannounced augmentation drill at BSEP from twice per year to once per year. The January 16, 2017, letter also acknowledges the addition of WLS to the Duke Energy corporate EOF with the issuance of the WLS operating license on December 19, 2016 (ADAMS Accession No. ML16333A329).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes relocate the BSEP, HNP, and RNP EOFs from their present onsite or near-site locations to the established corporate EOF in Charlotte, North Carolina, changes the required response times for supplementing onsite personnel in response to a radiological emergency, decreases the multi-site drill frequency, allows the multi-site drill to be performed with sites other than ONS, MNS, or CNS, and decreases the frequency of augmentation drills at BSEP. The functions and capabilities of the relocated EOFs will continue to meet the applicable regulatory requirements. It has

been evaluated and determined that the change in response time does not significantly affect the ability to supplement the onsite staff. In addition, analysis shows that the onsite staff can acceptably respond to an event for longer than the requested time for augmented staff to arrive. The proposed changes have no effect on normal plant operation or on any accident initiator or precursors, and do not impact the function of plant structures, systems, or components (SSCs). The proposed changes do not alter or prevent the ability of the emergency response organization to perform its intended functions to mitigate the consequences of an accident or event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes only impact the implementation of the affected stations' emergency plans by relocating their onsite or near-site EOFs to the established corporate EOF in Charlotte, North Carolina, changing the required response time of responders who supplement the onsite staff, decreasing the multi-site drill frequency, allowing the multi-site drill to be performed with sites other than ONS, MNS, or CNS, and decreasing the frequency of augmentation drills at BSEP. The functions and capabilities of the relocated EOFs will continue to meet the applicable regulatory requirements. It has been evaluated and determined that the change in response time does not significantly affect the ability to supplement the onsite staff. In addition, analysis shows that the onsite staff can acceptably respond to an event for longer than the requested time for augmented staff to arrive. The proposed changes will not change the design function or operation of SSCs. The changes do not impact the accident analysis. The changes do not involve a physical alteration of the plant, a change in the method of plant operation, or new operator actions. The proposed changes do not introduce failure modes that could result in a new accident, and the changes do not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes only impacts the implementation of the affected stations' emergency plans by relocating their onsite or near-site EOFs to the established corporate EOF in Charlotte, North Carolina, changing the required response time of responders who supplement the onsite staff, decreasing the multi-site drill frequency, allowing the multi-site drill to be performed with sites other than ONS, MNS, or CNS, and decreasing the frequency of augmentation drills at BSEP. The functions and capabilities of the relocated EOFs will continue to meet the applicable regulatory requirements. It has been evaluated and determined that the change in response time does not significantly affect the ability to supplement the onsite staff. In addition, analysis shows that the onsite staff can acceptably respond to an event for longer than the requested time for augmented staff to arrive. Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed changes are associated with the emergency plans and do not impact operation of the plant or its response to transients or accidents. The changes do not affect the Technical Specifications. The changes do not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Safety analysis acceptance criteria are not affected. The emergency plans will continue to provide the necessary response staff for emergencies as demonstrated by staffing and functional analyses including the necessary timeliness of performing major tasks for the functional areas of the emergency plans.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 550 South Tyron Street, Mail Code DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Benjamin G. Beasley.

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant (HNP), Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: December 2, 2016. A publicly-available version is in ADAMS under Accession No. ML16337A249.

Description of amendment request: The amendment would revise HNP Technical Specifications (TSs) to relocate selected figures and values from the TSs to the Core Operating Limits Report (COLR), remove all references to a specific plant procedure as it pertains to the COLR, and adopt Technical Specification Task Force (TSTF)-5, ''Delete Safety Limit Violation Notification Requirements,'' Revision 1, which deletes duplicate notification, reporting and restart requirements from the Administrative Controls section of TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

[*Response:* No.]

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative in nature, facilitate improved content and presentation of Administrative controls, and alter only the format and location of cycle-specific parameter figures and limits from the TS to the COLR. This relocation does not result in the alteration of the design, material, or construction standards that were applicable prior to the change. The proposed changes will not result in modification of any system interface that would increase the likelihood of an accident since these events are independent of the proposed change. The proposed amendment will not change, degrade, or prevent actions, or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the Final Safety Analysis Report (FSAR).

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

[*Response:* No.]

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amounts of any effluents released offsite.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

[*Response:* No.]

The proposed changes do not involve a significant reduction in a margin of safety. Previously-approved methodologies will continue to be used in determination of cycle-specific core operating limits that are present in the COLR. The proposed changes are administrative in nature and will not affect the plant design or system operating parameters. As such, there is no detrimental impact on any equipment design parameter and the plant will continue to be operated within prescribed limits.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara Nichols, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon St., M/C DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Benjamin G. Beasley.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: November 8, 2016. A publicly-available version is in ADAMS under Accession No. ML16313A573.

Description of amendment request: The proposed amendment would, on a one-time basis, extend the Completion Time by 7 days for Technical Specification Conditions 3.5.1.A, 3.6.1.5.A, and 3.6.2.3.A. This onetime extension will be used to support preventive maintenance, which replaces the residual heat removal train A subsystem's pump and motor.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not increase the probability of an accident because the residual heat removal (RHR) system cannot initiate an accident. The RHR system provides coolant injection to the reactor core, cooling of the suppression pool water inventory, and drywell sprays following a design basis accident.

The proposed one time completion time (CT) change for RHR train A does not alter the conditions, operating configurations, or minimum amount of operating equipment assumed in the safety analysis for accident mitigation. No changes are proposed in the manner in which the emergency core cooling system (ECCS) provides plant protection or which create new modes of plant operation. In addition, a probabilistic safety assessment (PSA) evaluation concluded that the risk contribution of the increased CT is a very small increase in risk. The proposed change in CT will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed amendment will not create the possibility of a new or different kind of accident because inoperability of one RHR subsystem is not an accident precursor. There are no hardware changes nor are there any changes in the method by which any plant system performs a safety function. This request does not affect the normal method of plant operation. The proposed amendment does not introduce new equipment, or new way of operation of the system which could create a new or different kind of accident. No new external threats, release pathways, or equipment failure modes are created. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this request.

Therefore, the implementation of the proposed amendment will not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Columbia's ECCS is designed with sufficient redundancy such that a low pressure ECCS subsystem may be removed from service for maintenance or testing. The remaining subsystems are capable of providing water and removing heat loads to satisfy the final safety analysis report (FSAR) requirements for accident mitigation or plant shutdown. A PSA evaluation concluded that the risk contribution of the CT extension is very small. There will be no change to the manner in which safety limits or limiting safety system settings are determined nor will there be any change to those plant systems necessary to assure the accomplishment of protection functions. There will be no change to post-LOCA peak clad temperatures.

For these reasons, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: November 9, 2016. A publicly-available version is in ADAMS under Accession No. ML16314A027.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.5.10, ''Ventilation Filter Testing Program,'' to correct and modify the description of the control room ventilation and fuel handling area ventilation systems. In addition, the proposed amendment would correct an editorial omission in TS Limiting Condition for Operation 3.0.9.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the Palisades Nuclear Plant (PNP) Technical Specifications (TS) are editorial or administrative in nature. The changes make an editorial correction in the TS, and correct and modify the component descriptions in the ventilation filter testing program TS. These changes do not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed changes do not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents, and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the PNP TS are editorial or administrative in nature. The changes make an editorial correction in the TS, and correct and modify the component descriptions within the ventilation filter testing program TS. The proposed changes do not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed changes do not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated

accidents, and do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed changes to the TS are editorial or administrative in nature and do not impact any safety margins. Because there is no impact on established safety margins as a result of these changes, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeanne Cho, Senior Counsel, Entergy Services, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: David J. Wrona.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station (LSCS), Units 1 and 2, LaSalle County, Illinois

Date of amendment request: October 26, 2016. A publicly-available version is in ADAMS under Accession No. ML16300A200.

Description of amendment request: The proposed change revises TS 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to allow for the permanent extension of the Type A Integrated Leak Rate Testing (ILRT) and Type C Leak Rate Testing frequencies, to change the documents used by LSCS to implement the performance-based leakage testing program, and to delete the information regarding the performance of the next LSCS Type A tests to be performed.

Additionally, this license amendment request (LAR) proposes to delete Condition 2.D.(e) of the LSCS Unit 1 Renewed Facility Operating License regarding conducting the third Type A Test of each 10-year service period when the plant is shutdown for the 10-year plant inservice inspection (ISI). Similarly, this LAR proposes to delete Condition 2.D.(c) of the LSCS Unit 2 Renewed Facility Operating License regarding conducting the third Type A test of each 10-year service period when the plant is shutdown for the 10 year plant ISI.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to the TS involves the extension of the LSCS Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The current Type A test interval of 120 months (10 years) would be extended on a permanent basis to no longer than 15 years from the last Type A test. The current Type C test interval of 60 months for selected components would be extended on a performance basis to no longer than 75 months. Extensions of up to nine months (total maximum interval of 84 months for Type C tests) are permissible only for non-routine emergent conditions.

The proposed extension does not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident. The change in dose risk for changing the Type A test frequency from three-per-ten years to once-per-fifteen years, measured as an increase to the total integrated dose risk for all internal events accident sequences for LSCS, is 1.23E–02 person-rem/yr (0.33%) using the EPRI [Electric Power Research Institute] guidance with the base case corrosion included. The change in dose risk drops to 3.15E–03 person-rem/yr (0.08%) when using the EPRI Expert Elicitation methodology. The values calculated per the EPRI guidance are all lower than the acceptance criteria of ≤1.0 person-rem/yr or <1.0% person-rem/yr defined in Section 1.3 of Attachment 3 of this submittal. The results of the risk assessment for this amendment meet these criteria. Moreover, the risk impact for the ILRT extension when compared to other severe accident risks is negligible. Therefore, this proposed extension does not involve a significant increase in the probability of an accident previously evaluated.

As documented in NUREG–1493, Type B and C tests have identified a very large percentage of containment leakage paths, and the percentage of containment leakage paths that are detected only by Type A testing is very small. The LSCS Type A test history supports this conclusion.

The integrity of the containment is subject to two types of failure mechanisms that can be categorized as: (1) Activity based and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as configuration management and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the containment combined with the containment inspections performed in accordance with ASME [American Society of Mechanical Engineers] Section XI and TS requirements serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by a Type A test. Based on the above, the proposed extensions do not significantly increase the consequences of an accident previously evaluated.

The proposed amendment also deletes exceptions previously granted to allow one-time extensions of the ILRT test frequency for LSCS. These exceptions were for activities that would have already taken place by the time this amendment is approved; therefore, their deletion is solely an administrative action that has no effect on any component and no impact on how the unit is operated.

Therefore, the proposed change does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to the TS involves the extension of the LSCS Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled.

The proposed amendment also deletes exceptions previously granted to allow one-time extensions of the ILRT test frequency for LSCS. These exceptions were for activities that would have already taken place by the time this amendment is approved; therefore, their deletion is solely an administrative action that does not result in any change in how the unit is operated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment to TS 5.5.13 involves the extension of the LSCS Type A

containment test interval to 15 years and the extension of the Type C test interval to 75 months for selected components. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS Containment Leak Rate Testing Program exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed change involves only the extension of the interval between Type A containment leak rate tests and Type C tests for LSCS. The proposed surveillance interval extension is bounded by the 15-year ILRT Interval and the 75-month Type C test interval currently authorized within NEI [Nuclear Energy Institute] 94–01, Revision 3–A. Industry experience supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section XI and TS serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods and acceptance criteria for Type A, B, and C containment leakage tests specified in applicable codes and standards would continue to be met, with the acceptance of this proposed change, since these are not affected by changes to the Type A and Type C test intervals.

The proposed amendment also deletes exceptions previously granted to allow one time extensions of the ILRT test frequency for LSCS. These exceptions were for activities that would have already taken place by the time this amendment is approved; therefore, their deletion is solely an administrative action and does not change how the unit is operated and maintained. Thus, there is no reduction in any margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

South Carolina Electric & Gas Company (SCE&G) and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: November 10, 2016. A publicly-available version is in ADAMS under Accession No. ML16316A003.

Description of amendment request: The amendment request proposes to add to License Condition 2.D.(1) of the VCSNS Units 2 and 3 combined licenses (COLs), an Interim Amendment Request process for changes during construction when emergent conditions are present.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would add an Interim Amendment Request process to Condition 2.D.(1) of the VCSNS 2 and 3 COLs to allow construction to continue, at SCE&G's own risk, in emergent conditions, where a non-conforming condition that has little or no safety significance is discovered and the work activity cannot be adjusted. The Interim Amendment Request process would require SCE&G to submit a Nuclear Construction Safety Assessment which (1) identifies the proposed change; (2) evaluates whether emergent conditions are present; (3) evaluates whether the change would result in any material decrease in safety; and (4) evaluates whether continued construction would make the non-conforming condition irreversible. Only if the continued construction would have no material decrease in safety would the NRC issue a determination that construction could continue pending SCE&G's initiation of the COL–ISG–025 PAR [preliminary amendment request]/LAR [license amendment request] process. The requirement to include a Nuclear Construction Safety Assessment ensures that the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. If the continued construction would result a material decrease in safety, then continued construction would not be authorized.

The proposed amendment does not modify the design, construction, or operation of any plant structures, systems, or components (SSCs), nor does it change any procedures or method of control for any SSCs. Because the proposed amendment does not change the design, construction, or operation of any SSCs, it does not adversely affect any design function as described in the Updated Final Safety Analysis Report.

The proposed amendment does not affect the probability of an accident previously evaluated. Similarly, because the proposed amendment does not alter the design or operation of the nuclear plant or any plant SSCs, the proposed amendment does not represent a change to the radiological effects of an accident, and therefore, does not involve an increase in the consequences of an accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment would add an Interim Amendment Request process to Condition 2.D.(1) of the VCSNS 2 and 3 COLs to allow construction to continue, at SCE&G's own risk, in emergent conditions, where a non-conforming condition that has little or no safety significance is discovered and the work activity cannot be adjusted. The Interim Amendment Request process would require SCE&G to submit a Nuclear Construction Safety Assessment which (1) identifies the proposed change; (2) evaluates whether emergent conditions are present; (3) evaluates whether the change would result in any material decrease in safety; and (4) evaluates whether continued construction would make the non-conforming condition irreversible. Only if the continued construction would have no material decrease in safety would NRC issue a determination that construction could continue pending SCE&G's initiation of the COL–ISG–025 PAR/LAR process.

The proposed amendment is not a modification, addition to, or removal of any plant SSCs. Furthermore, the proposed amendment is not a change to procedures or method of control of the nuclear plant or any plant SSCs. The proposed amendment only adds a new screening process and does not change the design, construction, or operation of the nuclear plant or any plant operations.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment would add an Interim Amendment Request process to Condition 2.D.(1) of the VCSNS 2 and 3 COLs to allow construction to continue, at SCE&G's own risk, in emergent conditions, where a non-conforming condition that has little or no safety significance is discovered and the work activity cannot be adjusted. The Interim Amendment Request process would require SCE&G to submit a Nuclear Construction Safety Assessment which (1) identifies the proposed change; (2) evaluates whether emergent conditions are present; (3) evaluates whether the change would result in any material decrease in safety; and (4) evaluates whether continued construction would make the non-conforming condition irreversible. Only if the continued

construction would have no material decrease in safety would the NRC issue determination that construction could continue pending SCE&G's initiation of the COL–ISG–025 PAR/LAR process.

The proposed amendment is not a modification, addition to, or removal of any plant SSCs. Furthermore, the proposed amendment is not a change to procedures or method of control of the nuclear plant or any plant SSCs. The proposed amendment does not alter any design function or safety analysis. Consequently, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed amendment, thus the margin of safety is not reduced. The only impact of this activity is the addition of an Interim Amendment Request process.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

South Carolina Electric & Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield, South Carolina

Date of amendment request: September 15, 2016. A publicly-available version is in ADAMS under Accession No. ML16259A315.

Description of amendment request: The amendment request proposes changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2 information and a combined license (COL) License Condition which references one of the proposed changes. Additionally, the proposed changes to the UFSAR eliminate pressurizer spray line monitoring during pressurizer surge line first plant only testing. In addition, these proposed changes correct inconsistencies in testing purpose, testing duration, and the ability to leave equipment in place following the data collection period. These changes involve material which is specifically referenced in Section 2.D.(2) of the COL. This submittal requests approval of the license amendment necessary to implement these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the RCS [reactor coolant system] include providing an effective reactor coolant pressure boundary. The proposed changes for removing the requirement to install temporary instrumentation on the pressurizer spray line during the monitoring of the pressurizer surge line for thermal stratification and thermal cycling during hot functional testing and during the first fuel cycle for the first plant only, proposed changes to parameter retention requirements, and proposed change to remove the pressurizer spray and surge line valve leakage requirement do not impact the existing design requirements for the RCS. These changes are acceptable as they are consistent with the commitments made for the pressurizer surge line monitoring program for the first plant only, and do not adversely affect the capability of the pressurizer surge line and pressurizer spray lines to perform the required reactor coolant pressure boundary design functions.

These proposed changes to the monitoring of the pressurizer surge line for thermal stratification and thermal cycling during hot functional testing and during the first fuel cycle for the first plant only, proposed changes to parameter retention requirements, and proposed change to remove the pressurizer spray and surge line valve leakage requirement as described in the current licensing basis do not have an adverse effect on any of the design functions of the systems. The proposed changes do not affect the support, design, or operation of mechanical and fluid systems required to mitigate the consequences of an accident. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor do the proposed changes create any new accident precursors.

Therefore, the requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes for removing the requirement to install temporary instrumentation on the pressurizer spray line during the monitoring of the pressurizer surge line for thermal stratification and thermal cycling during hot functional testing and during the first fuel cycle for the first plant only, proposed changes to parameter retention requirements, and proposed change to remove the pressurizer spray and surge line valve leakage requirement as described in the current licensing basis maintain the required design functions, and are consistent with other Updated Final Safety Analysis Report (UFSAR) information. The proposed changes do not adversely affect the design requirements for the RCS, including the pressurizer surge line and pressurizer spray lines. The proposed changes do not adversely affect the design function, support, design, or operation of mechanical and fluid systems. The proposed changes do not result in a new failure mechanism or introduce any new accident precursors. No design function described in the UFSAR is adversely affected by the proposed changes.

Therefore, the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced. Therefore, the requested amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius, LLC, 1111 Pennsylvania Ave. NW., Washington, DC 20004–2514.

NRC Branch Chief: Jennifer Dixon-Herrity.

South Carolina Electric & Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield, South Carolina

Date of amendment request: November 16, 2016. A publicly-available version is in ADAMS under Accession No. ML16323A020.

Description of amendment request: The amendment request proposes changes to plant-specific Tier 1 information, with corresponding changes to the associated Combined License (COL) Appendix C information, and involves associated Tier 2 information in the Updated Final Safety Analysis Report (UFSAR). Specifically, the requested amendment proposes clarifications to a plant-specific Tier 1 (and COL Appendix C) table and a UFSAR table in regard to the inspections of the excore source, intermediate, and power range detectors. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from

elements of the design as certified in the 10 CFR part 52, appendix D, design certification rule is also requested for the plant-specific Design Control Document Tier 1 material departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff's edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to specify the inspection of the excore source, intermediate, and power range detectors is done to verify that aluminum surfaces are contained in stainless steel or titanium, and avoids the introduction of aluminum into the post-loss of coolant accident (LOCA) containment environment due to detector materials. The proposed change does not alter any safety related functions. The materials of construction are compatible with the post-LOCA conditions inside containment and will not significantly contribute to hydrogen generation or chemical precipitates. The change does not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSC) accident initiator or initiating sequence of events.

The change does not impact the support, design, or operation of mechanical and fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. Consequently, the plant response to previously evaluated accidents or external events is not adversely affected, nor does the proposed change create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed change to specify the inspection of the excore source, intermediate, and power range detectors is done to verify that aluminum surfaces are contained in stainless steel or titanium, and avoids the introduction of aluminum into the post-LOCA containment environment due to detector materials. In addition, the proposed change to the ITAAC [inspections, tests, analysis, and acceptance criteria] verified materials of construction does not alter the design function of the excore detectors. The detector canning materials of construction are compatible with the post-LOCA containment environment and do not contribute a significant amount of hydrogen or chemical precipitates. The change to the ITAAC aligns the inspection with the Tier 2 design feature. Consequently, because the excore detectors functions are unchanged, there are no adverse effects on accidents previously evaluated in the UFSAR.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to specify the inspection of the excore source, intermediate, and power range detectors is done to verify that aluminum surfaces are contained in stainless steel or titanium, and avoids the introduction of aluminum into the post-LOCA containment environment, does not alter any safety-related equipment, applicable design codes, code compliance, design function, or safety analysis. Consequently, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change, thus the margin of safety is not reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius, LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern California Edison Company, et al., Docket Nos. 50–206, 50–361, and 50–362, San Onofre Nuclear Generating Station (SONGS), Units 1, 2, and 3, San Diego County, California

Date of amendment request: December 15, 2016. A publicly-available version is in ADAMS under Accession No. ML16355A014.

Description of amendment request: The proposed amendment would revise the Facility Operating Licenses and associated Technical Specifications (TS) for SONGS, Units 1, 2, and 3, to reflect removal of all spent nuclear fuel from the SONGS, Units 2 and 3 spent fuel pools (SFPs) and its transfer to dry cask storage within an onsite independent spent fuel storage installation (ISFSI). The proposed changes would also make conforming changes to the SONGS, Unit 1 TS and combine them with the SONGS, Units 2 and 3 TS. These changes will more fully reflect the permanently shutdown and defueled status of the facility, as well as the reduced scope of structures, systems, and components necessary to ensure plant safety once all spent fuel has been permanently moved to the SONGS ISFSI, an activity which is currently scheduled for completion in 2019.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would modify the SONGS, Units 2 and 3 facility operating licenses and TS by deleting the portions of the licenses and TSs that are no longer applicable to a facility with no spent nuclear fuel stored in the SFP, while modifying the remaining portions to correspond to all nuclear fuel stored within an ISFSI. This amendment becomes effective upon removal of all spent nuclear fuel from the SONGS, Units 2 and 3 SFP and its transfer to dry cask storage within an ISFSI.

Additionally, the proposed change would revise the Unit 1 TSs for consistency with the proposed changes to the Units 2 and 3 TSs. Similar to the changes for Units 2 and 3, the Unit 1 changes delete portions of the TSs that are no longer applicable to a facility with spent fuel no longer stored in the SFP, while modifying the remaining portions to correspond to all nuclear fuel in dry storage. The Unit 1 TSs are also proposed to be combined with the Units 2 and 3 TSs.

The definition of safety-related Structures, Systems, and Components (SSCs) in 10 CFR 50.2 states that safety-related SSCs are those relied on to remain functional during and following design basis events to assure:

1. The integrity of the reactor coolant boundary;

2. The capability to shutdown the reactor and maintain it in a safe shutdown condition; or

3. The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the applicable guideline exposures set forth in 10 CFR 50.43(a)(1) or 100.11.

The first two criteria (integrity of the reactor coolant pressure boundary and safe shutdown of the reactor) are not applicable to a plant in a permanently defueled condition. The third criterion is related to preventing or mitigating the consequences of accidents that could result in potential offsite exposures exceeding limits. However, after all nuclear spent fuel assemblies have been transferred to dry cask storage within an ISFSI, none of the SSCs at SONGS, Units 2 and 3 are required to be relied on for accident mitigation. Therefore, none of the SSCs at

SONGS, Units 2 and 3 meet the definition of a safety-related SSC stated in 10 CFR 50.2. The proposed deletion of requirements in the TSs is not related to any systems credited in an accident analysis at SONGS, Units 2 and 3.

Chapter 15 of the SONGS, Units 2 and 3 Updated Final Safety Analysis Report (UFSAR) described the design basis accidents (DBAs) related to the SFP. The majority of these postulated accidents are predicated on spent fuel being stored in the SFP. With the removal of the spent fuel from the SFP, there are no remaining spent fuel assemblies to be monitored and there are no credible accidents that require the actions of a Certified Fuel Handler, Shift Manager, or a Certified Operator to prevent occurrence or mitigate the consequences of an accident.

With all of the SONGS 1 operating plant above-ground structures having been demolished and removed, and all Unit 1 spent fuel having been removed from the SFP, there are no remaining design basis accidents or transients in Chapter 8 of the Unit 1 Defueled Safety Analysis Report (DSAR).

The proposed changes do not have an adverse impact on the remaining decommissioning activities or any of their potential consequences.

The proposed changes related to the relocation of certain administrative requirements do not affect operating procedures or administrative controls that have the function of preventing or mitigating any accidents applicable to the safe management of irradiated fuel or decommissioning of the facility.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes eliminate the operational requirements and certain design requirements associated with the storage of the spent fuel in the SFP, and relocate certain administrative controls to the Decommissioning Quality Assurance Program or Licensee Controlled Specifications (LCS).

After the removal of the spent fuel from the Units 2 and 3 SFP and transfer to the ISFSI, there are no spent fuel assemblies that remain in a SFP on site. Coupled with a prohibition against storage of fuel in the Units 2 and 3 SFP (the Unit 1 SFP has been dismantled), the potential for fuel related accidents is removed. The proposed changes do not introduce any new failure modes.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The removal of all spent nuclear fuel from the SFPs into storage in casks within an ISFSI, coupled with a prohibition against future storage of fuel within the Units 2 and 3 SFPs (the Unit 1 SFP has been dismantled), removes the potential for fuel related accidents.

The design basis and accident assumptions within the SONGS, Units 1, 2 and 3 UFSARs and the TSs relating to safe management and safe storage of spent fuel in the SFP are no longer applicable. The proposed changes do not affect remaining plant operations, systems, or components supporting decommissioning activities.

The proposed deletion of TS requirements is not related to any SSCs that will be credited in the accident analysis for an applicable postulated accident. As a result, the proposed deletions do not affect the margin of safety associated with the accident analysis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Walker A. Matthews, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Bruce Watson.

Southern California Edison Company, et al., Docket Nos. 50–206, 50–361, and 50–362, San Onofre Nuclear Generating Station (SONGS), Units 1, 2, and 3, San Diego County, California

Date of amendment request: December 15, 2016. A publicly-available version is in ADAMS under Accession No. ML16355A015.

Description of amendment request: The proposed amendment would revise the Permanently Defueled Emergency Plan into an Independent Spent Fuel Storage Facility Installation (ISFSl)-Only Emergency Plan, and revise the Emergency Action Level (EAL) scheme into an ISFSl-Only EAL scheme, for SONGS, Units 1, 2, and 3. The proposed changes would more fully reflect the permanently shutdown and defueled status of the facility, as well as the reduced scope of potential radiological accidents once all spent fuel has been moved to dry cask storage within the onsite SONGS ISFSI, an activity which is currently scheduled for completion in 2019.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendments would modify the SONGS, Units 1, 2 and 3 licenses by revising the emergency plan and revising the EAL scheme. The SONGS units have permanently ceased operation and are permanently defueled. The proposed amendments are conditioned on all spent nuclear fuel being removed from wet storage in the spent fuel pools and placed in dry storage within an ISFSI. Occurrence of postulated accidents associated with spent fuel stored in a spent fuel pool is no longer credible in a spent fuel pool devoid of such fuel. The proposed amendments have no effect on plant systems, structures, and components (SSCs) and no effect on the capability of any plant SSC to perform its design function. The proposed amendments would not increase the likelihood of the malfunction of any plant SSC. The proposed amendments would have no effect on any of the previously evaluated accidents in the SONGS Updated Final Safety Analysis Report (UFSAR).

Since SONGS has permanently ceased operation, the generation of fission products has ceased and the remaining source term continues to decay. This continues to significantly reduce the consequences of previously postulated accidents.

Therefore, the proposed amendments do not involve a significant increase in the consequences of a previously evaluated accident.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendments constitute a revision of the emergency planning function commensurate with the ongoing and anticipated reduction in radiological source term at SONGS.

The proposed amendments do not involve a physical alteration of the plant. No new or different types of equipment will be installed and there are no physical modifications to existing equipment as a result of the proposed amendments. Similarly, the proposed amendments would not physically change any SSCs involved in the mitigation of any postulated accidents. Thus, no new initiators or precursors of a new or different kind of accident are created. Furthermore, the proposed amendments do not create the possibility of a new failure mode associated with any equipment or personnel failures. The credible events for the ISFSI remain unchanged.

Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Because the 10 CFR part 50 licenses for SONGS no longer authorize operation of the reactors or emplacement or retention of fuel into the reactor vessels, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is

no longer credible. With all nuclear spent fuel transferred out of wet storage from the spent fuel pools and placed in dry storage within the ISFSI, a fuel handling accident is no longer credible. There are no longer credible events that would result in any releases beyond the Exclusion Area Boundary (EAB) exceeding the U.S. Environmental Protection Agency (EPA) Protective Action Guideline (PAG) exposure levels, as detailed in the EPA's ''Protective Action Guide and Planning Guidance for Radiological Incidents,'' Draft for Interim Use and Public Comment dated March 2013 (PAG Manual).

The proposed amendments do not involve a change in the plant's design, configuration, or operation. The proposed amendments do not affect either the way in which the plant structures, systems, and components perform their safety function or their design margins. Because there is no change to the physical design of the plant, there is no change to any of these margins.

Therefore, the proposed amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Walker A. Matthews, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Bruce Watson.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: August 31, 2016. A publicly-available version is in ADAMS under Accession No. ML16244A253.

Description of amendment request: The amendment request proposes changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document (DCD) Tier 2 information and a combined license (COL) License Condition which references one of the proposed changes. Additionally, the proposed changes to the UFSAR eliminate pressurizer spray line monitoring during pressurizer surge line first plant only testing. In addition, these proposed changes correct inconsistencies in testing purpose, testing duration, and the ability to leave equipment in place following the data collection period. These changes involve material which is specifically referenced in Section 2.D.(2) of the COLs. This submittal requests approval of the license amendment necessary to implement these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the RCS [reactor coolant system] include providing an effective reactor coolant pressure boundary. The proposed changes for removing the requirement to install temporary instrumentation on the pressurizer spray line during the monitoring of the pressurizer surge line for thermal stratification and thermal cycling during hot functional testing and during the first fuel cycle for the first plant only, proposed changes to parameter retention requirements, and proposed change to remove the pressurizer spray and surge line valve leakage requirement do not impact the existing design requirements for the RCS. These changes are acceptable as they are consistent with the commitments made for the pressurizer surge line monitoring program for the first plant only, and do not adversely affect the capability of the pressurizer surge line and pressurizer spray lines to perform the required reactor coolant pressure boundary design functions.

These proposed changes to the monitoring of the pressurizer surge line for thermal stratification and thermal cycling during hot functional testing and during the first fuel cycle for the first plant only, proposed changes to parameter retention requirements, and proposed change to remove the pressurizer spray and surge line valve leakage requirement as described in the current licensing basis do not have an adverse effect on any of the design functions of the systems. The proposed changes do not affect the support, design, or operation of mechanical and fluid systems required to mitigate the consequences of an accident. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor do the proposed changes create any new accident precursors.

Therefore, the requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes for removing the requirement to install temporary instrumentation on the pressurizer spray line during the monitoring of the pressurizer surge line for thermal stratification and thermal cycling during hot functional testing and during the first fuel cycle for the first plant only, proposed changes to parameter retention requirements, and proposed change to remove the pressurizer spray and surge line valve leakage requirement as described in the current licensing basis maintain the required design functions, and are consistent with other Updated Final Safety Analysis Report (UFSAR) information. The proposed changes do not adversely affect the design requirements for the RCS, including the pressurizer surge line and pressurizer spray lines. The proposed changes do not adversely affect the design function, support, design, or operation of mechanical and fluid systems. The proposed changes do not result in a new failure mechanism or introduce any new accident precursors. No design function described in the UFSAR is adversely affected by the proposed changes.

Therefore, the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced.

Therefore, the requested amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant

hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: May 25, 2016, as supplemented by letters dated June 15, 2016, and October 18, 2016.

Brief description of amendment: The amendment revised the Millstone Power Station, Unit No. 2, Technical Specifications (TSs) to add the evaluation model EMF–2103(P)(A), Revision 3, ''Realistic Large Break LOCA Methodology for Pressurized Water Reactors'' (ADAMS Package Accession No. ML16286A579), to the TS Section 6.9.1.8.b list of analytical methods use to establish core operating limits.

Date of issuance: January 24, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 332. A publicly-available version is in ADAMS under Accession No. ML17025A218; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–65: Amendment revised the Renewed Facility Operating License and TSs.

*Date of initial notice in **Federal Register:*** August 30, 2016 (81 FR 59662). The supplemental letters dated June 15, 2016, and October 18, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 2017.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: August 16, 2016.

Brief description of amendments: The amendments modified license conditions to reflect the transfer of the Master Decommissioning Trust from the Power Authority of the State of New York to Entergy Nuclear Operations, Inc., and deletes other conditions so as to apply the requirements of 10 CFR 50.75(h)(1).

Date of issuance: January 30, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 262 (Indian Point Nuclear Generating Unit No. 3); 313 (James A. FitzPatrick Nuclear Power Plant). A publicly-available version is in ADAMS under Accession No. ML17025A288; documents related to these amendments are listed in the Safety Evaluation enclosed with the letter dated January 27, 2017 (ADAMS Package Accession No. ML16336A488).

Facility Operating License Nos. DPR–64 and DPR–59: Amendments revised the Facility Operating Licenses.

*Date of initial notice in **Federal Register:*** September 27, 2016 (81 FR 66305).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 2017.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: August 29, 2016, as supplemented by letter dated November 21, 2016.

Brief description of amendment: The amendment revised Technical Specification 5.5.6, ''Primary Containment Leakage Rate Testing Program,'' to allow permanent extension of Type A and Type C leak rate test intervals through the adoption of Revision 3–A of Nuclear Energy Institute (NEI) 94–01 and the limitations and conditions specified in Revision 2–A of NEI 94–01 as the guidance documents for implementation of performance-based Option B of appendix J to 10 CFR part 50, Option B, ''Performance-Based Requirements.'' Based on the guidance in Revision 3–A of NEI 94–01, the change allows the maximum interval for the Type A primary containment integrated leakage rate test to extend from once in 10 years to once in 15 years, and the Type C local leak rate test interval to extend to 75 months, provided acceptable performance history and other requirements are maintained.

Date of issuance: January 24, 2017.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No.: 132. A publicly-available version is in ADAMS under Accession No. ML17009A372; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–59: The amendment revised the Renewed Facility Operating License and the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 11, 2016 (81 FR 70178). The supplemental letter dated November 21, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 2017.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 17, 2016, as supplemented by letter dated September 6, 2016.

Brief description of amendment: The amendment changed the DBNPS emergency plan by revising the emergency action level scheme.

Date of issuance: January 12, 2017.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment No.: 294. A publicly-available version is in ADAMS under Accession No. ML16342C946; documents related to this amendment are listed in the Safely Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–3: The amendment revised the emergency plan.

Date of initial notice in ***Federal Register:*** March 15, 2016 (81 FR 13843).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 2017.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: August 29, 2016.

Brief description of amendment: This amendment approves a change to the administrative controls associated with the Limiting Condition for Operation (LCO) of Technical Specification (TS) 3.5.4, ''Refueling Water Storage Tank.''

Date of issuance: January 18, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 207. A publicly-available version is in ADAMS under Accession No. ML16348A200; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–12: Amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** October 11, 2016 (81 FR 70183).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 18, 2017.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, San Diego County, California

Date of amendment request: June 16, 2016, as supplemented by letter dated September 6, 2016.

Brief description of amendments: The amendments revised the scheduled implementation date for Milestone 8 of the SONGS, Units 2 and 3, Cyber Security Plan to December 31, 2019, in order to more fully reflect the permanently shutdown status of the facility and accommodate ongoing decommissioning activities.

Date of issuance: January 23, 2017.

Effective date: As of its date of issuance and shall be implemented within 60 days.

Amendment Nos.: Unit 2–234 and Unit 3–227: A publicly-available version is in ADAMS under Accession No. ML16252A207; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** August 2, 2016 (81 FR 50735). The supplemental letter dated September 6, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 23, 2017.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket No. 50–364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: September 8, 2016.

Brief description of amendment: The amendment corrected an error in the Joseph M. Farley Nuclear Plant, Unit 2, Renewed Facility Operating License No. NPF–8, for Condition 2.C.(23). Specifically, the Unit 2 referenced date representing the start of the 20-year period of extended operation was incorrectly entered as June 25, 2017. The Unit 2 correct date corresponding to the 20-year period of extended operation is March 31, 2021.

Date of issuance: January 23, 2017.

Effective date: As of its date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 204. A publicly-available version is in ADAMS under Accession No. ML15329A032; documents related to this amendment is listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–8: Amendment revised the Renewed Facility Operating License.

Date of initial notice in ***Federal Register:*** October 25, 2016 (81 FR 73441).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 2017.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (Farley), Units 1 and 2, Houston County, Alabama

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (Vogtle), Units 1 and 2, Burke County, Georgia

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant (Hatch), Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: March 14, 2016, as supplemented by letters dated May 17, 2016, and October 26, 2016.

Brief description of amendments: The amendments consist of changes that insert generic personnel titles in lieu of plant-specific personnel titles. In addition, the term ''plant-specific titles'' is replaced with ''generic titles'' in Technical Specification (TS) 5.2.1.a for each plant. Lastly, this change revised the Hatch, Unit Nos. 1 and 2, TS 5.1 to be consistent with the corresponding Farley, Units 1 and 2, and Vogtle, Units 1 and 2, TS 5.1, and make it consistent with the corresponding Improved Standard Technical Specifications section.

Date of issuance: January 13, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Farley—Unit 1 (207) and Unit 2 (203); Vogtle—Unit 1 (183) and Unit 2 (166); and Hatch—Unit No. 1 (282) and Unit No. 2 (227). A publicly-available version is in ADAMS under Accession No. ML16291A030; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–2, NPF–8, NPF–68, NPF–81, DPR–57, and NPF–5: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** May 24, 2016 (81 FR 32809). The supplemental letters dated May 17,

2016, and October 26, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 2017.

No significant hazards consideration comments received: No.

Susquehanna Nuclear, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: January 28, 2016, as supplemented by letters April 6, 2016, and October 10, 2016.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.7.1, ''Residual Heat Removal Service Water (RHRSW) System and the Ultimate Heat Sink (UHS),'' and TS 3.8.7, ''Distribution Systems—Operating,'' to increase the completion time for Conditions A and B of TS 3.7.1, and Condition C of TS 3.8.7, from 72 hours to 7 days, in order to accommodate 480 volt engineered safeguard system load center transformer replacements on the Susquehanna Steam Electric Station, Unit 1. The change is temporary and will be annotated by a note in each TS that specifies the allowance expires on June 15, 2020.

Date of issuance: January 26, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 248. A publicly-available version is in ADAMS under Accession No. ML17004A250; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–22: The amendment revised the Renewed Facility Operating License and TSs.

*Date of initial notice in **Federal Register:*** May 24, 2016 (81 FR 32810). The supplemental letter dated October 10, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 26, 2017.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: August 12, 2016.

Brief description of amendments: The amendments revised Technical Specification (TS) 4.3.1.2, ''Fuel Storage Criticality,'' for Units 1, 2, and 3, to preclude the placement of fuel in the new fuel storage vaults. This TS change removed the existing TS 4.3.1.2 criticality criteria wording in its entirety, and replaced it with language that specifically restricts the placement of fuel in the new fuel storage vaults.

Date of issuance: January 17, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 296 (Unit 1), 320 (Unit 2), and 280 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML16330A158; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register:*** October 11, 2016 (81 FR 70187).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2017.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant, Units 1 and 2, Rhea County, Tennessee

Date of amendment request: December 8, 2015, as supplemented by letters dated March 11, October 13, December 1, and December 8, 2016.

Brief description of amendment: The amendment revised the Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification (TS) 3.8.1, ''AC Sources—Operating,'' to extend the Completion Time for one inoperable Diesel Generator from 72 hours to 10 days based on the availability of a supplemental alternating current power source (specifically, the FLEX DG added as part of the mitigating strategies for beyond-design-basis events in response to NRC Order EA–12–049). The amendment also made clarifying changes to certain TS 3.8.1 Conditions, Required Actions, and Surveillance Requirements.

Date of issuance: January 13, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 110 (Unit 1) and 5 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17006A271; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License Nos. NPF–90 and NPF–96: Amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** May 24, 2016 (81 FR 32810). The supplement letters dated October 13, November 1, and December 8, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 2017.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 6th day of February 2017.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–02795 Filed 2–13–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Station, Units 3 and 4; Fire Pump Head and Diesel Fuel Day Tank Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 58 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating

Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on November 30, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. 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. The request for the amendment and exemption was submitted by letter dated August 23, 2016 (ADAMS Accession No. ML16236A265).
- *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: Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 58 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would revise the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and Section VIII.A.4 of appendix D to 10 FR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16280A378.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML16280A352 and ML16280A355, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML16280A274 and ML16280A289, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated August 23, 2016, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, appendix D, Section III.B, as part of license amendment request 16–014, ''Fire Pump Head and Diesel Fuel Day Tank Changes (LAR 16–014).''

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML16280A378, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated August 23, 2016. This exemption is related to, and necessary for, the granting of License Amendment No. 58, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML16280A378), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated August 23, 2016, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 27, 2016 (81 FR 66301). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on August 23, 2016.

The exemption and amendment were issued on November 30, 2016 as part of a combined package to the licensee (ADAMS Accession No. ML16279A341).

Dated at Rockville, Maryland, this 6th day of February 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–02959 Filed 2–13–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; Relocation of Air Cooled Chiller Pump 3, VWS–MP–03

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 64 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on January 13, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. 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. The request for the amendment and exemption was submitted by letter dated April 26, 2016 (ADAMS Accession No. ML16117A531), and supplemented by letter dated August 28, 2016 (ADAMS Accession No. ML16239A422).
- *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: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 64 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' of appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes to the Updated Final Safety Analysis Report Tier 2 and Tier 2* information to modify the overall design of the Central Chilled Water subsystem to relocate the Air Cooled Chiller Pump 3 (VWS–MP–03) and associated equipment from the auxiliary building to the annex building, for each unit. The amendment also involves changes to plant-specific Tier 1 information, with corresponding changes to Appendix C of the COLs, to relocate the air cooled chiller pump from the auxiliary building to the annex building, for each unit.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued

the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16266A352.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML16266A340 and ML16266A350, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML16266A326 and ML16266A334, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated April 26, 2016, as supplemented August 28, 2016, the licensee requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of License Amendment Request 15–018, ''Relocation of Air Cooled Chiller Pump 3, VWS–MP–03.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML16266A352, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License as described in the licensee's request dated April 26, 2016, as supplemented August 28, 2016. This exemption is related to, and necessary for the granting of License Amendment No. 64, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML16266A352), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated April 26, 2016 (ADAMS Accession No. ML16117A531), and supplemented by letter dated August 28, 2016 (ADAMS Accession No. ML16239A422), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on August 2, 2016 (81 FR 50736). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on April 26, 2016, as supplemented August 28, 2016. The exemption and amendment were issued on January 13, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML16265A618).

Dated at Rockville, Maryland, this 6th day of February 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–02958 Filed 2–13–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; Radiologically Controlled Area Ventilation System Design Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 57 to Combined Licenses (COLs), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on November 18, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. 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. The request for the amendment and exemption was submitted by letter dated November 24, 2015 (ADAMS Accession No. ML15328A515), and supplemented by letter dated August 25, 2016 (ADAMS Accession No. ML16238A486).
- *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: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 57 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would revise the Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific DCD Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information for certain Radiologically Controlled Area Ventilation System radiation monitors.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16270A358.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML16270A332 and ML16270A341, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML16270A320 and ML16270A327, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In an application dated November 24, 2015, as supplemented August 25, 2016, the licensee requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of License Amendment Request 15–011, ''Radiologically Controlled Area Ventilation System Design Changes.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML16270A358, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD plant-specific Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License as described in the licensee's request dated November 24, 2015, as supplemented August 25, 2016. This exemption is related to, and necessary for, the granting of License Amendment No. 57, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML16270A358), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated November 24, 2015, and supplemented by letter dated August 25, 2016, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate

findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on April 26, 2016 (81 FR 24664). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on November 24, 2015, and supplemented by letter dated August 25, 2016. The exemption and amendment were issued on November 18, 2016 as part of a combined package to the licensee (ADAMS Accession No. ML16270A267).

Dated at Rockville, Maryland, this 6th day of February 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–02960 Filed 2–13–17; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Notice—March 8, 2017 Public Hearing

TIME AND DATE: 2:00 p.m., Wednesday, March 8, 2017.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 2:00 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, March 1, 2017. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, March 1, 2017. Such statement must be typewritten, double spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the March 16, 2017 Board meeting will be posted on OPIC's Web site.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Catherine F.I. Andrade at (202) 336–8768, via facsimile at (202) 408–0297, or via email at *Catherine.Andrade@opic.gov.*

Dated: February 10, 2017.

Catherine F.I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2017–03011 Filed 2–10–17; 11:15 am]

BILLING CODE 3210–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before March 16, 2017.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION: The Peace Corps has mechanisms in place to gather information from active Volunteers and the host country nationals who work and live with them. Currently, there is no such mechanism for collecting comprehensive information from Volunteers after their service ends. To fill this gap, the Peace Corps proposes to conduct a survey with these returned Peace Corps Volunteers (RPCVs). The information collected through the proposed survey will augment the Peace Corps' other strategic planning activities and provide information for its annual Performance and Accountability Report. The survey will be conducted by Peace Corps' Office of Third Goal and Returned Volunteer Services (3GL). The information collected through the survey will support the Peace Corps' ability to report on its performance, as well as to provide information to inform Peace Corps Operations.

OMB Control Number: 0420–xxxx.

Title: 2016 Returned Peace Corps Volunteer Survey (RPCV Survey).

Type of Review: New.

Affected Public: Individuals.

Respondents' Obligation to Reply: Voluntary.

Burden to the Public:

a. *Number of Respondents (first year):* 25,000.

b. *Frequency of response:* 1 response.

c. *Completion time:* 0.33 hours.

d. *Annual burden hours:* 8,333 hours.

General Description of Collection: The information collected will support interpretation of performance data by the Office of Third Goal and Returned Volunteer Services, the Office Volunteer Recruitment and Selection, Peace Corps Response, the Office of Health Services, and the Office of Strategic Partnerships. If the information were not collected, long-range program planning and the ability of the Peace Corps to adapt its programs to the needs of those it serves would be negatively impacted.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including

whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC, on February 9, 2017.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2017–02942 Filed 2–13–17; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, February 16, 2017 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Acting Chairman Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: February 9, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–03006 Filed 2–10–17; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79992; File No. 265–29]

Equity Market Structure Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Federal Advisory Committee Renewal.

SUMMARY: The Securities and Exchange Commission is publishing this notice to announce that the Chair of the Commission, with the concurrence of the other Commissioners, has approved the renewal of the Securities and Exchange Commission Equity Market Structure Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Molly Kim, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551–5644.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C.—App., the Commission is publishing this notice that the Chair of the Commission, with the concurrence of the other Commissioners, has approved the renewal of the Securities and Exchange Commission Equity Market Structure Advisory Committee (the ''Committee''). The Chair of the Commission affirms that the renewal of the Committee is necessary and in the public interest.

The Committee's objective is to provide the Commission with diverse perspectives on the structure and operations of the U.S. equities markets, as well as advice and recommendations on matters related to equity market structure.

No more than seventeen voting members will be appointed to the Committee, representing a cross-section of those directly affected by, interested in, and/or qualified to provide advice to the Commission on matters related to equity market structure. The Committee's membership will continue to be balanced fairly in terms of points of view represented and functions to be performed.

The Charter provides that the duties of the Committee are to be solely advisory. The Commission alone will make any determinations of actions to be taken and policies to be expressed with respect to matters within the Commission's jurisdiction as to which the Committee provides advice or makes recommendations. The Committee will meet at such intervals as are necessary to carry out its functions. The charter contemplates that the full Committee will meet two times. Meetings of subgroups or subcommittees of the full Committee may occur more frequently.

The Committee will terminate six months from the date it is renewed or such earlier date as determined by the Commission unless, before the expiration of that time period, it is renewed in accordance with the Federal Advisory Committee Act. A copy of the charter for the Committee has been filed with the Chair of the Commission, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, the Committee on Financial Services of the United States House of Representatives, the Committee Management Secretariat of the General Services Administration, and the Library of Congress. It also has been posted on the Commission's Web site at *www.sec.gov.*

By the Commission.

Dated: February 9, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–02932 Filed 2–13–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79988; File No. SR–ICC–2017–002]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to ICC's Liquidity Thresholds for Euro Denominated Products

February 8, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4,[2] notice is hereby given that on January 27, 2017, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been primarily prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

security-based swap submission, or advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed changes is to amend the ICC Clearing Rules (''ICC Rules''), the ICC Treasury Operations Policies and Procedures, and the ICC Liquidity Risk Management Framework to update ICC's liquidity thresholds for Euro denominated products.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The proposed revisions are intended to update ICC's liquidity thresholds for Euro denominated products. Currently, for Euro denominated products, 65% of Clearing Participant Non-Client Initial Margin and Guaranty Fund Liquidity Requirements (''Non-Client Liquidity Requirements'') must be posted in Euro cash and the next 35% may be posted in Euro cash, United States (''U.S.'') Dollar cash, U.S. Treasury securities, and/or other G7 cash. ICC proposes updating the liquidity thresholds for Euro denominated products, set forth in Schedule 401 of the ICC Rules, to require the first 45% of Non-Client Liquidity Requirements to be satisfied with Euro cash. The next 20% may be posted in Euro cash or U.S. Dollar cash, and the final 35% may be posted in Euro cash, U.S. Dollar cash, U.S. Treasury securities, and/or other G7 cash. The 45% minimum percentage requirement is equivalent to the maximum assumed one day movement in Initial Margin (assuming a 5-day risk horizon).

The proposed revisions will provide Clearing Participants with the option to cover 20% of the current Euro liquidity threshold with either Euro cash or U.S. Dollar cash. ICC's Euro liquidity will not be negatively impacted by the proposed changes as ICC's committed foreign exchange (''FX'') facility provides for same day settled spot FX transactions. The facility allows ICC to use available U.S. Dollar cash to convert into Euro cash to meet a Euro liquidity need, for example in the unlikely event of a Clearing Participant default when Euro cash is needed for liquidity but only U.S. Dollar cash is available.[3]

The ICC Treasury Operations Policies and Procedures and ICC Liquidity Risk Management Framework have also been updated to reflect the update to ICC's Non-Client Liquidity Requirements for Euro denominated products. The changes to the Euro cash Non-Client Liquidity Requirements do not require any operational changes.

Section 17A(b)(3)(F) of the Act[4] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F),[5] because ICC believes that the update to its liquidity thresholds for Euro denominated products will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, and contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible. The proposed update to ICC's liquidity thresholds for Euro denominated products will permit Clearing Participants to post more U.S. Dollar cash to meet Euro Non-Client Liquidity Requirements. Given the fact that, to the extent possible, ICC deposits U.S. Dollar cash in its account at the Federal Reserve Bank of Chicago, the use of additional U.S. Dollar cash provides superior safety and security for depositors, as the U.S. Dollar cash is held in a manner whereby risk of loss or of delay in access to them is minimized, consistent with Section 17A(b)(3)(F)[6] and Rule 17Ad–22(d)(3).[7]

Additionally, the change to the liquidity thresholds for Euro denominated products will not adversely impact ICC's liquidity levels because ICC's committed FX facility provides for same day settled spot FX transactions, which allows ICC to use available U.S. Dollar cash to convert into Euro cash to meet a Euro liquidity need. As such, the proposed change would increase the safety and security of ICC's assets without any diminishment of its ability to meet its liquidity needs. Further, the changes promote liquidity and ensure assets are available in the event of a participant default. As previously stated, ICC will hold the additional U.S. Dollar cash at the Federal Reserve Bank of Chicago. In doing so, ICC reduces the likelihood that assets securing participant obligations would be unavailable when ICC needs to draw on them, thus safeguarding ICC's ability to meet its settlement obligations. For the foregoing reasons, the updated liquidity thresholds for Euro denominated products are designed consistent with ICC's objective to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, and contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible, consistent with Section 17A(b)(3)(F).[8]

In addition, the proposed revisions are consistent with the relevant requirements of Rule 17Ad–22.[9] ICC's Euro liquidity or financial resources will not be negatively impacted by the proposed changes as ICC's committed FX facility provides for same day settled spot FX transactions, to convert U.S. Dollar cash into Euro cash. As such, the changes are therefore reasonably designed to meet the requirements of Rule 17Ad–22(b)(3).[10]

B. Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed update to ICC's liquidity thresholds for Euro denominated

[3] *See* Securities Exchange Act Release No. 34–78566 (Aug. 12, 2016), 81 FR 55254 (Aug. 18, 2016) (File No. SR–ICC–2016–009).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] *Id.*

[6] *Id.*

[7] 17 CFR 240.17Ad–22(d)(3).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22.

[10] 17 CFR 240.17Ad–22(b)(3).

products applies consistently across all market participants and the implementation of the proposed liquidity thresholds for Euro denominated products does not preclude the implementation of similar changes by other market participants. Therefore, ICC does not believe the update to its liquidity thresholds for Euro denominated products imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission, or advance notice 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–ICC–2017–002 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–ICC–2017–002. 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, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2017–002 and should be submitted on or before March 7, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02909 Filed 2–13–17; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

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:

Rules 15Ba1–1 through 15Ba1–8 SEC File No. 270–619, OMB Control No. 3235–0681

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rules 15Ba1–1 to 15Ba1–8 (17 CFR 240.15Ba1–1 to 17 CFR 240.15Ba1–8)—Registration of Municipal Advisors, under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

On September 20, 2013 (*see* 78 FR 67468, November 12, 2013), the Commission adopted Rules 15Ba1–1 through 15Ba1–8 and Rule 15Bc4–1 under the Act to establish the rules by which a municipal advisor must obtain, maintain, and terminate its registration with the Commission. In addition, the rules interpret the definition of the term ''municipal advisor,'' interpret the statutory exclusions from that definition, and provide certain additional regulatory exemptions. The rules became effective on January 13, 2014; however, on January 13, 2014, the Commission temporarily stayed such rules until July 1, 2014 (*see* 79 FR 2777, January 16, 2014). Section 15B(a)(1) of the Act makes it unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission. The rules, among other things (i) require municipal advisors to file certain forms (*i.e.,* Form MA, Form MA–A, Form MA/A, Form MA–I, Form MA–I/A, Form MA–NR, and Form MA–W) with the Commission to, as appropriate, obtain, maintain, or terminate their registration with the Commission and maintain certain books and records in accordance with the Act, and (ii) set forth how certain entities may meet the requirements of the statutory exclusions or regulatory exemptions from the definition of ''municipal advisor.''

Form MA

The Commission estimates that approximately 75 respondents will submit new Form MA applications annually in each of the next three years. The Commission further estimates that each submission will take

approximately 3.5 hours. Thus, the total annual burden borne by respondents for submitting an initial Form MA application will be approximately 263 hours.[1] The Commission estimates that respondents submitting new Form MA applications would, on average, consult with outside counsel for one hour, at a rate of $400/hour. Thus, the Commission estimates that the average total annual cost that may by incurred by all respondents filing new Form MA applications will be $30,000.[2] In addition to filing initial Form MA applications, the rules require municipal advisors to amend Form MA once annually (Form MA–A) and after the occurrence of any material event (Form MA/A). The requirement to amend Form MA applies to all registered municipal advisors. There are currently approximately 668 municipal advisors registered with the Commission and, as noted above, the Commission anticipates receiving 225 new Form MA submissions over the next three years. Therefore, the Commission expects that the rules' requirement to amend Form MA will apply to approximately 743 municipal advisors in year one, approximately 818 municipal advisors in year two, and approximately 893 municipal advisors in year three. The Commission estimates that completing an annual amendment would take a municipal advisor approximately 1.5 hours and completing a material event amendment would take 0.5 hours. The Commission further estimates that each municipal advisor will submit two amendments per year (one Form MA–A and one Form MA/A). Thus, the Commission estimates that the average annual burden borne by respondents for amending Form MA during the three-year period will be approximately 1,636 hours.[3]

Form MA–I

The Commission estimates that it will receive approximately 950 new Form MA–I submissions annually. The Commission further estimates that each Form MA–I submission will take approximately three hours to complete. Thus, the total annual burden borne by respondents submitting Form MA–I will be approximately 2,850 hours.[4] The Commission also estimates that a Form MA–I respondent will submit 1.7 updating amendments per year (Form MA–I/A), and that each such amendment will take approximately 0.5 hours to complete. There are currently approximately 5,685 Form MA–Is on file with the Commission and, as noted above, the Commission expects to receive 2,850 Form MA–I submissions over the next three years. Therefore, the Commission expects the rules' requirement to amend Form MA–I to apply to approximately 6,635 Form MA–Is in year one, approximately 7,585 Form MA–Is in year two, and approximately 8,535 Form MA–Is in year three. Thus, the Commission estimates that the average annual burden borne by respondents submitting Form MA–I amendments during the three-year period will be approximately 6,447 hours.[5]

Form MA–W

The Commission estimates that it will receive 40 new Form MA–W submissions annually. The Commission further estimates that each Form MA–W submission will take approximately 0.5 hours to complete. Thus, the total annual burden borne by respondents submitting Form MA–W will be approximately 20 hours.[6]

Form MA–NR

The Commission estimates that three municipal advisors will have a non-resident general partner, non-resident managing agent, or non-resident associated person and such advisors will submit a total of approximately nine Form MA–NRs annually. The Commission further estimates that each Form MA–NR submission will take approximately 1.5 hours to complete. Thus, the total annual burden borne by respondents submitting Form MA–NR will be approximately 13.5 hours.[7] In addition, each respondent that submits a Form MA–NR must also provide an opinion of counsel. The Commission estimates that such an opinion of counsel would take three hours to complete, at a rate of $400/hour. Thus, the Commission estimates that the total annual burden borne by respondents providing an opinion of counsel will be approximately nine hours.[8] The estimated average total cost that may be incurred by all respondents providing an opinion of counsel will be $3,600.[9]

Consent to Service of Process

The Commission estimates that 75 new municipal advisors will have to develop a template document to use in obtaining written consents to service of process from their associated persons annually. The Commission further estimates that each template document will take approximately one hour to draft. Thus, the Commission estimates that the total annual burden borne by respondents developing a template document will be approximately 75 hours.[10] In addition, the Commission estimates that municipal advisors will need to obtain 950 new consents to service of process from associated persons annually. The Commission further estimates that, after the written consents are drafted, it will take municipal advisors approximately 0.10 hours to obtain each consent. Thus, the Commission estimates that the total annual burden borne by respondents obtaining consents to service of process will be 170 hours.[11]

Books and Records To Be Maintained by Municipal Advisors

The Commission estimates 743, 818, and 893 municipal advisors will be subject to the books and records rules during each of the next three years, respectively. The Commission further estimates that the average annual burden for a municipal advisor to comply with the books and records requirement is approximately 182 hours. Thus, the Commission estimates that the average annual burden borne by respondents to comply with the books and records requirements during the three-year period will be approximately 148,876 hours.[12]

Independent Registered Municipal Advisor Exemption

The Commission estimates that approximately 150 persons will seek to rely on the independent registered municipal advisor exemption annually. The Commission further estimates that the one-time burden of developing a written template disclosure document will be approximately one hour. Thus, the Commission estimates that the total one-time burden borne by respondents developing a template disclosure document will be approximately 150 hours.[13] The Commission also recognizes that respondents will be subject to a recurring burden each time they seek to rely on the exemption. The Commission estimates that respondents may seek the exemption on approximately 7,400 transactions annually. The Commission further estimates that the burden of obtaining the written representations needed from

[1] 75 respondents × 3.5 hours.

[2] 75 respondents × ($400/hour × 1 hour).

[3] 818 respondents × 2 hours.

[4] 950 submissions × 3 hours.

[5] 7,585 Form MA–I/As × (1.7 amendments × 0.5 hours).

[6] 40 respondents × 0.5 hours.

[7] 3 respondents × (3 Form MA–NR submissions × 1.5 hours).

[8] 3 respondents × 3 hours.

[9] 3 respondents × (3.0 hours × $400/hour).

[10] 75 respondents × 1 hour.

[11] 75 hours + (950 × 0.1 hours).

[12] 818 respondents × 182 hours.

[13] 150 respondents × 1 hour.

the municipal entity or obligated person client will be approximately 0.25 hours. Thus, the Commission estimates that the total annual burden borne by respondents seeking to rely on the independent registered municipal advisor exemption will be approximately 1,850 hours.[14]

Definition of Municipal Escrow Investments Exemption

The Commission estimates that approximately 700 respondents will seek to rely on the municipal escrow investments exemption. The Commission further estimates that the one-time burden of creating a template document to use in obtaining the written representations necessary to rely on the exemption will be approximately one hour. Thus, the Commission estimates that the total one-time burden borne by respondents developing a template document will be approximately 700 hours.[15] The Commission also recognizes that respondents will be subject to a recurring burden each time they seek to rely on the exemption. The Commission estimates the respondents will seek to rely on the exemption with approximately 8,620 municipal entity clients. The Commission further estimates that the burden of obtaining the required written representations from the respondent's client will be approximately 0.25 hours. Thus, the Commission estimates that the total annual burden borne by respondents seeking to rely on the municipal escrow investments exemption will be approximately 2,155 hours.[16]

Definition of Proceeds of Municipal Securities Exemption

The Commission estimates that approximately 880 respondents will seek to rely on the proceeds of municipal securities exemption. The Commission further estimates that the one-time burden of creating a template document to use in obtaining the written representations necessary to rely on the exemption will be approximately one hour. Thus, the Commission estimates that the total one-time burden borne by respondents developing a template document will be approximately 880 hours.[17] The Commission also recognizes that respondents will be subject to a recurring burden each time they seek to rely on the exemption. The Commission estimates that respondents will seek to rely on the exemption in connection with services provided to approximately 25,420 clients. The Commission further estimates that the burden of obtaining the required written consents from the respondent's client will be approximately 0.25 hours. Thus, the Commission estimates that the total annual burden borne by respondents seeking to rely on proceeds of municipal securities exemption will be approximately 6,355 hours.[18]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 30 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number. Please direct your written comments to: Pamela C. Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 8, 2017.

Eduardo A. Aleman,

Assistant Secretary.

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[14] 7,400 transactions × 0.25 hours.

[15] 700 respondents × 1 hour.

[16] 8,620 clients × 0.25 hours.

[17] 880 respondents × 1 hour.

[18] 25,420 clients × 0.25 hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79989; File No. SR–BatsBZX–2017–07]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Under BZX Rule 14.11(c)(4) the Shares of the VanEck Vectors AMT-Free National Municipal Index ETF of VanEck Vectors ETF Trust

February 8, 2017.

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 January 27, 2017, Bats BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to list and trade under BZX Rule 14.11(c)(4) the shares of the VanEck Vectors AMT-Free National Municipal Index ETF (the ''Fund'') of VanEck Vectors ETF Trust (the ''Trust'').

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Fund under BZX Rule 14.11(c)(4),[3] which governs the listing and trading of index fund shares based on fixed income securities indexes.[4] The Shares will be offered by the Trust, which was established as a Delaware statutory trust on March 15, 2001. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A (''Registration Statement'') with the Commission.[5] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

Description of the Shares and the Fund

Van Eck Associates Corporation will be the investment adviser (''Adviser'') to the Fund.[6] The Adviser will serve as the administrator for the Fund (the ''Administrator''). The Bank of New York Mellon will serve as the custodian (''Custodian'') and transfer agent (''Transfer Agent'') for the Fund. Van Eck Securities Corporation (the ''Distributor'') will be the distributor of the Shares. Bloomberg Finance L.P. and its affiliates will be the index provider (''Index Provider'').

VanEck Vectors AMT-Free National Municipal Index ETF

According to the Registration Statement, the Fund will seek to replicate as closely as possible, before fees and expenses, the price and yield performance of the Bloomberg Barclays AMT-Free National Municipal Index (the ''Index''). As of November 30, 2016, there were 50,615 issues in the Index. Unless otherwise noted, all statistics related to the Index presented hereafter were accurate as of November 30, 2016.

The Index tracks the municipal bond market with a 75% weight in investment grade municipal bonds (*i.e.,* rated Baa3/BBB− or higher) through the Muni Investment-Grade Rated/$75 Million Deal Size Index and the high yield municipal bond market with a 25% weight in non-investment grade municipal bonds (*i.e.,* unrated or rated Ba1/BB+ or lower) through the Muni High Yield/$20 Million Deal Size Index. To be included in the Muni Investment-Grade Rated/$75 Million Deal Size Index, a bond must be rated Baa3/BBB− or higher by at least two of the following rating agencies if all three agencies rate the bond: Moody's Investors Service (''Moody's''), Standard & Poor's Ratings Services (''S&P'') and Fitch Ratings, Inc. (''Fitch''). If only two of the three agencies rate the bond, the lower rating is used to determine index eligibility. If only one of the three agencies rates the bond, the rating must be Baa3/BBB− or higher. Bonds in the Muni Investment-Grade Rated/$75 Million Deal Size Index must have an outstanding par value of at least $7 million and be issued as part of a transaction of at least $75 million. To be included in the Muni High Yield/$20 Million Deal Size Index, a bond must be unrated or rated Ba1/BB+ or lower by at least two of the following rating agencies if all three agencies rate the bond: Moody's, S&P and Fitch. If only two of the three agencies rate the bond, the lower rating is used to determine index eligibility. If only one of the three agencies rates the bond, the rating must be Ba1/BB+ or lower. Bonds in the Muni High Yield/$20 Million Deal Size Index must have an outstanding par value of at least $3 million and be issued as part of a transaction of at least $20 million.

All bonds included in the Index must have a fixed rate, a dated date (*i.e.,* the date when interest begins to accrue) after December 31, 1990, and a nominal maturity of 1 to 30 years. Bonds subject to the alternative minimum tax, taxable municipal bonds, bonds with floating rates, derivatives and municipal bonds of issuers from the territories of the United States (*e.g.,* Puerto Rico) are excluded from the Index. The composition of the Index is rebalanced monthly. Interest and principal payments earned by the component securities are held in the Index without a reinvestment return until month end when they are removed from the Index. Qualifying securities issued, but not necessarily settled, on or before the month end rebalancing date qualify for inclusion in the Index in the following month.

The Fund normally invests at least 80% of its total assets in securities that

[3] The Commission approved BZX Rule 14.11(c) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] The Commission previously has approved a proposed rule change [sic] relating to listing and trading of funds based on municipal bond indexes. *See* Securities Exchange Act Release Nos. 78329 (July 14, 2016), 81 FR 47217 (July 20, 2016) (SR–BatsBZX–2016–01) (order approving the listing and trading of the following series of VanEck Vectors ETF Trust: VanEck Vectors AMT-Free 6–8 Year Municipal Index ETF; VanEck Vectors AMT-Free 8–12 Year Municipal Index ETF; and VanEck Vectors AMT-Free 12–17 Year Municipal Index ETF); 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92) (order approving proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca, Inc. (''NYSE Arca'') Rule 5.2(j)(3), Commentary .02); 72523 (July 2, 2014), 79 FR 39016 (July 9, 2014) (SR–NYSEArca–2014–37) (order approving proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Rule 5.2(j)(3), Commentary .02); and 75468 (July 16, 2015), 80 FR 43500 (July 22, 2015) (SR–NYSEArca–2015–25) (order approving proposed rule change relating to the listing and trading of the iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF under NYSE Arca Rule 5.2(j)(3), Commentary .02). The Commission also has issued a notice of filing and immediate effectiveness of a proposed rule change relating to listing and trading on the Exchange [sic] of the iShares Taxable Municipal Bond Fund. *See* Securities Exchange Act Release No. 63176 (October 25, 2010), 75 FR 66815 (October 29, 2010) (SR–NYSEArca–2010–94). The Commission has approved two actively managed funds of the PIMCO ETF Trust that hold municipal bonds. *See* Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of PIMCO ShortTerm Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund, among others). The Commission also has approved listing and trading of the SPDR Nuveen S&P High Yield Municipal Bond Fund. *See* Securities Exchange Act Release No. 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120).

[5] *See* Registration Statement on Form N–1A for the Trust, dated October 31, 2016 (File Nos. 333–123257 and 811–10325). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') (the ''Exemptive Order''). *See* Investment Company Act Release No. 28021 (October 24, 2007) (File No. 812–13426).

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with all applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

comprise the Fund's benchmark index. The Index is comprised of publicly traded municipal bonds that cover the U.S. dollar-denominated investment grade and high yield tax-exempt bond market. The Fund's 80% investment policy is non-fundamental and may be changed without shareholder approval upon 60 days' prior written notice to shareholders.[7] The Fund also has adopted a fundamental investment policy to invest at least 80% of its assets in municipal securities.[8] Currently, when issued transactions (''WIs'')[9] representing securities eligible for inclusion in the Index may be used by the Fund in seeking performance that corresponds to the Index and in such cases would count towards the Fund's 80% Investment Policy.

Other Portfolio Holdings

While the Fund normally will invest at least 80% of its total assets in securities that compose the Index, as described above, the Fund may invest its remaining assets in other financial instruments, as described below.

The Fund may invest its remaining assets in securities not included in the Index including only the following instruments: Municipal bonds not described above; money market instruments, including repurchase agreements or other funds which invest exclusively in money market instruments; convertible securities; structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index);[10] certain derivative instruments described below; and, to the extent permitted by the 1940 Act, affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange-traded funds (''ETFs'').[11] In addition to the use described above, WIs not included in the Index may also be used by the Fund in managing cash flows.

The Fund may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and to invest securities lending cash collateral.

The Fund may use exchange-traded futures contracts and exchange-traded options thereon, together with positions in cash and money market instruments, to simulate full investment in the Index.

The Fund may use cleared or non-cleared index, interest rate or credit default swap agreements. Swap agreements are contracts between parties in which one party agrees to make payments to the other party based on the change in market value or level of a specified index or asset. Currently, interest rate swaps and credit default swaps on indexes may be cleared, however, credit default swaps on a specific security are currently uncleared.

The Fund may invest in exchange-traded warrants, which are equity securities in the form of options issued by a corporation which give the holder the right to purchase stock, usually at a price that is higher than the market price at the time the warrant is issued.

The Fund may invest in participation notes, which are issued by banks or broker-dealers and are designed to offer a return linked to the performance of a particular underlying equity security or market.

The Fund will only enter into transactions in derivative instruments with counterparties that the Adviser reasonably believes are capable of performing under the contract and will post collateral as required by the counterparty.[12]

Index Overview

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the ''generic'' listing requirements of Rule 14.11(c)(4) applicable to the listing of index fund shares based on fixed income securities indexes. The Index meets all such requirements except for those set forth in Rule 14.11(c)(4)(B)(i)(b).[13] Specifically, as of November 30, 2016, 25.04% of the weight of the Index components have a minimum original principal amount outstanding of $100 million or more.

As of November 30, 2016, 86.49% of the weight of the Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the Index was approximately $1.5 trillion and the average dollar amount outstanding of issues in the Index was approximately $30.4 million. Further, the most heavily weighted component represented 1.57% of the weight of the Index and the five most heavily weighted components represented 3.93% of the weight of the Index.[14]

[7] As noted herein, the Fund's policy to invest 80% of its total assets in securities that comprise the Fund's benchmark index (the ''80% Investment Policy'') is non-fundamental and may be changed without shareholder approval upon 60 days' prior written notice to shareholders. The Exchange notes that, notwithstanding the foregoing, all statements and representations made in this filing regarding (a) the description of the portfolios [sic], (b) limitations on portfolio holdings or reference assets (including, for example, the Fund's 80% Investment Policy), or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. As noted below, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements (or any changes made with respect to the Fund's 80% Investment Policy), and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

[8] The Fund's policy to invest 80% of its assets in municipal securities (the ''Secondary 80% Policy'') is a fundamental investment policy. Fundamental investment policies, including the Secondary 80% Policy, cannot be changed without the approval of the holders of a majority of the Fund's outstanding voting securities. For purposes of the 1940 Act, a majority of the outstanding voting securities of the Fund means the vote, at an annual or a special meeting of the security holders of the Trust, of the lesser of (1) 67% or more of the voting securities of the Fund present at such meeting, if the holders of more than 50% of the outstanding voting securities of the Fund are present or represented by proxy, or (2) more than 50% of the outstanding voting securities of the Fund.

[9] When issued is a transaction that is made conditionally because a security has been authorized but not yet issued. Treasury securities, stock splits, and new issues of stocks and bonds are all traded on a when-issued basis.

[10] Structured notes are derivative securities for which the amount of principal repayment and/or interest payments is based on the movement of one or more factors, including, but not limited to, currency exchange rates, interest rates (such as the prime lending rate or LIBOR), referenced bonds and stock indices.

[11] For purposes of this filing, ETFs include Index Fund Shares (as described in Rule 14.11(c)); Portfolio Depositary Receipts (as described in Rule 14.11(b)); and Managed Fund Shares (as described in Rule 14.11(i)). The ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

[12] The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser will review approved counterparties using various factors, which may include the counterparty's reputation, the Adviser's past experience with the counterparty and the price/market actions of debt of the counterparty.

[13] Rule 14.11(c)(4)(B)(i)(b) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[14] Rule 14.11(c)(4)(B)(i)(d) provides that no component fixed-income security (excluding Treasury Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted

Continued

Therefore, the Exchange believes that, notwithstanding that the Index does not satisfy the criterion in Rule 14.11(c)(4)(B)(i)(b), the Index is sufficiently broad-based to deter potential manipulation, given that it is comprised of approximately 50,615 issues. In addition, the Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (86.49%) of the Index weight is comprised of maturities that are part of a minimum original principal amount outstanding of $100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of the Index issues, as referenced above.[15] 63.8% of the Index weight consisted of issues with a rating of AA/Aa2 or higher.

The Index value, calculated and disseminated at least once daily, as well as the components of the Index and their percentage weighting, will be available from major market data vendors. In addition, the portfolio of securities held by the Fund will be disclosed on the Fund's Web site at *www.vaneck.com/etfs.*

Correlation Among Municipal Bond Instruments With Common Characteristics

With respect to the Fund, the Adviser represents that the nature of the municipal bond market and municipal bond instruments makes it feasible to categorize individual issues represented by CUSIPs (*i.e.,* the specific identifying number for a security) into categories according to common characteristics, specifically, rating, geographical region, purpose, and maturity. Bonds that share similar characteristics tend to trade similarly to one another; therefore, within these categories, the issues may be considered fungible from a portfolio management perspective, allowing one CUSIP to be represented by another that shares similar characteristics for purposes of developing an investment strategy. Therefore, while 25.04% of the weight of the Index components have a minimum original principal amount outstanding of $100 million or more, the nature of the municipal bond market makes the issues relatively fungible for investment purposes when aggregated into categories such as ratings, geographical region, purpose and maturity. In addition, within a single municipal bond issuer, there are often multiple contemporaneous or sequential issuances that have the same rating, structure and maturity, but have different CUSIPs; these separate issues by the same issuer are also likely to trade similarly to one another.

The Adviser represents that the Fund are [sic] managed utilizing the principle that municipal bond issues are generally fungible in nature when sharing common characteristics, and specifically make use of the four categories referred to above. In addition, this principle is used in, and consistent with, the portfolio construction process in order to facilitate the creation and redemption process, and to enhance liquidity (among other benefits, such as reducing transaction costs), while still allowing the Fund to closely track the Index.

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of the Fund will be determined each business day as of the close of trading (ordinarily 4:00 p.m. Eastern time) on the Exchange.

The values of the Fund's portfolio securities are based on the securities' closing prices, when available. In the absence of a last reported sales price, or if no sales were reported, and for other assets for which market quotes are not readily available, values may be based on quotes obtained from a quotation reporting system, established market makers or by an outside independent pricing service. Fixed income securities, repurchase agreements and money market instruments with maturities of more than 60 days are normally valued on the basis of quotes from brokers or dealers, established market makers or an outside independent pricing service. Prices obtained by an outside independent pricing service may use information provided by market makers or estimates of market values obtained from yield data related to investments or securities with similar characteristics and may use a computerized grid matrix of securities and its evaluations in determining what it believes is the fair value of the portfolio securities. Any assets or liabilities denominated in currencies other than the U.S. dollar are converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources. Short-term investments and money market instruments having a maturity of 60 days or less are valued at amortized cost. Futures contracts will be valued at the settlement price established each day by the board or exchange on which they are traded. Exchange-traded options will be valued at the closing price in the market where such contracts are principally traded. Swaps, structured notes, participation notes, convertible securities, and WIs will be valued based on valuations provided by independent, third-party pricing agents. Securities of non-exchange-traded investment companies will be valued at NAV. Exchange-traded instruments, including investment companies and warrants, will be valued at the last reported sale price on the primary exchange or market on which they are traded.

If a market quotation for a security or other asset is not readily available or the Adviser believes it does not otherwise accurately reflect the market value of the security or asset at the time the Fund calculates its NAV, the security or asset will be fair valued by the Adviser in accordance with the Trust's valuation policies and procedures approved by the Board of Trustees and in accordance with the 1940 Act. The Fund may also use fair value pricing in a variety of circumstances, including but not limited to, situations when the value of a security in the Fund's portfolio has been materially affected by events occurring after the close of the market on which the security is principally traded (such as a corporate action or other news that may materially affect the price of a security) or trading in a security has been suspended or halted.

The Fund currently expects that futures contracts will be valued at the settlement price established each day by the board or exchange on which they are traded and exchange. Exchange-traded options will be valued at the closing price in the market where such contracts are principally traded. Additionally, the Fund currently expects that swaps, structured notes, participation notes, convertible securities, and WIs will be valued at the closing price, if exchange listed, or based on valuations provided by independent, third-party pricing agents. Securities of non-exchange-traded investment companies will be valued at NAV. Exchange-traded instruments, including investment companies and warrants, will be valued at the last reported sale price on the primary exchange or market on which they are traded.

Creation and Redemption of Shares

The NAV of the Fund will be determined each business day as of the close of trading, (normally 4:00 p.m. Eastern time) on the exchange. The Fund currently anticipates that a ''Creation Unit'' will consist of 50,000

component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[15] The Adviser represents that when bonds are close substitutes for one another, pricing vendors can use executed trade information from all similar bonds as pricing inputs for an individual security. This can make individual securities more liquid.

Shares, though this number may change from time to time, including prior to the listing of the Fund. The exact number of Shares that will comprise a Creation Unit will be disclosed in the Registration Statement of the Fund. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without an initial sales load (but subject to transaction fees), at their NAV per Share next determined after receipt, on any business day, of an order in proper form.

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of fixed income securities (the ''Deposit Securities'') per each Creation Unit and the Cash Component (defined below), computed as described below, or (ii) as permitted or required by the Fund, of cash. The Cash Component together with the Deposit Securities, as applicable, are referred to as the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for Shares. The Cash Component represents the difference between the NAV of a Creation Unit and the market value of Deposit Securities and may include a Dividend Equivalent Payment. The ''Dividend Equivalent Payment'' enables the Fund to make a complete distribution of dividends on the next dividend payment date, and is an amount equal, on a per Creation Unit basis, to the dividends on all the securities held by each [sic] of the Fund (''Fund Securities'') with ex-dividend dates within the accumulation period for such distribution (the ''Accumulation Period''), net of expenses and liabilities for such period, as if all of the Fund Securities had been held by the Trust for the entire Accumulation Period. The Accumulation Period begins on the ex-dividend date for the Fund and ends on the next ex-dividend date.

The Administrator, through the National Securities Clearing Corporation (''NSCC''), makes available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) as well as the Cash Component for the Fund. Such Fund Deposit is applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced Fund Deposit composition is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor,[16] only on a business day and only through a Participating Party or DTC Participant who has executed a Participation Agreement.

The Administrator, through NSCC, makes available immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time) on each day that the Exchange is open for business, the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day.

Unless cash redemptions are permitted or required for the Fund, the redemption proceeds for a Creation Unit generally consist of Fund Securities as announced by the Administrator on the business day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less the redemption transaction fee and variable fees described below. Should the Fund Securities have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the Trust equal to the differential plus the applicable redemption transaction fee will be required to be arranged for by or on behalf of the redeeming shareholder. The Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Fund Securities.[17]

Orders to redeem Creation Units of the Fund must be delivered through a DTC Participant that has executed the Participant Agreement with the Distributor and with the Trust. A DTC Participant who wishes to place an order for redemption of Creation Units of the Fund to be effected need not be a Participating Party, but such orders must state that redemption of Creation Units of the Fund will instead be effected through transfer of Creation Units of the Fund directly through DTC. An order to redeem Creation Units of the Fund is deemed received by the Administrator on the transmittal date if (i) such order is received by the Administrator not later than 4:00 p.m. Eastern time on such transmittal date; (ii) such order is preceded or accompanied by the requisite number of Shares of Creation Units specified in such order, which delivery must be made through DTC to the Administrator no later than 11:00 a.m. Eastern time, on such transmittal date (the ''DTC Cut-Off-Time''); and (iii) all other procedures set forth in the Participant Agreement are properly followed.

After the Administrator has deemed an order for redemption received, the Administrator will initiate procedures to transfer the requisite Fund Securities (or contracts to purchase such Fund Securities) which are expected to be delivered within three business days and the cash redemption payment to the redeeming beneficial owner by the third business day following the transmittal date on which such redemption order is deemed received by the Administrator.

Availability of Information

The Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, daily trading volume, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information for the Fund will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. On each business day, before commencement of trading in Shares during Regular Trading Hours [18]

[16] To be eligible to place orders with the Distributor to create Creation Units of the Funds [sic], an entity or person either must be: (1) A ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the Clearing Process through the Continuous Net Settlement System of the NSCC; or (2) a DTC Participant (as defined below); and, in either case, must have executed an agreement with the Distributor and the Transfer Agent (as it may be amended from time to time in accordance with its terms) (''Participant Agreement''). DTC Participants are participants of the Depository Trust Company (''DTC'') that acts as securities depositary for Index Fund Shares. A Participating Party and DTC Participant are collectively referred to as an ''Authorized Participant.''

[17] The Adviser represents that, to the extent that the Trust permits or requires a ''cash in lieu'' amount, such transactions will be effected in the same or equitable manner for all Authorized Participants.

[18] Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Fund that formed the basis for the Fund's calculation of NAV at the end of the previous business day. The daily disclosed portfolio will include, as applicable: The ticker symbol; CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site and information will be publicly available at no charge. The value, components, and percentage weightings of each of the Indices will be calculated and disseminated at least once daily and will be available from major market data vendors. Rules governing the Indices are available on Barclays' Web site and in each respective Fund's prospectus.

In addition, an estimated value, defined in BZX Rule 14.11(c)(6)(A) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the daily disclosed portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[19] In addition, the quotations of certain of the Fund's holdings may not be updated during U.S. trading hours if updated prices cannot be ascertained.

The dissemination of the Intraday Indicative Value, together with the daily disclosed portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Quotation and last sale information for the Shares of the Fund will be available via the CTA high speed line. Quotation information for investment company securities (excluding ETFs) may be obtained through nationally recognized pricing services through subscription agreements or from brokers and dealers who make markets in such securities. Price information regarding municipal bonds, convertible securities, and non-exchange traded assets, including investment companies, derivatives, money market instruments, repurchase agreements, structured notes, participation notes, and WIs is available from third party pricing services and major market data vendors. For exchange-traded assets, including investment companies, futures, warrants, and options, such intraday information is available directly from the applicable listing exchange.

Initial and Continued Listing

The Shares of the Fund will conform to the initial and continued listing criteria under BZX Rule 14.11(c)(4), except for those set forth in 14.11(c)(4)(B)(i)(b). The Exchange represents that, for initial and/or continued listing, the Fund and the Trust must be in compliance with Rule 10A–3 under the Act. [20] A minimum of 50,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for the Fund will be calculated daily and will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(c)(1)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[21] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board (''MSRB'') relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange-traded investment companies, futures, options, and warrants from markets or other entities that are members of ISG or with which

[19] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association (''CTA'') or other data feeds.

[20] *See* 17 CFR 240.10A–3.

[21] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange prohibits the distribution of material non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening [22] and After Hours Trading Sessions [23] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Fund's Registration Statement.

[22] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[23] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [24] in general and Section 6(b)(5) of the Act [25] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the listing criteria in BZX Rule 14.11(c). The Exchange believes that its surveillances, which generally focus on detecting securities trading outside of their normal patterns which could be indicative of manipulative or other violative activity, and associated surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Exchange will communicate as needed regarding trading in the Shares with other markets or other entities that are members of the Intermarket Surveillance group (''ISG''), and may obtain trading information regarding trading in the Shares from such markets or entities. The Exchange can also access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Exchange is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board (''MSRB'') relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange-traded investment companies, futures, options, and warrants from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[24] 15 U.S.C. 78f.

[25] 15 U.S.C. 78f(b)(5).

The Index Provider is not a broker-dealer, but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Indices. The Index Provider has also implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indices.

As of November 30, 2016, 86.49% of the weight of the Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the Index was approximately $1.5 trillion and the average dollar amount outstanding of issues in the Index was approximately $30.4 million. Further, the most heavily weighted component represented 1.57% of the weight of the Index and the five most heavily weighted components represented 3.93% of the weight of the Index.[26] Therefore, the Exchange believes that, notwithstanding that the Index does not satisfy the criterion in Rule 14.11(c)(4)(B)(i)(b), the Index is sufficiently broad-based to deter potential manipulation, given that it is comprised of approximately 50,615 issues.

The value, components, and percentage weightings of each of the Indices will be calculated and disseminated at least once daily and will be available from major market data vendors. In addition, the portfolio of securities held by the Fund will be disclosed on the Fund's Web site at *www.vaneck.com/etfs.* The intraday indicative value for Shares of the Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. The Adviser represents that bonds that share similar characteristics, as described above, tend to trade similarly to one another; therefore, within these categories, the issues may be considered fungible from a portfolio management perspective. Within a single municipal bond issuer,

[26] Rule 14.11(c)(4)(B)(i)(d) provides that no component fixed-income security (excluding Treasury Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

Adviser represents that separate issues by the same issuer are also likely to trade similarly to one another.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on the Fund's Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. The current value of each of the Indices will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Members in an information circular of the special characteristics and risks associated with trading the Shares. If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(c)(1)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. If the IIV of any [sic] of the Fund or value of the Indices are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or index value occurs.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of exchange-traded funds that holds [sic] municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information in the Shares and the underlying shares in exchange-traded investment companies, futures, options, and warrants via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, investors will have ready access to information regarding the IIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–BatsBZX–2017–07 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 No. SR–BatsBZX–2017–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBZX–2017–07 and should be submitted on or before March 7, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02910 Filed 2–13–17; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15041 and #15042]

Mississippi Disaster #MS–00098

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4295–DR), dated 02/06/2017.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 01/20/2017 through 01/21/2017.

Effective Date: 02/06/2017.

Physical Loan Application Deadline Date: 04/07/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 11/06/2017.

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 02/06/2017, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Forrest, Lamar, Perry.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15041C and for economic injury is 15042C.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–02908 Filed 2–13–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15043 and #15044]

Georgia Disaster #GA–00092

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA–4297–DR), dated 02/07/2017.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 01/21/2017 through 01/22/2017.

Effective Date: 02/07/2017.

Physical Loan Application Deadline Date: 04/10/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 11/07/2017.

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 02/07/2017, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Baker, Brooks, Calhoun, Clay, Cook, Crisp, Dougherty, Thomas, Turner, Wilcox, Worth.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15043C and for economic injury is 15044C.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–02907 Filed 2–13–17; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2017–0003]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a new information collection and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, *Fax:* 202–395–6974, *Email address: OIRA_Submission@omb.eop.gov*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–966–2830, *Email address: OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *www.regulations.gov,*

[27] 17 CFR 200.30–3(a)(12).

referencing Docket ID Number [SSA–2017–0003].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than April 17, 2017. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Supported Employment Demonstration (SED) Project—0960–NEW. Sponsored by SSA, the SED project builds on the success of the intervention designed for the Mental Health Treatment Study (MHTS) previously funded by SSA. The MHTS provides integrated mental health and vocational services to disability beneficiaries with mental illness. The SED will offer these same services to individuals with mental illness for whom SSA denied Social Security disability benefits. SSA seeks to determine whether offering this evidence-based package of integrated vocational and mental health services to denied disability applicants fosters employment that leads to self-sufficiency; improved mental health and quality of life; and reduced demand for disability benefits. The SED will use a randomized controlled trial to compare the outcomes of two treatment groups and a control group. Study participation spans 36 months beginning on the day following the date of randomization to one of the three study groups. The SED study population consists of individuals aged 18 to 50 who apply for disability benefits alleging a mental illness, and the initial decision is a denial of benefits in the past 60 days. The SED will enroll up to 1,000 participants in each of the three study arms for a total of 3,000 participants: 40 participants in each of three study arms for the 20 urban sites equaling an *n* of 2,400 urban site participants, and 20 participants in each of three arms for the 10 rural sites equaling an *n* of 600 rural site participants.

We randomly select and assign each enrolled participant to one of three study arms:

- Full-Service Treatment (n = 1,000). The multi-component service model from the MHTS comprises the Full-Service Treatment. At its core, it includes an Individual Placement and Support (IPS) supported employment specialist and behavioral health specialist providing IPS supported employment services integrated with behavioral health care. Participants in the full-service treatment group will also receive the services of a Nurse Care Coordinator who coordinates Systematic Medication Management services, as well assistance with: Out-of-pocket expenses associated with prescription behavioral health medications; work-related expenses; and services and treatment not covered by the participant's health insurance.
- *Basic-Service Treatment (n = 1,000).* The Basic-Service Treatment model leaves intact IPS supported employment integrated with behavioral health services as the centerpiece of the intervention arm. The Basic-Service Treatment is essentially the Full-Service model without the services of the Nurse Care Coordinator; Systematic Medication Management; and the funds associated with out-of-pocket expenses for prescription behavioral health medications.
- *Usual Services (n = 1,000).* This study arm represents a control group against which we can compare the two treatment groups. Participants assigned to this group seek services as they normally would (or would not) in their community. However, at the time of randomization, each Usual Service participant will receive a comprehensive manual describing mental health and vocational services in their locale, along with state and national resources.

This study will test the two treatment conditions against each other and against the control group on multiple outcomes of policy interest to SSA. The key outcomes of interest include: (1) Employment; (2) earnings; (3) income; (4) mental status; (5) quality of life; (6) health services utilization; and (7) SSA disability benefit receipt and amount. SSA is also interested in the study take up rate (participation); knowing who enrolls (and who does not); and fidelity to evidence-based treatments; among other aspects of implementation. Data collection for the evaluation of the SED will consist of the following activities: Baseline in-person participant interviews; quarterly participant telephone interviews; receipt of SSA administrative record data; and collection of site-level program data. Evaluation team members will also conduct site visits involving: (1) Pre-visit environmental scans to understand the local context in which we embed SED services; (2) independent fidelity assessments in conjunction with those carried out by state Mental Health or Vocational Rehabilitation staff; (3) key informant interviews with the IPS specialist, the nurse care coordinator, the case manager, and facility director; (4) focus groups with participants in the Full-Service and Basic-Service Treatment groups; and (5) ethnographic data collection consisting of observations in the natural environment, and person-centered interviews with participants and non-participants. The respondents are study participants and non-participants; family members; IPS specialists; nurse care coordinators; case managers; and facility directors.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Competency and CIDI Screener	3,000	1	40	2,000
Baseline Interview	3,000	1	45	2,250
Quarterly Interview (Quarters 1, 2, 3, 5, 6, 7, 9, 10, and 11)	3,000	9	20	9,000
Annual Interview (Quarters 4, 8, and 11)	3,000	3	30	4,500
Fidelity Assessment Participant Interview	180	4	60	720
Fidelity Assessment Family Member Interview	90	4	60	360
Key Informant Interview	120	4	60	480
Participant Focus Groups	600	2	60	1,200
Person-Centered Interview	180	4	60	720
Totals	13,170			21,230

2. Student Reporting Form—20 CFR 404.352(b)(2); 404.367; 404.368; 404.415; 404.434; 422.135—0960–0088. To qualify for Social Security Title II student benefits, student beneficiaries must be in full-time attendance status at an educational institution. In addition, SSA requires these beneficiaries to report events that may cause a reduction, termination, or suspension of their benefits. SSA collects this information on Forms SSA–1383 and SSA–1383–FC to determine if the changes or events the student beneficiaries report will affect their continuing entitlement to SSA benefits. SSA also uses the SSA–1383 and SSA–1383–FC to calculate the correct benefit amounts for student beneficiaries. The respondents are Social Security Title II student beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1383	74,887	1	6	7,489
SSA–1383–FC	1,247	1	6	125
Totals	76,134			7,614

3. Advanced Notice of Termination of Child's Benefits & Student's Statement Regarding School Attendance—20 CFR 404.350–404.352, 404.367–404.368—0960–0105. SSA collects information on Forms SSA–1372–BK and SSA–1372–BK–FC to determine whether children of an insured worker meet the eligibility requirements for student benefits. The data we collect allows SSA to determine student entitlement and thether to terminate benefits. The respondents are student claimants for Social Security benefits; their respective schools; and in some cases; their representative payees.

Type of Request: Revision of an OMB-approved information collection.

SSA–1372–BK

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Individuals/Households	99,850	1	8	13,313
State/Local/Tribal Government	99,850	1	3	4,993
Totals	199,700			18,306

SSA–1372–BK–FC

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Individuals/Households	1,198	1	8	160
State/Local/Tribal Government	1,198	1	3	60
Totals	2,396			220
Grand Total	200,096			18,526

4. Request for Review of Hearing Decision/Order—20 CFR 404.967–404.981, 416.1467–416.1481—0960–0277. Claimants have a statutory right under the Social Security Act and current regulations to request review of an administrative law judge's (ALJ) hearing decision or dismissal of a hearing request on Title II and Title XVI claims. Claimants may request Appeals Council review by filing a written request using Form HA–520. SSA uses the information to establish the claimant filed the request for review within the prescribed time and to ensure the claimant completed the requisite steps permitting the Appeals Council review. The Appeals Council uses the information to: (1) Document the claimant's reason(s) for disagreeing with the ALJ's decision or dismissal; (2) determine whether the claimant has additional evidence to submit; and (3) determine whether the claimant has a representative or wants to appoint one. The respondents are claimants requesting review of an ALJ's decision or dismissal of hearing.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–520	175,000	1	10	29,167

5. Disability Update Report—20 CFR 404.1589–404.1595 and 416.988–416.996—0960–0511. As part of our statutory requirements, SSA periodically uses Form SSA–455, the Disability Update Report, to evaluate current Title II disability beneficiaries' and Title XVI disability payment recipients' continued eligibility for Social Security disability payments. Specifically, SSA uses the form to determine if: (1) There is enough evidence to warrant referring the respondent for a full medical Continuing Disability Review (CDR); (2) the respondent's impairments are still present and indicative of no medical improvement, precluding the need for a CDR; or (3) the respondent has unresolved work-related issues. SSA mails Form SSA–455 to specific disability recipients, whom we select as possibly qualifying for the CDR process. SSA pre-fills the form with data specific to the disability recipient, except for the sections we ask the recipients to complete. When SSA receives the completed form, we scan it into SSA's system. This allows us to gather the information electronically, and enables SSA to process the returned forms through automated decision logic to decide the proper course of action to take. The respondents are recipients of Title II and Title XVI Social Security disability payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–455	1,500,000	1	15	375,000

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 16, 2017. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

1. Agreement to Sell Property—20 CFR 416.1240–1245—0960–0127. Individuals or couples who are otherwise eligible for Supplemental Security Income (SSI) payments, but whose resources exceed the allowable limit may receive conditional payments if they agree to dispose of the excess non-liquid resources and make repayments. SSA uses Form SSA–8060–U3 to document this agreement, and to ensure the individuals understand their obligations. Respondents are applicants for and recipients of SSI payments who will be disposing of excess non-liquid resources.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8060–U3	20,000	1	10	3,333

2. Development of Participation in a Vocational Rehabilitation or Similar Program—20 CFR 404.316(c), 404.337(c), 404.352(d), 404.1586(g), 404.1596, 404.1597(a), 404.327, 404.328, 416.1321(d), 416.1331(a)–(b), and 416.1338, 416.1402—0960–0282. State Disability Determination Services (DDS) must determine if Social Security disability payment recipients whose disability ceased and who participate in vocational rehabilitation programs may continue to receive disability payments. To do this, DDSs need information about the recipients; the types of program participation; and the services they receive under the rehabilitation program. SSA uses Form SSA–4290 to collect this information. The respondents are State employment networks; vocational rehabilitation agencies; or other providers of educational or job training services.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–4290	3,000	1	15	750

3. Appointment of Representative—20 CFR 404.1707, 404.1720, 408.1101, 416.1507, and 416.1520—0960–0527. Individuals claiming rights or benefits under the Social Security Act (Act) must notify SSA in writing when they appoint an individual to represent them in dealing with SSA. SSA collects the information on Form SSA–1696–U4 to verify the appointment of these representatives. The SSA–1696–U4 allows SSA to inform representatives of items that affect the recipient's claim, and allows claimants to give permission to their appointed representatives to designate a person to receive their claims files. Respondents are applicants for, or recipients of, Social Security disability benefits (SSDI) or SSI payments who are notifying SSA they have appointed a person to represent them in their dealings with SSA.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1696–U4	800,000	1	10	133,333

4. Work Activity Report (Self-Employment)—20 CFR 404.1520(b), 20 CFR 404.1571–404.1576, 20 CFR 404.1584–404.1593, and 20 CFR 416.971–416.976—0960–0598. SSA uses Form SSA–820–U4 to determine initial or continuing eligibility for (1) Title II SSDI, or (2) Title XVI SSI payments. Under Titles II and XVI of the Act, recipients receive disability benefits and SSI payments based on their inability to engage in substantial gainful activity (SGA) due to a physical or mental condition. Therefore, when the recipients resume work, they must report their work so SSA can evaluate and determine by law whether they continue to meet the disability requirements. SSA uses Form SSA–820–U4 to obtain information on self-employment activities of Social Security Title II and XVI disability applicants and recipients. We use the data we obtain to evaluate disability claims, and to help us determine if the claimant meets current disability provisions under Titles II and XVI. Since applicants for disability benefits or payments must prove an inability to perform any kind of SGA generally available in the national economy for which we expect them to qualify based on age, education, and work experience, any work an applicant performed until, or subsequent to, the date the disability allegedly began, affects our disability determination. The respondents are applicants and claimants for SSI payments or SSDI benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–820–BK	100,000	1	30	50,000

Dated: February 9, 2017.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2017–02941 Filed 2–13–17; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, and other federal agencies.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, on State Route 29, in the County of Lake, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 14, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Chris Quiney, Branch Chief R–1, Caltrans Environmental Planning Office—District 2, 1657 Riverside Drive, Redding, CA 96001, regular office hours 7:30 a.m.–4:15 p.m. Monday–Friday, telephone: (530) 225–3174, email: *chris.quiney@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Widening and improvement of an eight-mile segment of State Route (SR) 29, beginning 0.2 miles east of Diener Drive and ending 0.6 miles west of the SR 175 intersection, in Lake County. The project will widen and improve the existing two-lane highway to a four-lane divided expressway with access control to provide a modern transportation facility that will provide adequate capacity to accommodate anticipated traffic growth and improve safety and operation of SR 29. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on November 23, 2016, in the FHWA Finding of No Significant Impact (FONSI) issued on November 23, 2016, and in other documents in the FHWA project records. The EA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA and FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist1/d1projects/lake29/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)]
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712]
5. *Historic and Cultural Resources:* Section 106 of the National Historic

Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]
7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13112 Invasive Species

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Matthew Schmitz,

Director, Project Delivery, Federal Highway Administration Sacramento, California.

[FR Doc. 2017–02928 Filed 2–13–17; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Tappan Zee Hudson River Crossing Project in New York

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces action taken by the FHWA that relate to the Tappan Zee Hudson River Crossing (New NY Bridge) Project located in Rockland and Westchester Counties, New York.

DATES: A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 14, 2017. If this date falls on a Saturday, Sunday, or legal holiday, parties are advised to file their claim no later than the business day preceding this date. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Peter Osborn, Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, Albany, New York 12207, Telephone (518) 431–4127; or Jamey Barbas, Project Director, New York State Thruway Authority, 555 White Plains Road, Tarrytown New York, 10591, Telephone (914) 524–5440.

SUPPLEMENTARY INFORMATION: On October 31, 2012, the FHWA published a ''Notice of Final Federal Agency Actions'' on the Tappan Zee Hudson River Crossing (New NY Bridge) Project in New York, in the **Federal Register** at FR Doc. 2012–26799. Tappan Zee Hudson River Crossing (New NY Bridge) Project is located on the Hudson River between the Village of South Nyack in Rockland County on the west and the Village of Tarrytown in Westchester County on the east. The bridge carries Interstate 87 (New York State Thruway) and Interstate 287. The Tappan Zee Hudson River (New NY Bridge) Project involves the replacement of the existing bridge with two new structures (one each for eastbound and westbound traffic), to the north of its existing location, carrying 8-lanes of vehicular traffic and a Shared Use Path. An Environmental Assessment (EA) was prepared for Facilities and Bicycle/Pedestrian Connections associated with the Shared Use Path to determine if potential significant adverse impacts would result from the proposed work in accordance with the requirements of the Council on Environmental Quality's regulations for implementing the procedural provisions of the NEPA of 1969 (40 CFR 1500–1508), the FHWA's Environmental Impact and Related Procedures; 23 CFR 771.130, and the New York SEQRA (6 NYCRR Part 617 and 17 NYCRR Part 15), and a number of other federal and state regulations and requirements, including Section 106 of the National Historic Preservation Act and Section 4(f) of the U.S. Department of Transportation Act. Notice is hereby given that subsequent to the earlier FHWA notice, FHWA has taken final agency actions by issuing an Environmental Assessment/Finding of No Significant Impact (EA/FONSI) and determining that a SEIS is not required for the Facilities and Bicycle/Pedestrian Connections associated with the Shared Use Path. The actions by FHWA are described in the February 2016 EA and FONSI Issued on June 10, 2016. The documents are available by contacting the FHWA or the New York State Thruway Authority at the addresses provided above. The documents can also be viewed and downloaded from the project Web site at *www.newnybridge.com.* This notice applies to FHWA agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q) (Transportation Conformity).
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].
7. *Water Resources:* Coastal Zone Management Act, 16 U.S.C. 1451–1465.
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: February 6, 2017.

Peter Osborn,

Division Administrator, Albany, NY.

[FR Doc. 2017–02929 Filed 2–13–17; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0022]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel REEL RESPONDER; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the

Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 16, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0022. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel REEL RESPONDER is:

—*Intended Commercial Use of Vessel:* ''The vessel intended use is to conduct commercial med-evac of guest or crew from cruise, cargo and military ships off Florida's east coast. Then transport them to shore and turn them over to paramedics for transport to hospital.''

—*Geographic Region:* ''Florida, Georgia, Alabama, Puerto Rico''

The complete application is given in DOT docket MARAD–2017–0022 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

By Order of the Maritime Administrator.

Dated: February 8, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–02900 Filed 2–13–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0024]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel FOREVER YOUNG; Invitation for Public Comments

AGENCY: Maritime Administration, Depatment of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 16, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0024. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FOREVER YOUNG is:

—*Intended Commercial Use of Vessel:* ''Pleasure charter vessel for single and multiple day charters''

—*Geographic Region:* ''Texas, Mississippi, Louisiana, Alabama, Florida, Georgia, South Carolina, North Carolina, Maryland, Delaware, Virginia, Pennsylvania, Connecticut, New York, New Jersey, Rhode Island, Massachusetts, New Hampshire and Maine''

The complete application is given in DOT docket MARAD–2017–0024 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–

14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

By Order of the Maritime Administrator.

Dated: February 8, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–02898 Filed 2–13–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0025]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PRETTY WOMAN; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 16, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0025. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PRETTY WOMAN is:

—*Intended Commercial Use of Vessel:* ''30 minute Japanese wedding cruises for wedding pictures''

—*Geographic Region:* ''Hawaii''

The complete application is given in DOT docket MARAD–2017–0025 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

By Order of the Maritime Administrator.

Dated: February 8, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–02899 Filed 2–13–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2017–0003]

Proposed Information Collections; Comment Request (No. 62)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before April 17, 2017.

ADDRESSES: As described below, you may send comments on the information collections listed in this document using the *Regulations.gov* online comment form for this document, or you may send written comments via U.S. mail or hand delivery. TTB no longer accepts public comments via email or fax.

- *http://www.regulations.gov:* Use the comment form for this document posted within Docket No. TTB–2017–0003 on *Regulations.gov,* the Federal e-rulemaking portal, to submit comments via the Internet;
- *U.S. Mail:* Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier in Lieu of Mail:* Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit separate comments for each specific information collection listed in this document. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment.

You may view copies of this document, the information collections listed in it and any associated instructions, and all comments received in response to this document within Docket No. TTB–2017–0003 at *https://www.regulations.gov.* A link to that docket is posted on the TTB Web site at *https://www.ttb.gov/forms/comment-on-form.shtml.* You may also obtain paper copies of this document, the information collections described in it and any associated instructions, and any

comments received in response to this document by contacting Michael Hoover at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone (202) 453–1039, ext. 135; or email *informationcollections@ttb.gov* (please *do not* submit comments on this notice to this email address).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of a continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in comments.

For each information collection listed below, we invite comments on: (a) Whether the information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following information collections (forms, recordkeeping requirements, or questionnaires):

Title: Tax Information Authorization.

OMB Number: 1513–0001.

TTB Form Number: F 5000.19.

Abstract: Federal law at 26 U.S.C. 6103 protects the privacy of taxpayer information by, among other things, prohibiting unauthorized persons from receiving taxpayer information. Under the Department of Treasury regulations at 26 CFR 601.523, taxpayers may authorize a representative to receive otherwise confidential tax information. TTB requires a taxpayer to file TTB F 5000.19 when the taxpayer wishes to authorize a representative who does not have a power of attorney to obtain confidential information regarding the taxpayer. TTB uses this form to properly identify the representative and the scope of his/her authority to obtain confidential information.

Current Actions: TTB is submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated number of burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits; individuals or households.

Estimated Number of Respondents: 50.

Estimated Total Annual Burden Hours: 50.

Title: Referral of Information.

OMB Number: 1513–0003.

TTB Form Number: F 5000.21.

Abstract: During the course of their duties, TTB personnel sometimes discover apparent violations of statutes and regulations under the jurisdiction of other Federal, State, and local government agencies. TTB personnel use this form to refer such information to other agencies, and the form includes a section for the other agency to respond regarding their action on the referral. The referral form provides a consistent means of conveying the relevant information to other agencies, and it facilitates information-sharing between agencies to support enforcement efforts. The response that TTB requests from other agencies also provides information as to the utility of the referral and potential enforcement actions that the other agency may take against the same entities TTB may regulate.

Current Actions: TTB is submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated number of burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal government; State, local, and tribal governments.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 500.

Title: Monthly Report of Processing Operations.

OMB Number: 1513–0041.

TTB Form Number: F 5110.28.

TTB Recordkeeping Number: REC 5110/03.

Abstract: Distilled spirits, other than those used for certain authorized nonbeverage purposes, are taxed at a rate of $13.50 a proof gallon. Pursuant to 26 U.S.C. 5207, the proprietor of a distilled spirits plant must maintain records of production, storage, denaturation, and processing activities and submit reports covering those operations. The TTB regulations in 27 CFR part 19 require distilled spirit proprietors to keep records regarding processing operations, and processing records must also be maintained for any wholesale liquor dealer operations or taxpaid storeroom operations conducted by a proprietor. In addition, the TTB regulations at 27 CFR 19.632 require proprietors to file a monthly report of processing operations on TTB F 5110.28. The information collected accounts for the processing of distilled spirits in bond. TTB uses the information to monitor proprietor activities to ensure appropriate taxes are paid. The information is also aggregated and provided publicly through statistical reports.

Current Actions: TTB is submitting this collection as a revision. The information collection remains unchanged. However, TTB is increasing the estimated number of annual respondents, responses, and burden hours due to an increase in the number of distilled spirits plant proprietors regulated by TTB.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 2,198.

Estimated Total Annual Burden Hours: 52,752.

Title: Application for an Alcohol Fuel Producer under 26 U.S.C. 5181.

OMB Number: 1513–0051.

TTB Form Number: F 5110.74.

Abstract: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as authorized under 26 U.S.C. 5181, either as a business or for their own use, and for State and local registration where required. TTB F 5110.74 describes the person(s) applying for the permit, the location of the proposed operation, the type of material used for production, and the amount of alcohol fuel to be produced. This information is necessary to protect the revenue, by determining the applicant's eligibility to obtain a permit and determining whether the

applicant's operations will be in conformity with Federal law and regulations.

Current Actions: TTB is submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated number of burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 251.

Estimated Total Annual Burden Hours: 377.

Title: Principal Place of Business on Beer Labels.

OMB Number: 1513–0085.

TTB Recordkeeping Number: REC 5130/5.

Abstract: Under the authority of the Internal Revenue Code at 26 U.S.C. 5412 and the Federal Alcohol Administration Act at 27 U.S.C. 205(e), the TTB regulations require the name and address of the brewer to appear on labels of kegs, bottles, and cans of domestic beer. In the case of a brewer that operates multiple breweries, the TTB regulations allow the brewer to label their beer containers with their ''principal place of business,'' provided that the brewer codes each beer container to indicate the actual place of production. This option allows multi-plant brewers to use an identical, universal label at all of their breweries.

Current Actions: TTB is submitting this collection as a revision. The information collection remains unchanged. However, TTB is reducing the estimated number of annual respondents due to more accurate data regarding the number of brewers that operate multiple production facilities. However, because the labeling of beer containers is a usual and customary business practice, the estimated total annual burden hours are unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 430.

Estimated Total Annual Burden Hours: 1 (one).

Title: Federal Firearms and Ammunition Quarterly Excise Tax Return.

OMB Number: 1513–0094.

TTB Form Number: F 5300.26.

Abstract: The Internal Revenue Code (IRC) at 26 U.S.C. 4181 imposes a Federal excise tax on the sale of pistols, revolvers, other firearms, and shells and cartridges (ammunition) sold by manufacturers, producers, and importers. The IRC at 26 U.S.C. 6001 and 6011 provides for the filing of a return for this firearms and ammunition excise tax (FAET). The FAET return form, TTB F 5300.26, is prescribed by regulation in 27 CFR part 53. TTB uses the information collected on that return form to determine how much FAET is owed by the respondent, and to verify that the respondent has correctly determined and paid the tax liability. This return is filed on a quarterly basis.

Current Actions: TTB is submitting this collection as a revision. TTB is increasing the estimated number of respondents and the estimated total annual burden hours associated with this collection to reflect an increase in the number of firearms and ammunition taxpayers.

In addition, TTB is revising the FAET return form, F 5300.26, to clarify certain data fields and instructions, thereby improving the accuracy of the information reported, and to capture the data necessary for TTB to more accurately verify the tax liability. The revisions to F 5300.26 include reorganizing data fields in Part II, Calculation of Taxes on Sale or Uses During this Tax Period, adding instructional language to Schedules A and B to clarify that they are used to claim adjustments for prior quarter activity, and adding a ''printed'' name field to the signature area of the form. TTB has also updated the form's instructions to remove obsolete language and improve clarity. TTB also has made other format, grammatical, and typographic corrections to the form. In addition, to support future automation efforts, TTB has added a bar code to each page of the form to allow the forms to be scanned by optical character recognition (OCR) software.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 675.

Estimated Total Annual Burden Hours: 18,900.

Title: Application for Registration for Tax-free Transactions Under 26 U.S.C. 4221.

OMB Number: 1513–0095.

TTB Form Number: F 5300.28.

Abstract: The Internal Revenue Code at 26 U.S.C. 4181 imposes a Federal excise tax on the sale of pistols and revolvers, other firearms, shells and cartridges (ammunition) sold by manufacturers, producers, and importers. Under 26 U.S.C. 4221, no tax is imposed on certain sales of firearms and ammunition, provided that the seller and purchaser of the articles (with certain exceptions) are registered as required by 26 U.S.C. 4222. Section 4222 further provides that the Secretary of the Treasury may prescribe regulations regarding the manner, forms, terms, and conditions of registration. The TTB regulation at 27 CFR 53.140 prescribes the use of TTB F 5300.28 as the application to obtain an approved Certificate of Registry to sell or purchase firearms and ammunition tax-free. TTB uses the form to determine if the respondent is qualified to engage in tax-free sales. In addition, registrants may make certain amendments to the information provided on the form by letterhead notice.

Current Actions: TTB is submitting this collection as a revision. The information collection remains unchanged. However, TTB is decreasing the estimated number of respondents and estimated total annual burden hours due to a decrease in the number of respondents applying for registration for tax-free transactions under 26 U.S.C. 4221.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits; State, local, and tribal governments.

Estimated Number of Respondents: 85.

Estimated Total Annual Burden Hours: 235.

Dated: February 8, 2017.

Angela Jeffries,

Deputy Director, Regulations and Rulings Division.

[FR Doc. 2017–02917 Filed 2–13–17; 8:45 am]

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Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1051

Milk in California; Recommended Decision and Opportunity To File Written Exceptions on Proposal To Establish a Federal Milk Marketing Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1051

[Doc. No. AO–15–0071; AMS–DA–14–0095]

Milk in California; Recommended Decision and Opportunity To File Written Exceptions on Proposal To Establish a Federal Milk Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This Recommended Decision proposes the issuance of a Federal Milk Marketing Order (FMMO) regulating the handling of milk in California. The proposed FMMO incorporates the entire state of California and would adopt the same dairy product classification and pricing provisions used throughout the current FMMO system. The proposed FMMO provides for the recognition of producer quota as administered by the California Department of Food and Agriculture. This proposed rule also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements to implement the order.

DATES: Written exceptions to this proposed rule must be submitted on or before May 15, 2017. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by April 17, 2017.

AMS will conduct a public meeting on February 22, 2017, to review the rulemaking process, explain and answer questions relating to how the proposed California FMMO would operate, and inform the public how they can submit public comments for consideration.

ADDRESSES: Comments should be submitted at the Federal eRulemaking portal: *http://www.regulations.gov.* Comments may also be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1031–S, Washington, DC 20250–9200, Facsimile number (202) 720–9976. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

The public meeting will convene at 9:00 a.m. on Wednesday, February 22, 2017, at the Clovis Veterans Memorial District Building, 808 Fourth Street, Clovis, California 93612. Additional meeting information can be found at *www.ams.usda.gov/caorder.*

FOR FURTHER INFORMATION CONTACT: Erin Taylor, Acting Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Program, STOP 0231, Room 2969–S, 1400 Independence Ave. SW., Washington, DC 20250–0231, (202) 720–7311, email address: *erin.taylor@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This recommended decision finds that a FMMO for California would provide more orderly marketing conditions in the marketing area, and therefore promulgation of a California FMMO is warranted. The record is replete with discussion from most parties on whether disorderly marketing conditions exist, or are even needed, to warrant promulgation of a California FMMO. FMMOs are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674 and 7253) (AMAA). The declared policy of the AMAA makes no mention of ''disorder,'' and this recommended decision finds that disorderly marketing conditions are not a requirement for an order to be promulgated. The standard for FMMO promulgation is to ''. . . establish and maintain such orderly marketing conditions . . .,'' (7 U.S.C. 602(4) and this recommended decision finds that the California FMMO recommended decision meets that standard.

AMS has considered all record evidence presented at the hearing, as well as the arguments and proposed findings submitted in post-hearing briefs, to formulate this Recommended Decision. The package of provisions recommended in this decision reflect California marketing conditions, while still adhering to fundamental FMMO principles that have historically helped to maintain orderly marketing conditions, ensured a sufficient supply of pure and wholesome milk, and been in the public interest.

A FMMO is a regulation issued by the Secretary of Agriculture that places certain requirements on the handling of milk in the area it covers. Each FMMO is established under the authority of the AMAA. A FMMO requires handlers of milk for a marketing area pay minimum class prices according to how the milk is used. These prices are established under each FMMO after a public hearing where evidence is received on the supply and demand conditions for milk in the market. A FMMO requires that payments for milk be pooled and paid to individual farmers or cooperative associations of farmers on the basis of a uniform or average price. Thus, all eligible dairy farmers (producers) share in the marketwide use-values of milk by regulated handlers.

This decision recommends the establishment of a FMMO to regulate the handling of milk in California. Where appropriate, the recommended California FMMO proposes adoption of uniform provisions that are contained in the 10 current FMMOs. These uniform provisions include, but are not limited to, product classification, end-product price formulas, Class I differential structure, and producer-handler definition.[1] This decision recognizes the unique market structure of the California dairy industry through tailored performance-based standards to determine eligibility for pool participation.

As in all current FMMOs, California handlers regulated by a California FMMO would be responsible for accurate reporting of all milk movements and uses, and would be required to make timely payments to producers. The order would be administered by the United States Department of Agriculture (USDA) through a Market Administrator, who would provide essential marketing services, such as laboratory testing, account verification, information collection and publication, and producer payment enforcement.

A unique feature of the proposed order is a provision for the recognition of the California quota value specified in the California quota program currently administered by the California Department of Food and Agriculture (CDFA). This decision finds that the California quota program should remain a function of CDFA in whatever manner CDFA deems appropriate. Should CDFA continue to use producer monies to fund the quota program, this decision finds that the proper recognition of quota values within a California FMMO, as provided for in the Agriculture Act of 2014 (2014 Farm Bill) (Pub. L. 113–79, sec. 1410(d)), is to permit an authorized deduction from payment to producers, in an amount determined and announced by CDFA.

In conjunction with this Recommended Decision, AMS conducted a Regulatory Economic Impact Analysis to determine the potential impact of regulating California milk handlers under a FMMO on the milk supply, product demand and

[1] References to Class I, Class II, Class III and Class IV refer to products classified in those classes based on uniform FMMO provisions.

prices, and milk allocation in California and throughout the United States. As part of the analysis, a regional econometric model was used to project deviations from the USDA Agricultural Baseline Projections to 2025 [2] under the provisions of the proposed order. The full text of the Regulatory Economic Impact Analysis Report and accompanying documentation may be accessed at *www.regulations.gov* or *www.ams.usda.gov/caorder.*

Prior documents in this proceeding:

Notice of Hearing: Issued July 27, 2015; published August 6, 2015 (80 FR 47210);

Notice To Reconvene Hearing: Issued September 25, 2015; published September 30, 2015 (80 FR 58636).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

The provisions of the marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed order would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The AMAA provides that administrative proceedings must be exhausted before parties may file suit in court. Under 7 U.S.C. 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

[2] U.S. Department of Agriculture, Office of the Chief Economist, World Agricultural Outlook Board, Interagency Agricultural Projections Committee, 2016. Long-term Projections Report OCE–2016–1.

Civil Rights Impact Analysis

AMS has reviewed this rule in accordance with Departmental Regulation 4300–4—Civil Rights Impact Analysis, to identify and address potential impacts the proposal might have on any protected groups of people. After a careful review of the rule's intent and provisions, AMS has determined that this rule would not limit or reduce the ability of individuals in any protected classes to participate in the proposed FMMO, or to enjoy the anticipated benefits of the proposed program. Any impacts on dairy farmers and processors arising from implementation of this proposed rule are not expected to be disproportionate for members of any protected group on a prohibited basis.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small dairy farm businesses have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those businesses having annual gross receipts of less than $750,000. SBA's definition of small agricultural service firms, which includes handlers that would be regulated under the proposed California FMMO, varies depending on the product manufactured. Small fluid milk and ice cream manufacturers are defined as having 1,000 or fewer employees. Small butter and dry or condensed dairy product manufacturers are defined as having 750 or fewer employees. Small cheese manufacturers are defined as having 1,250 or fewer employees.

For the purpose of determining which California dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline that equates to approximately 315,000 pounds of milk per month. Although this guideline does not factor in additional monies that may be received by dairy farmers, it is a standard encompassing most ''small'' dairy farms. For the purpose of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the employee limit for that type of manufacturing, the plant is considered a large business even if the local plant has fewer than the defined number of employees.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed California FMMO on small businesses. Specific evidence on the number of large and small dairy farms in California (above and below the threshold of $750,000 in annual sales) was not presented at the hearing. However, data compiled by CDFA[3] suggests that between 5 and 15 percent of California dairy farms would be considered small business entities. No comparable data for dairy product manufacturers was available.

Record evidence indicates that implementing the proposed California FMMO would not impose a disproportionate burden on small businesses. Currently, the California dairy industry is regulated by a California State Order (CSO) that is administered and enforced by CDFA. While the CSO and FMMOs have differences that will be discussed later in this decision, they both maintain similar classified pricing and marketwide pooling functions. Therefore, it is not expected that the proposed regulatory change will have a significant impact on California small businesses.

The record evidence does indicate that while the program is likely to impose some costs on the regulated parties, those costs would be outweighed by the benefits expected to accrue to the California dairy industry. AMS prepared a Regulatory Economic Impact Analysis to study the possible impacts of the proposed California FMMO. The analysis may be viewed in conjunction with this recommended decision (Docket No. AMS–DA–14–0095) at *www.regulations.gov.*

California Dairy Market Background

The record shows that the California dairy industry accounts for approximately 20 percent of the nation's milk supply. While its 39 million residents are concentrated in the state's coastal areas, the majority of California's dairy farms are located in the interior valleys, frequently at some distance from milk processing plants and consumer population centers.

CDFA has defined and established distinct regulations for Northern and Southern California dairy regions.[4]

[3] CDFA, *California Dairy Review,* Volume 19, Issue 9, September 2015.

[4] CDFA, *Stabilization and Marketing Plan for Market Milk, as Amended, for the Northern California Marketing Area.*

According to data published by CDFA,[5] well over 90 percent of the state's approximately 41 billion pounds of milk for 2015 was produced in the Northern California region. The five leading milk production counties in 2015 were Tulare, Merced, Kings, Stanislaus, and Kern, together accounting for approximately 73 percent of the state's milk.

According to CDFA, there were 1,438 dairy farms in California in 2015. Of those, 1,338 were located in Northern California, and 100 were in Southern California. The statewide average number of cows per dairy was 1,215; in Northern California, the average herd size was 1,235 cows, and in Southern California, 952 cows. Average milk production for the state's 1.75 million cows was 23,382 pounds in 2015.

According to record evidence, 132 handlers reported milk receipts to CDFA for at least one month during 2015. A CDFA February 2015 list of California dairy product processing plants by type of product produced[6] shows that 35 California plants processed Class 1 products; 75 plants processed Class 2 and 3 products; 18 plants processed Class 4a products; and 64 plants processed Class 4b products.[7] Some plants processed products in more than one class.

CDFA reported[8] that approximately 99 percent of California's 2015 milk production was market grade (Grade A), and the rest was manufacturing grade (Grade B). Thirteen percent of the milk pooled under the CSO was utilized by California processors as Class 1 (fluid milk). Nine percent was utilized for Classes 2 and 3 (soft and frozen dairy products), 32 percent was utilized for Class 4a (butter and dried milk powders), and 46 percent was utilized for Class 4b (cheese).

According to CDFA, total Class 1 sales in California were approximately 662 million gallons in 2015. Record evidence shows that annual California Class 1 sales outside the state averaged 22 million gallons for the five years preceding 2015.

The record shows that for the five-year period from 2010 through 2014, an average of 230 million pounds of California bulk milk products were transferred to out-of-state plants for processing each year. During the same period, an average of 633 million pounds of milk from outside the state was received and reported by California pool plants each year.

Impact on Small Businesses

This rule proposes to establish a FMMO in California similar to the 10 existing FMMOs in the national system. The California dairy industry is currently regulated under the CSO, which is similar to the recommended FMMO in most respects. California handlers currently report milk receipts and utilization to CDFA, which calculates handler prices based on component values derived from finished product sales surveys. Likewise, FMMO handlers report milk receipts and utilization to the Market Administrators, who calculate handlers' pool obligations according to price formulas that incorporate component prices based on end product sales values. Under both programs, the value of handlers' milk is pooled, and pool revenues are shared by all the pooled producers. Thus, transitioning to the FMMO is expected to have only a minimal impact on the reporting and regulatory responsibilities for large or small handlers, who are already complying with similar CSO regulations.

Pricing

Under the recommended California FMMO, uniform FMMO end-product price formulas would replace the CDFA price formulas currently used to calculate handler milk prices. FMMO end-product price formulas incorporate component prices derived from national end-product sales surveys conducted by AMS. Use of price formulas based on national product sales would permit California farmers to receive prices for pooled milk reflective of the national market for commodity products for which their milk is utilized. Consistent with the current FMMOs, California FMMO Class I prices would be computed using the higher of the Class III or IV advance prices announced the previous month, and would be adjusted by the Class I differential for the county where the plant is located.[9]

Regulated minimum prices, especially for milk used in cheese manufacturing, are likely to be higher than what handlers would pay under the CSO. However, pooling regulations under the proposed FMMO would allow handlers to elect not to pool milk used in manufacturing. This option would be available to both large and small manufacturing handlers.

Dairy farmers whose milk is pooled on the order would receive a pro rata share of the pool revenues through the California FMMO uniform blend price. The FMMO would not provide for the quota and non-quota milk pricing tiers found under the CSO. Under the recommended FMMO, regulated handlers would be allowed to deduct monies, in an amount determined and announced by CDFA, from blend prices paid to California dairy farmers for pooled milk and send those monies to CDFA to administer the quota program.

These changes are expected to affect producers and handlers of all sizes, but are not expected to be disproportionate for small entities.

Producer-Handlers

The record shows that there are four producer-handlers[10] in California whose Class 1 milk production is all or partially exempt from CSO pricing and pooling by virtue of their ''exempt quota'' holdings, representing approximately 21 million pounds of milk each month. It is likely that these four entities would become fully regulated under the recommended FMMO and accountable to the marketwide pool for all of their Class I sales in the marketing area. By accounting to the pool for all their Class I sales in the marketing area, the value of the marketwide pool is expected to increase, benefiting most other large and small producers. The recommended California FMMO makes no provision for exempting large producer-handlers from pricing and pooling regulations under the order.

The evidentiary record shows that several smaller California producer-handlers, whose production volume exceeds the threshold to receive an exemption from the CSO's pricing and pooling regulations, would likely qualify as producer-handlers under the recommended FMMO.[11]

Interstate Commerce

The evidentiary record indicates that milk in interstate commerce, which the CSO does not have authority to regulate, would be regulated under the FMMO. Currently, California handlers who purchase milk produced outside the state do not account to the CSO marketwide pool for that milk. Record

[5] CDFA, *California Dairy Statistics Annual 2015.*

[6] CDFA, *Milk and Dairy Food Safety Branch (MDFS). https://www.cdfa.ca.gov/ahfss/Milk_and_Dairy_Food_Safety/index.html#Plants.*

[7] References to Class 1, Class 2, Class 3, Class 4a and Class 4b refer to products classified in those categories based on the CSO.

[8] CDFA, *California Dairy Statistics Annual 2015.*

[9] FMMOs have four classifications of milk: Class I—fluid milk products; Class II—fluid cream products, soft ''spoonable'' cheeses, ice cream, and yogurt; Class III—hard cheeses and spreadable cheese such as cream cheese; Class IV—butter and dried milk products.

[10] A producer-handler is a dairy farmer who processes and distributes their own-farm milk into dairy products.

[11] The CSO exempts producer-handlers with sales averaging less than 500 gallons of milk per day on an annual basis and who distribute 95 percent of their production to retail or wholesale outlets.

evidence shows approximately 425 million pounds of milk from outside the state was processed into Class 1 products at California processing plants during 2014.

Under the recommended FMMO, all Class I milk processed and distributed in the marketing area would be subject to FMMO pricing and pooling regulations, regardless of its origin. Revenues from Class 1 sales not currently regulated would accrue to the California FMMO pool and would be shared with all producers who are pooled on the California FMMO. If California handlers elect to continue processing out-of-state milk into Class I products under the FMMO, they would be required to pay the order's classified minimum price for that milk. Those additional revenues would be pooled and would benefit large and small producers who participate in the pool. Both large and small out-of-state producers who ship milk to pool plants in California would receive the California FMMO uniform blend price for their milk.

Classification and Fortification

Dairy product classification under the CSO and the recommended FMMO is similar, but not identical. The table below compares CSO and FMMO product classes.

CSO class	Equivalent FMMO class
Class 1	Class I.
Class 2 and 3	Class II.
Class 4b	Class III.
Class 4a	Class IV.

Under the proposed California FMMO, the classification of certain California products would change to align with standard FMMO classifications:

- Reassigning buttermilk from CSO Class 2 to FMMO Class I
- Reassigning half and half from CSO Class 1 to FMMO Class II
- Reassigning eggnog from CSO Class 2 to FMMO Class I
- There are numerous instances where the CSO classifies products based on product type and location of where the product is sold.[12] The proposed California FMMO would classify all products based solely on product type.

Under the recommended FMMO, California handlers would no longer receive credits for fluid milk fortification. Instead, accounting for fortification would be uniform with other FMMOs, as the classification of the fluid milk equivalent of the milk solids used to fortify fluid milk products would be classified as Class IV and the increased volume of Class I product due to fortification would be classified as Class I. The FMMO system accounts for fortification differently from the CSO, but the record does not indicate the net impact of this change. However, the impact is not expected to disproportionately affect small entities.

Transportation Credits

The recommended FMMO does not contain a transportation credit program to encourage shipments to Class 1, 2 and 3 plants as is currently provided for in the CSO. This decision recommends that producer payments be adjusted to reflect the applicable producer location adjustment for the handler location where their milk is received, thus providing the incentive to producers to supply Class I plants. As producers are responsible for finding a market for their milk and consequently bear the cost of transporting their milk to a plant, the record of this proceeding does not support reducing the producers' value of the marketwide pool through the payment of transportation credits to handlers. This change is not expected to disproportionately impact small business entities.

Summary

This decision finds that adoption of the recommended California FMMO would promote more orderly marketing of milk in interstate commerce. Classified milk prices under the recommended order would reflect national prices for manufactured products and local prices for fluid milk products, fostering greater equality for California producers and handlers in the markets where they compete. Under the recommended order, handlers would be assured a uniform cost for raw milk, and producers would receive uniform payments for raw milk, regardless of its use. Small dairy farmers and handlers are not expected to be disproportionately impacted by the transition from CSO to FMMO regulations.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (Act), this notice announces AMS' intention to request approval from the Office of Management and Budget (OMB) for a new information collection totaling 2138.35 hours for the initial set-up and annual reporting and recordkeeping requirements contained in this proposed rule for the promulgation of a California FMMO.

OMB previously approved information collection requirements associated with all other FMMOs and assigned OMB control number 0581–0032. This proposed rule would change certain aspects of the information collection and recordkeeping requirements previously approved. Therefore, a NEW information collection is required to carry out the requirements of this proposed rule. AMS intends to merge this new information collection, upon OMB approval, into the approved OMB No. 0581–0032 collection.

Below, AMS has described and estimated the annual burden for entities to prepare and maintain information necessary to participate in this proposed California FMMO. As with all mandatory regulatory programs, reporting and recordkeeping burdens are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The Act, as amended, provides authority for this action.

Title: Report Forms Under a California Federal Milk Marketing Order (From Milk Handlers and Milk Marketing Cooperatives).

OMB Number: 0581–NEW.

Expiration Date of Approval: Three years from date of approval.

Type of Request: This is a NEW collection.

Abstract: FMMO regulations (7 CFR parts 1000–1199) authorized under the AMAA require milk handlers to report in detail the receipts and utilization of milk and milk products handled at each of their plants that are regulated by a Federal order. The data are needed to administer the classified pricing system and related requirements of each Federal order.

A FMMO is a regulation issued by the Secretary of Agriculture that places certain requirements on the handling of milk in the area it covers. Each FMMO is established under the authority of the AMAA. The FMMO requires handlers of milk for a marketing area pay not less than certain minimum class prices according to how the milk is used. These prices are established under each FMMO after a public hearing where evidence is received on the supply and demand conditions for milk in the market. A FMMO requires payments for milk be pooled and paid to individual farmers or cooperative associations of farmers on the basis of a uniform or average price. Thus, all eligible dairy farmers (producers) share in the marketwide use-values of milk by regulated handlers.

[12] CDFA, *Classification of Dairy Products. https://www.cdfa.ca.gov/dairy/pdf/PRDCLASS.pdf.*

FMMOs help ensure adequate supplies of milk and minimum returns to producers. The FMMOs also provide for the public dissemination of market statistics and other information for the benefit of producers, handlers, and consumers.

Formal rulemaking amendments to the FMMOs must be approved in referenda conducted by the Secretary.

During 2015, 1,438 California dairy farmers produced over 40.9 billion pounds of milk. This volume represents approximately 20 percent of all milk marketed in the U.S. The value of this milk delivered to CSO regulated handlers at minimum CSO classified prices was over $3 billion. Producer deliveries of milk used in Class 1 products (mainly fluid milk products) totaled 13 percent of the State's market utilization.

Under the proposed California FMMO, an estimated 3.4 billion pounds of milk would be pooled, making it the largest FMMO pool. Class I volume pooled would approximate 438 million pounds each month, making it the third largest.

Each FMMO is administered by a Market Administrator. The Market Administrator is authorized to levy assessments on regulated handlers to carry out their duties and responsibilities under the FMMOs. Additional duties of the Market Administrator are to prescribe reports required of each handler, to assure handlers properly account for milk and milk products, and to assure such handlers pay producers and associations of producers according to the provisions of the FMMO. The Market Administrator employs a staff that verifies handlers' reports by examining their records to determine that required payments are made to producers. Most reports required from handlers are submitted monthly to the Market Administrator.

The forms used by the Market Administrators are required by the respective FMMOs authorized by the AMAA. The forms are used to establish the quantity of milk received by handlers, the pooling status of the handlers, the class use of milk by the handler, and the butterfat content and amounts of other components of the milk.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the proposed California FMMO, and their use is necessary to fulfill the intent of the AMAA as expressed in the FMMO and in the rules and regulations proposed under the FMMO. The information collected will only be used by authorized employees of the Market Administrator and authorized representatives of the USDA, including AMS Dairy Program staff.

Some of the established forms under ''Report Forms under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives)'' OMB No. 0581–0032 will be used and modified for this proposed order. However, the burden shown in this section is for this collection only. Upon approval, USDA will request to merge this burden into the currently approved OMB No. 0581–0032. All separate burdens will become all inclusive.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.06 hours per response.

Respondents: Milk handlers and milk marketing cooperatives.

Estimated Number of Respondents: 55.

Estimated Total Annual Responses: 2,022.

Estimated Number of Responses per Respondent: 36.76.

Estimated Total Annual Burden on Respondents: 2138.35.

Comments are invited on: (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 including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. A 60-day period is provided to comment on the information collection burden.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this Recommended Decision with respect to the proposed marketing agreement and order regulating the handling of milk in California.

This Recommended Decision is issued pursuant to the provisions of the AMAA and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The proposed marketing agreement and order are authorized under 7 U.S.C. 608(c).

The proposed marketing agreement and order are based on the record of a public hearing held September 22 through November 18, 2015, in Clovis, California. The hearing was held to receive evidence on four proposals submitted by dairy farmers, handlers, and other interested parties. Notice of this hearing was published in the **Federal Register** on August 6, 2015.

Ninety-eight witnesses testified over the course of the 40-day hearing. Witnesses provided a broad overview of the history and complexity of the California dairy industry, and submitted 194 exhibits containing supporting data, analyses, and historical information.

The material issues presented on the record of hearing are as follows:

1. Whether the handling of milk in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether economic and marketing conditions in California show a need for a Federal marketing order that would tend to effectuate the declared policy of the Act;

3. If an order is issued, what its provisions should be with respect to:

a. Handlers to be regulated and milk to be priced and pooled under the order;

b. Classification of milk, and assignment of receipts to classes of utilization;

c. Pricing of milk;

d. Distribution of proceeds to producers; and

e. Administrative provisions.

Findings and Conclusions

The findings and conclusions on the material issues are based on the record of the hearing. Discussions are organized by topic, recognizing inevitable overlap in some areas. Topics are addressed in the following order:

1. Regulatory Comparison
2. Overview of Proposals
3. Justification for a California FMMO
4. California Quota Program Recognition
5. Definitions and Uniform Provisions
6. Classification
7. Pricing
8. Pooling
9. Transportation Credits
10. Miscellaneous and Administrative Provisions

1. Regulatory Comparison

The purpose of the following section is to provide a general description and comparison of the major features of the California state dairy regulatory

framework and the FMMO system as provided in the evidentiary record. A more detailed discussion of each issue is provided in the appropriate section of this decision.

California State Order

Currently, milk marketing in California is regulated by the CDFA. The CSO is codified in the *Pooling Plan for Market Milk,* as amended, and in two *Stabilization and Marketing Plan(s) for Market Milk,* as amended, for the Northern and Southern California marketing areas.[13]

Quota

The California quota program is a state-administered producer program that entitles the quota holder to $0.195 per pound of solids-not-fat above the CSO base and overbase price of milk.[14] The quota premium is funded through a deduction from the CSO marketwide pool before the CSO overbase price is calculated. The quota program requires quota holders to deliver milk to a pool plant at least once every 60 days. Quota can be bought and sold, and according to record evidence, approximately 58 percent of California dairy farms owned some volume of quota in 2015.

Classification

The CSO provides for the pricing of five classified use values of milk. In general, Class 1 is milk used in fluid milk products; Class 2 is milk used in heavy cream, cottage cheese, yogurt, and sterilized products; Class 3 is milk used in ice cream and frozen products; Class 4a is milk used in butter and dry milk products, such as nonfat dry milk; and Class 4b is milk used in cheese—other than cottage cheese—and whey products.

Pricing

The CSO utilizes an end-product pricing system to determine classified prices for raw milk produced and manufactured in the State of California. Class 1, 4a, and 4b prices are announced monthly. Class 2 and 3 prices are announced bi-monthly. Prices for all five milk classes are component-based. Three components of milk are used to determine prices: Butterfat (fat); solids-not-fat (SNF), which includes protein and lactose; and a fluid carrier (used in only the Class 1 price).

The CSO determines milk component prices based on commodity market prices obtained from the Chicago Mercantile Exchange (CME), the AMS Dairy Market News Western Dry Whey—Mostly (WDW-Mostly) price series, and the announced nonfat dry milk (NFDM) California Weighted Average Price (CWAP), which is determined by CDFA through weekly surveys of California manufacturing plants.

The price for milk used in cheese manufacturing (CSO Class 4b) is a central issue in this proceeding. The Class 4b price is announced monthly and utilizes average commodity market prices for block Cheddar cheese, butter, and dry skim whey to determine the Class 4b component values. The average CME prices for butter and 40-pound Cheddar blocks are adjusted by f.o.b. price adjusters, which are designed to represent the difference between the CME price and the price California manufacturers actually receive. The CME butter price is also reduced by $0.10 per pound to derive the value of whey butter as it relates to cheese processing. The value of dry skim whey is determined through a sliding scale that provides a ''per hundredweight (cwt)'' value based on a series of announced WDW-Mostly per pound value ranges. The sliding scale determines dry whey's contribution to the Class 4b price, with a floor of $0.25 per cwt and a ceiling of $0.75 per cwt when the WDW-Mostly price equals or exceeds $0.60 per pound.

The CSO pricing system has a number of features worth highlighting. First, under the CSO, handlers must pay at least minimum classified prices for all Grade A milk purchased from California dairy farmers, regardless of whether the milk is pooled on the CSO. Additionally, Class 1 processors may claim credits against their pool obligations to offset the cost of fortifying fluid milk to meet the State-mandated solids content standards.

The classified use values of all the milk pooled on the CSO are aggregated, and producers are paid on the fat and SNF component levels in their raw milk. Producers are paid on the basis of their allocated quota (if applicable), base, and overbase production for the month. While the CSO pricing formulas have changed over time, in their current form, the base and overbase prices are the same. Generally, the quota price is the overbase price plus the $1.70 per cwt quota premium.

Pooling

Almost all California-produced milk received by California pool plants is pooled on the CSO, with some exceptions. Grade B milk is neither pooled nor subject to minimum prices. Manufacturing plants that do not make any Class 1 or 2 products can opt out of the pool, however, they are still required to pay announced CSO classified minimum prices for Grade A milk received. The requirement that quota holders must deliver milk to a pool plant at least once every 60 days tends to limit the amount of Grade A milk not pooled on the CSO. The decision not to pool milk in California carries with it a stipulation that the plant may not repool for 12 months after opting not to pool, and after repooling, a plant cannot opt out of pooling for 12 months.

Entities recognized as producer-handlers under the CSO may be exempt from pooling some or all of their milk. Producer-handlers are dairy farmers who also process and distribute their dairy products. Fully exempt (''Option 66'') producer-handlers have minimal production volumes and are exempt from the pricing and pooling provisions of the CSO. Producer-handlers who own exempt quota (''Option 70'') do not account to the CSO marketwide pool for the volume of Class 1 milk covered by their exempt quota.

The State of California cannot regulate interstate commerce, and therefore milk from out-of-state producers cannot be regulated by the CSO. While the record reflects that California handlers typically pay for out-of-state milk at a price reflective of the receiving plant's utilization, those prices are not regulated or enforced by the CSO.

Transportation Credits

The CSO provides transportation credits to producers for farm-to-plant Class 1, 2 and 3 milk movements between designated supply zones and plants with more than 50 percent Class 1, 2 and/or 3 utilization in designated demand zones. The CSO also provides for transportation allowances to handlers for plant-to-plant milk movements.

Classification

Whereas the CSO designates five classes of milk utilization, FMMOs provide for four classes of milk utilization. FMMO Class I is milk used in fluid milk products. Class II is milk used to produce fluid cream products, soft ''spoonable'' products like cottage cheese, ice cream, sour cream, and yogurt, and other products such as kefir, baking mixes, infant formula and meal replacements, certain prepared foods, and ingredients in other prepared food products. Class III is milk used to

[13] Chapter 2, Part 3, Division 21 and Chapter 3, Part 3, Division 21 of the California Food and Agriculture Code.

[14] The hearing record reveals that the $0.195 per pound solids-non-fat equates to a $1.70 per cwt of milk quota premium. Additionally, under current CSO provisions, base and overbase prices are equal.

produce spreadable cheeses like cream cheese, and hard cheeses, like Cheddar, that can be crumbled, grated, or shredded. Class IV is milk used to produce butter, evaporated or sweetened condensed milk in consumer-style packages, and dry milk products.

Federal Milk Marketing Orders

A FMMO is a regulation issued by the Secretary of Agriculture (Secretary) that places certain requirements on the handling of milk in a defined geographic marketing area. FMMOs are authorized by the AMAA. The declared policy of the AMAA is to ''. . . establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce . . .'' (7 U.S.C. 602(1)) . The principle means of meeting the objectives of the FMMO program are through the use of classified pricing of milk and the marketwide pooling of returns.

Pricing

Like the CSO, the FMMO program currently uses end-product price formulas based on the wholesale prices of finished products to determine the minimum classified prices handlers pay for raw milk in the four classes of utilization. However, the FMMO pricing system has some notable differences. While the CSO announces some classified prices on a bi-monthly basis, FMMOs announce prices for all four milk classes monthly. FMMOs use four components of milk to determine prices: Butterfat, protein, nonfat solids and other solids.

Like the CSO, the FMMO determines component prices based on commodity prices. However, AMS administers the Dairy Product Mandatory Reporting Program (DPMRP) to survey weekly wholesale prices of four manufactured dairy products (cheese, butter, NFDM and dry whey), and releases weekly average survey prices in the National Dairy Product Sales Report (NDPSR).[15] The FMMO product-price formulas use these surveyed prices to determine the component values in raw milk.

As referenced previously, a main feature of this proceeding is the pricing of milk used for cheese manufacturing (FMMO Class III). The FMMO pricing system determines the Class III value from DPMRP surveyed butter, cheese, and dry whey prices. The FMMO does not utilize a sliding scale to determine the value of whey that contributes to the Class III price.

Unlike the CSO, FMMOs do not provide for a tiered system of producer payments. A uniform blend price is computed for each FMMO reflecting the use of all milk in each marketwide pool. A blend price is paid for all milk that is pooled on the FMMO, adjusted for location. In six of the FMMOs, producers are paid for the pounds of butterfat, pounds of protein, pounds of other solids, and cwt of milk pooled. The cwt price is known as the producer price differential (PPD) and reflects the producer's pro rata share of the value of Class I, Class II, and Class IV uses in the pool relative to Class III value. In the other four FMMOs, producers are paid on a butterfat and skim basis.

Pooling

Inclusion in the FMMO marketwide pool carries with it an obligation to be available to serve the fluid market with necessary milk supplies throughout the year. In the FMMO system, participation in the pool is mandatory for distributing plants that process Grade A milk into Class I products sold in a FMMO marketing area. Handlers of manufacturing milk (Class II, III or IV) have the option of pooling, and pool eligibility is based on performance standards specific to each FMMO.

FMMOs recognize the unique business structures of producer-handlers, and exempt them from the pricing and pooling regulations of the orders based on size. Producer-handler exemptions under FMMOs are limited to those vertically-integrated entities that produce and distribute no more than three million pounds of packaged fluid milk products each month.

Unlike the CSO, FMMOs are authorized to regulate the interstate commerce connected with milk marketing. Thus, there is no differentiated regulatory treatment for milk produced outside of a FMMO marketing area boundary. All eligible milk is pooled and priced in the same manner, regardless of its source.

Transportation Credits

The Appalachian and Southeast FMMOs provide for transportation credits to offset a handler's cost of hauling supplemental milk to Class I markets. During deficit months, handlers can apply for transportation credits to offset the cost of supplemental milk deliveries from outside the marketing area to meet the Class I demand of FMMO handlers. The most significant difference from the CSO is that the FMMO transportation credits described are not paid from the marketwide pool. Instead, they are paid from separate funds obtained through monthly assessments on handlers' Class I producer milk. The exception is the Upper Midwest FMMO, which provides transportation credits on plant-to-plant milk movements paid from the marketwide pool.

2. Overview of Proposals

Four proposals were published in the Hearing Notice of this proceeding. Dairy Farmers of America, Inc., Land O'Lakes, Inc., and California Dairies, Inc., jointly submitted Proposal 1. Dairy Farmers of America, Inc. (DFA), is a national dairy-farmer owned cooperative with approximately 14,000 members and several processing facilities located throughout the United States, with products marketed both nationally and internationally. Within California, DFA represents 260 members and operates three processing facilities. Land O'Lakes (LOL) is a national farmer-owned cooperative with over 2,200 dairy-farmer members. LOL has processing facilities in the Upper Midwest, the eastern United States, and the State of California, with products marketed nationally and internationally. Within California, LOL represents 200 dairy-farmer members and operates three processing facilities. California Dairies, Inc. (CDI), is a California based dairy-farmer owned cooperative with 390 dairy-farmer members, six processing facilities in California, and national and international product sales. Combined, DFA, LOL, and CDI (Cooperatives) market approximately 75 percent of the milk produced in California.

Proposal 1 seeks to establish a California FMMO that incorporates the same dairy product classification and pricing provisions as those used throughout the FMMO system. Proposal 1 also includes unique pooling provisions, described as ''inclusive'' throughout the proceeding that would pool the majority of the milk produced in California each month, while also allowing for the pooling of milk produced outside of the marketing area, if it meets specific pooling provisions. The proposal includes fortification and transportation credits similar to those currently provided by the CSO. Lastly, Proposal 1 provides for payment of the California quota program quota values from the marketwide pool before the FMMO blend price is computed each month.

Proposal 2 was submitted on behalf of the Dairy Institute of California (Institute). The Institute is a California trade association representing proprietary fluid milk processors and cheese manufacturers, and cultured and

[15] Official Notice is taken of the Notice of Equivalent Price Series: 77 FR 22282. The National Dairy Product Sales Report was deemed as equivalent to the price series previously released by the National Agricultural Statistics Service.

frozen dairy products manufacturers in 38 plants throughout California. Institute plants process 70 percent of the fluid milk products, 85 percent of the cultured and frozen dairy products, and 90 percent of the cheese manufactured in the state. The Institute's first position is that a California FMMO should not be promulgated. However, should USDA find justification for promulgation, the Institute supports Proposal 2. Proposal 2 incorporates the same dairy product classification provisions used throughout the FMMO system, as well as pooling provisions that are consistent with those found in other FMMOs. The Proposal 2 pooling provisions require the pooling of Class I milk, but the pooling of milk used in manufactured products is optional. Proposal 2 includes fortification and transportation credits similar to those currently provided by the CSO. It also includes an additional shrinkage allowance for extended shelf life (ESL) products above that provided in the FMMO system. Lastly, Proposal 2 recognizes quota value by allowing producers to opt out of the quota program, thus receiving a FMMO blend price reflective of the market's utilization. Under Proposal 2, producers who remain in the quota program would have their blend price monies transferred to CDFA and redistributed according to their quota and non-quota holdings.

Proposal 3 was submitted on behalf of the California Producer Handlers Association (CPHA). CPHA is an association of four producer-handlers: Foster Farms Dairy, Inc. (Foster), Hollandia Dairy, Inc., Producers Dairy Foods, Inc. (Producers), and Rockview Dairies, Inc. (Rockview). CPHA members own their respective dairy farms and process that farm milk, as well as the milk of other dairy farms, for delivery to consumers. CPHA members own exempt quota, which entitles them to exemption from CSO pricing and pooling provisions for the volume of Class 1 milk covered by their exempt quota. Proposal 3 seeks recognition and continuation of CPHA members' exempt quota status under a California FMMO.

Proposal 4 was submitted on behalf of Ponderosa Dairy (Ponderosa). Ponderosa is a Nevada dairy farm that supplies raw milk to California fluid milk processing plants. Ponderosa contends that disorderly marketing conditions do not exist in California that would warrant promulgation of a FMMO. However, if USDA finds justification for a California FMMO, Proposal 4 seeks to allow California handlers to elect partially-regulated plant status with regard to milk they receive from out-of-state producers. Such allowance would enable handlers to not pool out-of-state milk, as long as they could demonstrate that they paid out-of-state producers an amount equal to or higher than the market blend price.

3. Justification For A California FMMO

This section reviews and highlights the testimony and evidence received regarding whether or not promulgation of a California FMMO is justified. This decision finds that the proposed California FMMO would provide for more orderly marketing conditions for the handling of milk in the State of California, as provided for and authorized by the AMAA.

A Cooperative witness testified regarding current California marketing conditions and the need for establishing a California FMMO. According to the witness, California is the largest milk-producing state, producing more than 20 percent of the nation's milk. The witness stated that the pooled volume of a California FMMO would be the largest of all FMMOs, averaging slightly below 3.4 billion pounds per month; the Class I volume would represent the third largest, following the Northeast and Mideast FMMOs.

The Cooperative witness testified that the primary reason California farmers are seeking the establishment of a FMMO is to receive prices reflective of the national commodity values for all milk uses. The witness opined that orderly marketing is no longer attainable through the CSO because the prices California dairy farmers receive do not reflect the full value of their raw milk. The witness estimated that this pricing difference has reduced California dairy farm income by $1.5 billion since 2010. The witness maintained that Proposal 1 allows California dairy farms to receive an equitable price for their milk, while also tailoring FMMO provisions to the California dairy industry. The Cooperatives' post-hearing brief reflected this position.

The Cooperative witness testified that there are significant differences in prices, depending on whether a producer's milk is regulated by the CSO or a FMMO. To illustrate this difference, the witness compared California farm milk prices to those received by producers in the states that comprise the Upper Midwest and Pacific Northwest marketing areas.[16] The witness selected these areas for comparison due to the similar milk utilization in the Upper Midwest FMMO and the geographic proximity of the Pacific Northwest FMMO. The witness estimated that between August 2012 and May 2015, California dairy farmers received on average $1.85 per cwt less (ranging from $0.43–$4.27 per cwt lower) than producers pooled on the Upper Midwest and Pacific Northwest FMMOs. The witness used the data to emphasize a wide difference in prices for farmers in similarly situated areas. The witness opined that a California FMMO, as advanced in Proposal 1, would ensure California dairy farmers receive equitable prices, more in line with those received by their FMMO counterparts.

The Cooperative witness emphasized that while both the CSO and the FMMOs use end-product pricing formulas to determine class prices, the two regulatory systems use different commodity series, effective dates, yield factors, and make allowances, which result in substantially different prices, as highlighted above. The witness explained that while the two regulatory systems have always had price differences, historically CSO and FMMO prices were relatively close. According to the witness, prices began to diverge significantly in 2007 when the CSO established a fixed whey factor in its formula for milk used to produce cheese. From that point forward, the witness said, price differences have become significant and have led to market disruptions both in the fluid and manufacturing markets.

The Cooperative witness summarized USDA's justification from the FMMO Order Reform decision for adopting a national Class I price surface that assigns a Class I differential for every county in the country, including counties in California. The witness said that the separate CSO Class 1 price surface undermines the integrity of the nationally coordinated Class I price surface and has become a source of disorder in California. To demonstrate the disorder, the witness compared FMMO Class I and CSO Class 1 prices for both in-state and out-of-state purchases. The witness said that because of the CSO and FMMO differences in both classified price formulas and Class I/1 price surfaces, the Class 1 price paid by California handlers is almost always lower than what it otherwise would be if FMMO Class I prices were applicable for those same purchases.

The Cooperative witness presented a similar comparison between CSO Class 1 prices and Class I prices in FMMO areas that were likely competitors. The witness said that under FMMO regulations, the difference in Class I prices between two FMMO areas is attributed to the difference in the Class I differential at the two locations. For

[16] Wisconsin, Minnesota, and Illinois; Oregon, Washington and Northern Idaho, respectively.

example, the witness explained, the Class I price difference between two plants, one located in a $2.10 zone and another in the $2.00 zone, would be $0.10 per cwt. However, when the witness compared Class 1 prices in California and a competing FMMO area, the price difference was always greater than the difference in differentials. For example, the FMMO differential in the Los Angeles/San Diego market is $2.10, while the differential in neighboring Phoenix is $2.35, a difference of $0.25. However, said the witness, when comparing the actual CSO Class 1 price in Los Angeles/San Diego with the FMMO Class I price in Phoenix from August 2012 to July 2015, the difference averaged $0.62. The witness concluded that these observed price differences undermine a nationally-coordinated pricing structure and contribute to disorderly marketing where fluid milk handlers pay different minimum prices depending on where they are regulated.

The Cooperative witness also provided testimony on the CSO and FMMO price disparities for manufacturing milk. The witness testified that FMMO Class II, III, and IV prices reflect national prices for products manufactured in these classes. If Proposal 1 is adopted, the witness said, California handlers would pay the same uniform prices as their FMMO competitors in the national marketplace. The witness noted past FMMO decisions that discussed the national supply and demand for manufactured dairy products and the need for national uniform manufacturing prices. The witness stressed that California producers should also receive these national prices like their FMMO counterparts.

The Cooperative witness elaborated on the differences between CSO and FMMO manufacturing class prices. When comparing FMMO Class II to CSO Class 2 and Class 3 prices, the witness cited differences in the commodity series used as price references, the time periods of data used, and the length of time prices are applicable to explain the sometimes large differences in prices under the two regulatory systems. As a result, the witness said, Class 2 products are sometimes sold on a spot basis to exploit short-term price differences.

The Cooperative witness presented a comparison of CSO Class 4a and FMMO Class IV prices from January 2000 to July 2015, revealing that over the entire time period the Class 4a price averaged $0.29 per cwt less than the Class IV price. The witness added that over this 15-year period, the CSO Class 4a price on an annual average basis was never above the FMMO Class IV price.

The Cooperative witness also provided testimony on the price disparity between CSO Class 4b and FMMO Class III price formulas. Data from January 2000 to July 2015 revealed that the CSO Class 4b price was lower than the Class III price in 161 of the 187 months examined. The witness computed the difference over that 15-year time period averaged $0.91 per cwt, with the largest difference of $3.24 per cwt occurring in November 2014. The witness attributed the observed price differences to differences in the valuation of dry whey between the CSO 4b and the FMMO Class III formulas. The witness said that in 2007, the whey factor in the CSO Class 4b formula became a tiered, bracketed system with a floor of $0.25 and a ceiling of $0.75 which is reached when the WDW-Mostly price is greater than or equal to $0.60 per pound. The witness added that the whey value contained in the FMMO Class III price comes from the AMS NDPSR, and reflects the mandatory reporting of dry whey sales throughout the country. The witness estimated that from August 2012 through July 2015, the DMN whey value contributed $0.68 per cwt to the CSO 4b price, while the NDPSR whey value contributed $2.39 per cwt to the FMMO Class III price. The witness concluded that the whey cap contained in the CSO 4b price results in lower contributions to the marketwide pool than what is observed in the national marketplace and reflected in FMMO prices.

The Cooperative witness reiterated the consequences of two different regulatory pricing schemes have led to severe differences between the regulated markets. The witness opined that the regulatory differences allow California handlers who purchase raw milk and manufacture products for sale on the national marketplace to pay substantially different regulated minimum prices than handlers regulated by the FMMO system. The witness estimated that because of the regulatory price differences, from August 2012 to July 2015, California farms received, on average, $1.89 per cwt less than similarly-situated FMMO farms. The witness concluded that this results in California farms being in a worse competitive position than other similarly situated FMMO farms. The witness labeled this as disorderly and said that this condition should be remedied through the adoption of Proposal 1.

The Cooperative witness also entered data estimating the value of regulating interstate commerce through the establishment of a California FMMO. The witness cited January 2009 through July 2015 CDFA data that indicated a monthly average of 54.5 million pounds of milk originating outside the state was processed by California processing plants and another monthly average 36 million pounds of milk was produced inside California and sold to plants located outside of the state. The witness explained that this milk is able to evade CSO minimum-price regulations because of the state's inability to regulate interstate commerce. Consequently, the witness said, out-of-state farms delivering milk to California plants can receive plant blend prices, which can be higher than the market's overbase price received by in-state producers delivering to the same plant. The witness elaborated that the problem is compounded because processors receiving these unregulated supplies are not required to pay minimum classified prices and can instead pay a lower price than their regulated competitors. By regulating these transactions through the establishment of a California FMMO, the witness stressed, the California market would be more orderly.

The Cooperatives' post-hearing brief also highlighted the CSO's inability to regulate out-of-area milk as a market dysfunction. The Cooperatives wrote that out-of-area sales financially harm California dairy farms because the Class 1 revenues from those sales does not contribute to the CSO marketwide pool that is shared with all the farms in the market.

A consultant witness, appearing on behalf of the Cooperatives, testified in support of Proposal 1. The witness was of the opinion that the primary purpose of FMMOs is to enhance producer prices, which is provided in the AMAA through its flexibility to regulate milk and/or milk products, not just fluid milk. As evidence of this flexibility, the witness discussed the Evaporated Milk Marketing Agreement, in existence until 1947, under which manufacturing milk was regulated. Therefore, the witness said, it is reasonable to conclude from this example that the regulation of all California plants that purchase milk from California farms, as contained in Proposal 1, would fall within the scope of the AMAA.

The consultant witness elaborated that extending minimum price regulation to all classes of milk in California is necessary to avoid the market-disrupting practice of handlers opting to not pool eligible milk because of price, often referred to as depooling. The witness said that many FMMOs have adopted provisions to reduce the instances of depooling. Currently, under the CSO, the witness said, while plants

can choose to not participate in the marketwide pool, there is no price advantage, because they are still required to pay minimum classified prices. The witness was of the opinion that the impact of depooling would be greater in a California FMMO because of how California quota premiums are paid. The witness testified that uniform prices calculated after deducting quota premiums would be less than they otherwise would be, if large volumes of milk were not pooled. Additionally, the witness addressed the issue of uniform producer payments. The witness was of the opinion that once quota premiums were paid, as required by California law, remaining pool revenues would be distributed uniformly to producers for non-quota milk, as required by the AMAA.

The consultant witness addressed the issue of whether Proposal 1 would implement classified prices that were too high. The witness opined that the classified price formulas contained in Proposal 1 would not establish manufacturing milk prices that are too high because FMMO regulated handlers in other areas are already paying those prices. The witness entered data showing that cheese production has increased in the western states (not including California and Idaho) by 92 percent from 2000 to 2014, while California cheese production has increased only 64 percent. The witness concluded that minimum FMMO prices have not been detrimental to FMMO-regulated plants, and offered the fact that over-order premiums are currently paid to FMMO producers to support that claim. The witness stated that provisions providing for orderly marketing conditions should also provide stability (regulations should not alter market transactions) and efficiency (regulations should stimulate a competitive economic environment), and concluded that both are embodied in Proposal 1.

Twenty-seven California dairy farmers testified in support of Proposal 1. Sixteen belong to one of the three proponent Cooperatives: Nine LOL members, three DFA members, and four CDI members. An additional 11 dairy farmers not associated with the Cooperatives provided testimony supporting the adoption of Proposal 1.

Although each dairy farmer provided unique testimony, several difficulties challenging the California dairy industry were addressed repeatedly. Producer testimony described financial hardships due to the CSO producer prices they receive consistently being below the amount needed to cover the cost of production. One farmer witness cited CDFA cost of production data from the first quarter of 2015 for the North Valley of California, and estimated that 90 percent of surveyed farms had negative net incomes. Farmer witnesses stated that a FMMO would provide an opportunity for dairy farms to cover their cost of production and work toward reducing debts incurred from historically low mailbox prices.

A number of producers testified that historically they had many competitive advantages (low cost of land, grain, hay and water) enabling them to produce milk at a significantly lower cost than farms located in the rest of the county. All of the witnesses testified that the hardships of high land, feed, and/or water costs, as compared to those in other dairy states, have eroded their competitive advantage. Citing no competitive advantage, coupled with the difference between the FMMO and CSO pricing formulas, dairy farmers testified they are receiving a lower mailbox price than their FMMO counterparts. Testimony stressed that these realities are forcing many California dairy farms out of business.

Many producers were of the opinion that their inability to cover the cost of production is tied to how whey is valued in the CSO Class 4b formula. Thirteen of the 27 producers testified regarding the impact of the whey valuation on mailbox prices. The witnesses stressed that the CSO historically responded to producers' needs by encouraging manufacturing plant investment that would provide an outlet for milk to be processed at a regulated price considered fair. According to the witnesses, this regulatory balance shifted in 2007 because of a CDFA rulemaking that adopted a sliding scale that capped the value of the dry whey factor in the Class 4b formula. Testimony was provided that stated that the 2007 hearing marked the start of the widening discrepancy between mailbox prices for California dairy farmers and those received by other dairy farmers across the nation. Witnesses stated the reduced mailbox prices continue to undervalue milk throughout the State. The producers were of the opinion that a California FMMO would bring California's valuation of dry whey in line with the rest of the country. With comparable whey values, producers testified their mailbox price would become more representative of the true market value of their milk.

Three testifying producers owned farms in both California and FMMO regulated areas. These producers testified to the difference in production costs and mailbox prices received by their farms over the last decade or more. Their testimonies specifically highlighted the industry differences between California and Wisconsin. The producers said the production advantages California dairy farmers enjoyed (inexpensive land, feed, and a different regulatory environment) no longer exist, and as a result, California dairy farms are closing or moving out of state at an increasing rate.

Seven producers testified that the use of futures contracting and hedging as risk management tools are hindered by the differences in the CSO and FMMO price formulas. They explained that current risk management tools are based on FMMO prices, and the fact that CSO prices are different make those tools less effective for California producers.

Eight producers provided evidence about reductions in the California dairy industry since 2007. According to the witnesses, many farms have elected to reduce their herd size or cease dairy farming. A witness provided September 2014 to September 2015 data showing that the Cooperatives have experienced a 6.6 percent reduction in milk production volume. The witness stated that the reduction seen by the Cooperatives is supported by CDFA data showing a 3.5 percent reduction in California milk production. The witness noted that while milk production in California is decreasing, it is increasing in the rest of the country. The witnesses believed the discrepancy between California milk production and national production is due to the inability of California farms to compete on a level-playing field with farms in the FMMO system. Many also expressed concern with the impact on related businesses due to the closing of many California dairy farms.

According to six producer witnesses, many farms have opted to weather the milk price volatility by diversifying their operations and investing in tree-crop production. Several witnesses testified that lenders encourage tree-crop production over dairy farming, due to the reduction of risk and the large margins attainable in tree-crop farming. Producers expressed a belief that the adoption of a California FMMO would lead to a more stable dairy industry supported by lenders.

Overall, California producer witnesses stated they are currently subject to a regulatory system that does not provide producer milk prices representative of the full value of their raw milk in the market. The producers believe adoption of a California FMMO represents an opportunity to remedy this regulatory disadvantage and to compete on a level-

playing field with the rest of the country.

A Western United Dairymen (WUD) representative testified in support of Proposal 1. WUD is a trade organization representing approximately 50 percent of California dairy farmers, whose farm sizes range from 17 to 10,000 cows. According to the WUD witness, the difference between CSO Class 4b and FMMO Class III prices demonstrates that the CSO is not providing California dairy farms with a milk price reflective of the national marketplace for manufactured dairy products. The witness attributed the pricing differences to how dry whey is accounted for in the two price formulas. The witness said the value difference has become increasingly larger since the CSO adopted a fixed whey factor in 2007, and then subsequently replaced it with a sliding scale whey factor in 2011. The witness said that from August 2014 to July 2015, the CSO Class 4b whey value averaged $1.50 per cwt less than the FMMO Class III whey value. As a result, the witness said, there are different regulated minimum milk prices for the milk products that compete in a national market. This milk price difference, the witness stressed, results in market decisions based on government regulations instead of market fundamentals. Furthermore, the witness said, the resulting lower CSO class prices put California dairy farmers at a competitive disadvantage compared to their FMMO counterparts. The witness concluded that this situation is disorderly and reiterated WUD's support for Proposal 1 as a more appropriate method to determine the value of whey.

A witness representing the California Dairy Campaign (CDC) testified in support of Proposal 1. CDC is a dairy producer organization with members located throughout California. The CDC witness said that over the last 10 years, more than 600 California dairy farms have permanently closed or moved to other states. The witness attributed this to milk prices that have been consistently lower than the cost of producing milk in California, and noted that water and feed availability due to the ongoing drought is the primary reason for increased production costs. The witness highlighted the consolidation and concentration of the California dairy manufacturing sector that causes dairy producers to be price takers in the market, thus making equitable minimum regulated prices vital to the long-term viability of California dairy farms.

The CDC witness testified that the failure of the CSO to align with FMMO prices, particularly between CSO Class 4b and FMMO Class III, has resulted in a more than $1.5 billion loss to California producers since 2010. The witness also said that risk-management tools, particularly the USDA Margin Production Program (MPP), are not as effective for California dairy farms because the national all-milk price used to determine MPP payments is significantly higher than California producer mailbox prices under CSO regulation.

The witness highlighted CDC's support of specific provisions contained in Proposal 1, including the adoption of FMMO end-product pricing formulas, unique pooling provisions that address the needs of the California market, regulation of out-of-state milk, uniform producer-handler provisions, fluid milk fortification allowances, and the continuation of the California quota program. The witness was of the opinion that Proposal 1 addresses California's unique market conditions and is the only path to restoring California producer price equity and the health of the California dairy industry.

CDC's post-hearing brief stated CDC has supported adoption of a California FMMO for over 20 years. The brief highlighted 2015 CDFA data showing California cost of production at $19.30 per cwt, while the average farm income was $15.94 per cwt. The brief stated the belief that minimum prices are put in place to ensure dairy farmers are able to share in some minimal level of profitability. CDC estimated that in 2015, a 1,000-cow California dairy farm was paid approximately $1.4 million less than equal-sized farms whose milk was pooled on a FMMO.

A witness representing Milk Producers Council (MPC) testified in support of Proposal 1. MPC is a nonprofit trade association with 120 California dairy-farmer members, accounting for approximately 10 percent of the California milking herd. The witness agreed with testimony given by the Cooperatives outlining California's disorderly marketing conditions. The witness said that California dairy farmers have repeatedly, though unsuccessfully, sought relief through CDFA to bring CSO classified prices more in line with FMMO classified prices. This is why California dairy farmers are now seeking to join the FMMO system, the witness added.

The MPC witness testified that Proposal 1 would establish orderly marketing conditions in California, resulting in a level-playing field for producers and processors. The witness stressed that not only would Proposal 1 provide price alignment between California and FMMOs, but a California FMMO would regulate interstate commerce—something the CSO cannot do. Proposal 1 would also maintain the current California quota program, a vital financial tool for many California dairy farmers, the witness stated. The witness said that while the quota program has no impact on the minimum prices handlers pay, it does aid in providing a local milk supply for some plants that would otherwise have to source milk from farther distances. The witness explained that in some instances, quota is an investment farms located in higher cost areas of the state make to remain financially viable and be able to provide a local milk supply to plants that would otherwise have to seek a supply from farther distances.

A witness representing the National Farmers Union (NFU) testified in support of Proposal 1. NFU is a national grassroots farmer organization with over 200,000 members across the nation, including dairy farmers located in California. The witness testified that NFU supports the inclusion of California in the FMMO system so California dairy farms could receive prices similar to those received by dairy farms located throughout the country. The witness testified that California's low-milk prices and high-feed costs have resulted in strained margins and ultimately the closure of over 400 dairy farms in the last five years.

The NFU witness testified the pay price differences between dairy farms whose milk is pooled under the CSO and FMMOs is primarily due to the difference in the Class 4b and Class III prices and has resulted in disorderly marketing conditions and a revenue loss to California dairy farms of more than $1.5 billion since 2010. The witness added that pay-price differences have reduced the ability of California dairy farms to utilize risk management tools, and puts them at a competitive disadvantage when competing for resources such as feed, land, cattle and labor.

A witness appearing on behalf of the Institute testified that while the Institute offered Proposal 2 as an alternative to the Cooperatives' proposal, their first position is that disorderly marketing conditions do not exist in California to warrant the promulgation of a FMMO. The witness stated that the California dairy industry is currently regulated by the CSO, whose purpose, much like a FMMO, is to provide for orderly marketing conditions. The witness emphasized their opinion that orderly marketing conditions are currently achieved through CSO classified pricing and marketwide pooling.

The Institute witness reviewed CSO history and regulatory evolution, and highlighted regulatory changes demonstrating how the CSO has consistently adapted to changing market conditions. Some, but not all, of these regulatory changes are highlighted below.

The Institute witness explained that California sought state solutions to disorderly marketing conditions through the Young Act of 1935. When FMMOs were authorized in 1937, California opted to remain under the purview of the CSO.

The Institute witness explained that the CSO adopted marketwide pooling through the Gonsalves Milk Pooling Act. Before that time, handlers operated individual handler pools, giving Class 1 handlers strong bargaining power as producers sought Class 1 contracts. According to the witness, this led to handler practices that eroded producer revenues. The witness testified that the California quota program, also authorized by the Gonsalves Milk Pooling Act, was a way for Southern California dairy farmers, who at the time had a higher percentage of Class 1 contracts, to preserve some of the Class 1 earnings they would otherwise be required to share with all producers through marketwide pooling. At the time, the witness said, producers were assigned a production base, and producer quota was allocated based on historical Class 1 sales. Milk marketed in excess of a producer's base and quota allocations was termed overbase milk. The witness explained that, during this time, the state's population was growing, and quota was deemed necessary to ensure the market's Class 1 needs would always be met.

The Institute witness said that when the quota program was established, there was a growing number of dairy farmers who also owned fluid milk bottling operations. They typically processed all the milk they produced, and were referred to as producer-handlers. These operations feared that the income benefits they gained from processing their own milk would disappear with the establishment of mandatory pooling. To relieve this concern, the witness said smaller producer-handlers were exempted from pooling in return for not receiving a quota allocation. The witness explained larger producer-handlers had the option of not receiving a quota premium, and deducting those quota pounds from their Class 1 obligations to the pool, an amount referred to as exempt quota.

The Institute witness testified that the CSO was modified numerous times in the late 1970's and early 1980's to ensure that Class 1 needs of the market would always be met. First, call provisions were established requiring manufacturing plants participating in the pool to maintain a percentage of quota milk available to Class 1 plants. Second, a system of transportation credits and allowances was established to cover part of the cost of moving milk from surplus areas to deficit areas for Class 1 use. According to the witness, CDFA regularly updates these milk movement incentives to reflect current costs.

In the early 1990's, CDFA amended how the quota premium was derived. At the time, quota funds were derived from Class 1, 2 and 3 prices, while overbase prices were derived from Class 4a and 4b prices. Consequently, the witness noted, the difference between quota and overbase prices varied greatly by month. The witness said the historic value of quota, in comparison to the overbase value, was evaluated to derive a fixed quota price of $0.195 per pound of quota solids nonfat.

The Institute witness also reviewed several instances since 2000 where CSO provisions were amended to reflect changing market conditions and changing FMMO regulations. These instances included adopting the ''higher of''' concept for pricing Class 1 milk, incorporating a dry whey factor in the price formulas, and changing the make allowances contained in the product price formulas—all changes the witness said were necessary to maintain orderly marketing conditions in California.

The Institute witness maintained that current California marketing conditions are orderly, and therefore the establishment of a FMMO is not justified. The witness stated the CSO program focuses on orderly marketing conditions to ensure Class 1 needs are met, while providing reasonable returns to those dairy farms who supply the Class 1 market. The witness stressed the regulated price differences between CSO Class 4a/4b prices and FMMO Class III/IV prices do not amount to disorder, and in fact, those differences are needed to maintain orderly marketing in the state.

The Institute witness testified that in the CSO-regulated environment, where all milk is subject to minimum price regulation, it is important that manufacturing prices are not set above market-clearing levels. The witness elaborated that the largest market, and therefore the highest value, for finished dairy products is in the eastern United States where most of the population resides. Therefore, the witness said, in order for California dairy products to be transported and compete in the eastern markets, they must have a lower value in the West. The witness was of the opinion that FMMO Class III and Class IV prices are not appropriate local, market-clearing prices for California.

The Institute witness also was of the opinion that current differences between CSO Class 2 and 3 prices and FMMO Class II prices are not disorderly. The witness explained that Class 2 and 3 prices are set relative to the Class 4a price, and it is important that these prices are not set so high as to encourage dairy ingredient substitution with Class 4a products. The witness argued the Cooperatives provided no evidence that the class price differences between the CSO and FMMO systems are disorderly.

The Institute witness also testified regarding the difference between CSO Class 1 and FMMO Class I prices. While CSO Class 1 prices are somewhat lower than those in neighboring FMMO areas, the witness said, they are not causing disorderly marketing conditions. The witness explained that if lower priced California milk is sold into FMMO areas, there are provisions for FMMO partial regulation to ensure the California Class 1 plants do not have a regulatory price advantage over the FMMO plants.

The Institute witness testified that recent declines in California milk production and increases in dairy farm consolidation are not evidence of disorderly marketing conditions. The witness elaborated that dairy-farm consolidation is a natural market evolution resulting from differences in producers' cost structure, risk tolerance, and access to capital. This is no different than consolidation trends that have happened in other regions of the country, added the witness. The witness also testified that, while dairy farmer margins have been volatile in recent years, California milk production costs have remained below the United States average. According to USDA Economic Research Service data, the witness said 2010–2014 California milk production costs were well below the national average, by a yearly average of $4.19 per cwt. Regardless of milk production and consolidation trends, the witness stated that California has adequate milk supplies to meet fluid demand, and milk movements to meet processing and manufacturing demands are largely efficient.

The Institute witness explained its members represent approximately 65 percent of the fluid milk processing in California, and none have expressed difficulty obtaining milk supplies or any type of disorderly marketing condition. The witness expressed concern that any changes in the regulatory environment

would likely increase the cost of fluid milk. This cost would be passed onto consumers, thereby creating a barrier for fluid milk sales, said the witness.

The Institute witness opined the CSO has an effective pricing and pooling system that has evolved over time to address changing market conditions, and disorderly marketing conditions do not exist to warrant a California FMMO. However, should USDA recommend a California FMMO, the witness said the provisions outlined in Proposal 2 should be adopted.

The post-hearing brief submitted on behalf of the Institute reiterates its opinion that USDA must find disorderly marketing conditions to justify intervention. Disorderly marketing conditions under the AMAA, the Institute wrote, refers to the fluid milk supply and not the market for manufactured milk. The brief stated that California has, on average, an 11 to 12 percent Class 1 utilization and more than enough reserve milk to meet fluid demand.

The Institute's brief outlined a six-point test that it argued needs to be met in order to justify a California FMMO. The Institute stated the current CSO already meets all six of the requirements and thus Federal intervention is not justified.

The Institute's brief also addressed the 1996 and 2014 Farm Bills as they pertain to the consideration of a California FMMO. The Institute stressed that in neither case did Congress amend the AMAA, and therefore USDA is authorized, but not required, to incorporate the California quota program. According to the Institute, whatever decision USDA makes, it must uphold the AMAA's uniform payments and trade barrier provisions. The Institute stated that Proposal 1's incorporation of the California quota program does not uphold either of these provisions.

The Institute's post-hearing brief argued that the differences in Class III and Class 4b prices, highlighted by the Cooperatives, do not provide justification for a California FMMO. According to the brief, the AMAA requires marketing orders to have regional application that recognizes differences in production and market conditions.

A witness appearing on behalf of Hilmar Cheese Company (Hilmar) testified that USDA has consistently found that evidence of disorderly marketing conditions must exist in order to justify Federal intervention through the promulgation or amendment of a FMMO. Hilmar is a dairy manufacturer with facilities in California and Texas selling dairy products both domestically and internationally. According to the witness, Hilmar's California cheese and whey manufacturing facility is the largest cheese manufacturing facility in the State, processing 12 percent of the total California milk supply, which is purchased from 200 dairy farms, most of whom are not affiliated with any cooperative.

The Hilmar witness cited previous USDA decisions, including the 1981 Southwestern Idaho/Eastern Oregon and the 1990 Carolina promulgations, as examples of what market conditions should be present in order for USDA to act. The witness was of the opinion that the Cooperatives did not provide evidence of actual disorderly marketing conditions in California warranting Federal intervention.

In its post-hearing brief, Hilmar stated that FMMOs are designed to be a marketing tool to address problems associated with the inherent instability in milk marketing. Hilmar reiterated its opposition to a California FMMO, stating that USDA has consistently denied proposals seeking price enhancement, as they believe is the case in this proceeding. Hilmar stated the record does not support the notion that there is an inadequate supply of milk for fluid use in California, and therefore a California FMMO is not justified.

A witness appearing on behalf of HP Hood, LLC, a milk processor with facilities in California and other states, testified that disorderly marketing conditions are not present in California and therefore a FMMO is not warranted. The witness said the CSO is an efficient program that has been routinely updated to reflect changing market conditions. The witness stated that HP Hood has not had any difficulty securing an adequate supply of raw milk for its California processing plants, nor is HP Hood aware of instances where raw milk had to be transported long distances in order to meet California demand.

The HP Hood witness suggested USDA consider the potential adverse impacts of recommending a California FMMO on other FMMOs, as well as potential increases in milk costs to consumers that may stem from adoption of the higher uniform minimum milk prices included in Proposal 1. The witness specifically opposed the inclusive pooling portion of Proposal 1 and explained how the ability for milk handlers to pool or not pool is how orderly marketing has been maintained in the existing FMMOs. The witness urged the adoption of Proposal 2, should USDA find that a California FMMO is warranted.

A witness appeared on behalf of Saputo Cheese USA, Inc. (Saputo), a proprietary international dairy and grocery products manufacturer and marketer with seven dairy product-manufacturing facilities in California. Saputo opposes the promulgation of a California FMMO, but should USDA find a FMMO warranted, it supports adoption of Proposal 2. The witness testified that disorderly marketing conditions are not present in California to warrant FMMO promulgation. The witness explained how CDFA has been responsive to dairy industry concerns, has held many hearings in the past, and administers the CSO in a manner that facilitates orderly marketing as well as, or better than, the FMMO system.

The Saputo witness summarized many of the similarities and differences between the CSO and FMMO systems. The witness was of the opinion that the CSO mandatory pooling rules increased milk production to surplus levels and encouraged the construction of bulk, storable dairy product manufacturing facilities. In conjunction with these rules, the witness explained, CSO regulated minimum prices are set at levels that are not too high to encourage significant additional increases in supply.

The Saputo witness described the California cheese production landscape. The witness, relying on CDFA data, said that from January through March of 2015, 57 cheese plants processed 45 percent of California's milk. The witness noted that out of the 57 cheese plants, 3 of the plants processed more than 25 percent of the state's entire milk supply. The witness stated that if the increase in the hypothetical California FMMO Class III price included in the USDA Preliminary Economic Analysis of $1.84 per cwt occurred, under a system of mandatory pooling, the aforementioned 3 cheese plants would face combined increased annual raw milk costs of nearly $196.5 million. The witness testified that such raw milk cost increases would be disorderly and threaten the viability of California manufacturing facilities.

A witness appearing on behalf of Farmdale Creamery (Farmdale) testified in support of Proposal 2. Farmdale is a proprietary dairy processing company located in San Bernardino, CA, that manufactures cheese, sour cream, dried whey protein concentrate, and buttermilk. The witness was of the opinion that disorderly marketing conditions are not present in California, since there is no shortage of milk to meet fluid milk needs. The Farmdale

witness was of the opinion that the CSO maintains an orderly market by responding to changing market conditions when warranted. Should USDA find a California FMMO justified, the witness supported adoption of Proposal 2 and opposed the mandatory pooling provisions contained in Proposal 1.

The witness also testified about financial losses incurred by Farmdale since 2005, when the CSO whey value was sometimes higher than what they could obtain from the market. The witness added that their on-again, off-again financial losses demonstrate the inability of current regulatory pricing systems to track and value the whey markets.

A witness appeared on behalf of Pacific Gold Creamery (Pacific Gold) in opposition to the adoption of a California FMMO, although the witness supported the provisions contained in Proposal 2 should a FMMO be recommended. Pacific Gold operates a dairy farmer owned specialty cheese plant in California. The witness testified that across existing FMMOs and unregulated areas, dairy product manufacturers regularly pay below FMMO minimum prices. The witness presented and explained USDA-prepared FMMO data regarding volumes of milk pooled and not pooled across existing FMMOs.

The Pacific Gold witness explained how their business produces ricotta from the whey stream of their cheese manufacturing, and how ricotta sales supplement the income of the cheese operation. The witness was of the opinion that the FMMO Class III price, and the accompanying higher whey value contained in Proposal 1, would be devastating to small and mid-size facilities. The witness also testified how an increase in California minimum-regulated prices would jeopardize exports, saying that U.S. domestic cheese prices are already relatively higher than global prices.

A post-hearing brief was submitted on behalf of Trihope Dairy Farms (Trihope). Trihope is a dairy farm located in, and pooled on, the Southeast FMMO. Trihope stated that disorderly marketing conditions do not exist in California to warrant promulgation of a FMMO. Trihope was of the opinion that California dairy farmers are seeking higher prices through a new regulatory body, which is not a justification for USDA to proceed. According to Trihope, the AMAA was designed to solve marketing problems in unregulated areas, not to address price disparities between Federal and State regulation.

Trihope expressed concern about the potential impact a California FMMO would have on the entire system. Trihope specifically noted the impacts to the southeastern marketing areas contained in the USDA Preliminary Economic Impact Analysis. According to their brief, Trihope estimates losses from 2017 to 2024 of approximately $313,091. Trihope wrote that California's marketing issues of high California milk production and limited plant capacity would not be solved by a FMMO.

A post-hearing brief submitted by Select Milk Producers, Inc. (Select), expressed support for the adoption of a California FMMO. Select is a national dairy-farmer cooperative that markets over 6.5 billion pounds of milk annually, and whose members' milk is regularly pooled on the Appalachian, Mideast, Southeast and Southwest FMMOs. Select also supplies plants located in many other FMMOs, but it does not supply any California plants. Select was of the opinion that having California's milk supply priced similarly to the rest of the FMMOs would remedy the competitive disadvantages faced by companies competing in the national marketplace, and would allow for more efficient milk movements. Select expressed support for maintaining a uniform national pricing system and opposed the Institute's alternative whey-pricing proposal. Select expressed support for the Cooperatives' inclusive pooling provisions on the basis that the provisions would apply only to California, due to its unique marketing conditions. Select stated the California quota program should be addressed outside of this rulemaking proceeding. Select was of the opinion that adoption of a California FMMO would lead to more orderly milk marketing throughout the entire FMMO system, and thus uphold the intent of the AMAA.

A post-hearing brief submitted on behalf of the Northwest Dairy Association (NDA) expressed support for Proposal 1. NDA is a dairy farmer-owned cooperative that markets the milk of its 460 members and operates numerous fluid milk and manufacturing plants located in Washington, Oregon, Idaho, and Montana. NDA was of the opinion that adoption of Proposal 1 would create more orderly marketing conditions and strengthen the entire FMMO system. As California represents the largest milk supply in the United States, NDA wrote, it is important for the integrity of the FMMO program to include the additional 20 percent of United States milk represented by California. NDA stated that California producers should not be disadvantaged with lower Class III and IV prices than what their western FMMO producer counterparts receive.

Findings

The record contains a voluminous amount of testimony, evidence and opinions as to whether or not a California FMMO is justified. The Cooperatives and their supporters argue that a California FMMO was authorized by Congress in the 2014 Farm Bill. They contend that this proceeding is not about whether or not a FMMO should be established, but rather to determine what the California FMMO provisions should be. The Cooperatives are of the opinion that the existence of disorderly marketing conditions is not required by the AMAA to justify order promulgation. They stressed in their post-hearing briefs that a FMMO needs to establish and maintain orderly marketing conditions, and that would be accomplished through the adoption of their proposal. However, should the Department find that disorderly marketing conditions must be present, the Cooperatives provided evidence of what they believe are ongoing disorderly marketing conditions in California.

In general, the record reflects that the California producer community supports joining the FMMO system. Producers are of the opinion that the prices they currently receive under the CSO do not reflect the appropriate value for their milk and its components. Particularly, producers believe that the price they receive for milk used for cheese manufacturing does not value the dry whey component at a level commensurate with what manufacturers receive for whey in the marketplace.

In contrast, the Institute and its members consistently argued throughout the hearing and in their post-hearing briefs that the existence of disorderly marketing conditions is required by the AMAA, and that such conditions do not exist in California. They provided testimony explaining how the CSO is a flexible system that is routinely evaluated through the CDFA hearing process and changes are made as market conditions warrant. The Institute and its members were united in the opinion the Cooperatives are solely seeking to receive higher prices for their milk, and that such higher prices are not justified for California.

As discussed earlier, the declared policy of the AMAA is to ''. . . establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce . . .'' FMMOs accomplish this through the classified

pricing of milk products and marketwide pooling of those classified use values. Through these mechanisms, orderly marketing conditions are provided so that handlers are assured uniform minimum raw milk costs and producers receive minimum uniform payments for their raw milk, regardless of its use.

While in recent history FMMOs have been consolidated, amended and expanded, it has been decades since a new order has been promulgated. The records of those promulgation proceedings include descriptions of the market conditions at the time, and how a FMMO would provide order in the market. However, those decisions did not, nor does this decision find, that disorderly marketing conditions must exist to justify order promulgation. Order promulgation and amendatory proceedings have reiterated that a FMMO must adhere to the declared policy of the AMAA, where there is no mention of disorderly marketing conditions.

This decision finds that a FMMO for California would provide more orderly marketing conditions in the marketing area, and therefore promulgation of a California FMMO is warranted. The record is replete with discussion from most parties on whether disorderly marketing conditions exist, or are even needed, to warrant promulgation of a California FMMO. The declared policy of the AMAA makes no mention of ''disorder,'' and this decision finds that disorderly marketing conditions are not a requirement for an order to be promulgated. The standard for FMMO promulgation is to ''. . . establish and maintain such orderly marketing conditions . . .,'' and this decision finds that the California FMMO recommended meets that standard by providing uniform minimum raw milk costs to handlers and minimum uniform payments to producers for their raw milk, regardless of its use.

The record indicates that there are both handler and producer price differences between the CSO and the FMMO systems. The record contains data regarding the difference in classified use values paid by handlers regulated by the CSO and FMMOs. As discussed later, this decision recommends the adoption of the classified price formulas that currently exist in the FMMO system. A California FMMO, under the provisions recommended in this decision, will ensure that the prices handlers pay to purchase pooled California milk will be similar to prices paid for milk pooled on other FMMOs. As commodity dairy products compete in the national market, current FMMOs uniformly price the raw milk used in those products. This pricing system ensures that competing handlers have uniform minimum raw milk costs, and consequently none has a regulatory price advantage. The record demonstrates that California manufactured dairy products compete in the national market, however the CSO regulated prices paid by California manufacturers are different than those priced by FMMOs. This decision finds the proposed California FMMO would provide classified milk prices that would be more uniform with those paid by competing handlers, and more reflective of the national market for manufactured milk products and the local market for fluid milk products, as is the policy for the 10 current FMMOs. This decision finds that these prices would provide more orderly market conditions for California.

This decision also finds that the classified prices proposed for a California FMMO will provide producers with a minimum producer blend price more reflective of the national market for manufactured products and the utilization of the local California market. Taken together, handler and producer prices reflective of the national market, for which manufactured dairy products are sold, will ensure orderly marketing conditions in California.

While the current CSO provides classified pricing and marketwide pooling similar to a FMMO, the hearing record reflects that California dairy producers have been unsuccessful in obtaining a minimum regulated price they believe is reflective of the full value of their raw milk. Some parties argued on the record that because the CSO already provides classified pricing and marketwide pooling, disorderly marketing conditions do not exist and therefore there is no justification for promulgating a California FMMO. As discussed earlier, disorderly marketing conditions are not a requirement for order promulgation. Furthermore, this decision finds that it is not the intent of the AMAA to preclude a group of producers from petitioning for a FMMO because they are otherwise regulated by a state that provides classified pricing and marketwide pooling. Such a requirement would place an undue barrier on those producers as they would not have the opportunity to petition for FMMO regulation simply because they are currently regulated by a state.

Additionally, unlike the CSO, a California FMMO would have the authority to regulate interstate commerce. The record reveals that there is milk, both raw and packaged, being sold into and out of California over which the CSO has no regulatory jurisdiction. The revenues from those Class I sales are not shared with all the producers supplying the California market. A FMMO would ensure that those classified use values would be shared with all producers who supply the California market. The ability of a California FMMO to regulate these interstate sales, either through full or partial regulation, protects the integrity of the entire regulatory framework. Furthermore, out-of-state producers supplying that milk would be paid the order's blend price, which is reflective of the market's total classified use value.

In their post-hearing brief, the Institute made reference to a ''six-point test'' that must be met in order for a FMMO to be promulgated. While the Institute correctly lists various factors that have been used in some order promulgations, the articulated AMAA standard that must be met for order promulgation is that the order will ''. . . establish and maintain such orderly marketing conditions. . . .''

Other parties in post-hearing briefs contend that the 2014 Farm Bill mandated that a California FMMO be promulgated. The Farm Bill authorized a California FMMO that recognizes quota value as determined appropriate through a rulemaking proceeding. It is important to note that California producers could have petitioned for a FMMO at any time. However, Congress did not provide for the recognition of quota before the 1996 Farm Bill, and later, the 2014 Farm Bill. This decision finds that a California FMMO is justified, as it will meet the objective of the AMAA to ''. . . maintain such orderly marketing conditions . . ..'' The provisions recommended are tailored to the California market, adhere to the uniform handler and producer pricing provisions of the AMAA, and recognize quota as authorized by the 2014 Farm Bill and as deemed appropriate by an analysis of this hearing record.

Additionally, some hearing participants indicated that a goal of FMMOs, and therefore of a California FMMO, is to enhance producer prices. Other participants from outside of California, in testimony and post-hearing briefs, expressed the opinion that a California FMMO cannot be promulgated if it would have adverse impacts on other FMMOs, and that the Department must act to negate those adverse impacts before such promulgation.

FMMOs are a marketing tool that, among other things, establish a

marketing framework and enforce market-based minimum prices to handlers and uniform payments to producers reflective of all classified use values in the market. The record reflects that California represents over 20 percent of the United States milk supply. If a California FMMO is established, over 80 percent of the United States milk supply would fall under the same regulatory framework. This decision finds that a California FMMO will provide more orderly marketing conditions in California. Through inclusion of California in the FMMO regulatory framework, the prices received by all producers participating in the FMMO system would be more reflective of the national marketplace for dairy products. This would send uniform market signals to producers that would allow them to make their own individual business decisions.

4. California Quota Program Recognition

This section reviews and highlights the testimony and evidence received regarding the appropriate recognition of the California quota program, including exempt quota, in a California FMMO. The California quota program is a state-administered program that entitles the quota holder to an additional $0.195 per pound of SNF over the CSO overbase price. The money to pay the quota premium is deducted from the CSO marketwide pool before the CSO overbase price is calculated. This decision finds that the quota program should remain entirely within the jurisdiction of CDFA, and that its proper recognition under the proposed California FMMO would be through an authorized deduction from payments due to producers.

Proposal 1

A Cooperative witness testified regarding the development of the California quota program and its continued significance to California dairy farmers. The witness explained the California quota system is a tiered pricing system, developed in the late 1960's, that pays producers on three price calculations referred to as quota, base, and overbase. In its current form, ownership of quota entitles producer-owners to a higher price for milk covered by quota, and a lower base/overbase price on their nonquota milk production. Approximately 58 percent of all California farmers own quota at varying levels, which in aggregate represents approximately 2.2 million pounds of SNF on a daily basis. The witness testified that, currently, quota premium payments are approximately $12.5 to $13 million per month, and this money is taken out of the CSO marketwide pool before the base/overbase price is calculated. The witness stressed that the quota program is an important revenue source for California dairy farms, and the value of quota should not be diminished with the adoption of a California FMMO.

The Cooperative witness reviewed the authorization of the California milk pooling and quota programs by the 1967 Gonsalves Milk Pooling Act (Gonsalves Act). Originally, the witness explained, producers were assigned quota holdings as they related to the producers' historical milk production and individual deliveries to the Class 1 market. The witness said that in the beginning, quota premiums were not a set value, but instead were determined by allocating quota holdings to the highest value milk (Class 1), then base and overbase production were allocated to the remaining classes in descending order of classified value. In essence, the witness explained, quota holders were paid the Class 1 price for their quota holdings, and then a separate lower value for their non-quota holdings. According to the witness, when CDFA sought to enhance producer prices, typically additional revenue was assigned to Class 1 and subsequently quota holders, and overbase prices were not impacted. As milk production grew without corresponding increases in quota holdings, the witness said that producers were faced with lower milk prices on their non-quota production. Therefore, the Gonsalves Act was amended, effective January 1, 1994, and set a quota premium at $0.195 per pound of SNF (equivalent to $1.70 per cwt). The result, said the witness, was that overbase production did not subsidize quota milk, and quota holders could receive a reasonable return on their quota holdings.

The witness also discussed adjustments made to the total CSO marketwide pool value in conjunction with the quota program. According to the witness, when pooling was originally established, the provisions contained producer location differentials designed to encourage quota milk to be delivered to Class 1 plants. However, as overbase milk production began to grow, location differentials applicable to only quota milk did not ensure that the market's Class 1 needs would always be met, the witness stated. Consequently, in 1983 transportation allowances (on milk movements from ranch-to-plants) were established in lieu of location differentials. At the same time, the witness said, regional quota adjusters (RQAs), while providing no direct incentive to move Class 1 milk, were established to address producer equity issues that arose with the elimination of location differentials. The witness described RQAs as reductions (ranging from $0.00 to $0.27 per cwt) to the producer's quota premium, depending on their farm location and plant of receipt. In essence, the witness said, quota premiums have a location value: The farther the dairy farm is located from the receiving plant, the lower the quota premium.

The Cooperative witness stated that quota can only be held on Grade A milk produced in California, and a quota holder must deliver milk to a pool handler at least every 60 days. The witness also noted the fact that quota is bought and sold on a monthly basis, which underscores its continued importance to California dairy farms. The witness estimated that at a price of $525 per pound of SNF, the California quota program has a value of $1.2 billion to California dairy farms.

The witness was of the opinion, which was reiterated in the Cooperatives' post-hearing briefs, that under current California and Federal statutory authorities, a California FMMO can be established and the California quota program maintained. The witness said that the main objective of Proposal 1 is to preserve the quota program to the maximum extent possible, and proponents believe this is consistent with the Congressional intent of the Agricultural Act of 2014 (2014 Farm Bill), which authorized a California FMMO that recognizes the quota program.

The witness concluded by outlining what the proponents believe is the necessary framework of a proposed working relationship between CDFA and USDA, and that the provisions contained in Proposal 1 are needed to effectively maintain the quota program. The witness explained that Proposal 1 allows the quota premium to be removed from the marketwide pool before a FMMO blend price is computed. Producers would then receive the blend price for their nonquota holdings and the FMMO blend price plus the quota premium (adjusted for RQAs) for their quota holdings. According to the witness, USDA would enforce all producer payments, including quota payments, and jurisdiction over quota administration, calculations, record keeping and regulatory changes would remain with CDFA.

In their post-hearing brief, the Cooperatives asserted that their proposal is the only one that properly

recognizes the quota program as intended by Congress. The Cooperatives rebutted the Institute's claim that adoption of Proposal 1 would create a trade barrier to milk produced outside the state because that milk would be ineligible for the quota program. The Cooperatives offered a modification that would create an out-of-state adjustor to ensure out-of-state producers do not receive a lower price due to California quota premium payments.

The Cooperatives further argued that Proposal 1 upholds the AMAA's uniform pricing provisions, as all quota would be paid uniformly, all non-quota milk would be paid uniformly, and all milk located outside of the proposed marketing area would be unaffected by the quota program. The Cooperatives' brief stated that the ability of a FMMO to regulate interstate commerce would provide a more level playing field among all handlers with sales in California.

A consultant witness, appearing on behalf of the proponents of Proposal 1, testified regarding the economic importance of the California quota program, and provided a brief history of its evolution. At current market prices, the witness estimated the value of the California quota program at $1.164 billion—a significant economic asset for dairy farms and the communities they support, especially in counties where a high percentage of milk production is covered by quota. The witness noted that not only is quota a solid financial investment for dairy farms, but it is a tangible asset used by dairy farms to obtain additional financing from banks and lenders.

The witness utilized an economic impact analysis model to estimate the total economic impact of the California quota program. The witness estimated that total annual economic value of quota is associated with a $27.9 million increase in California GDP, creation of 1,269 jobs, an $11 million increase in local tax revenue, and a $16.7 million increase in Federal tax revenue. The witness clarified that the analysis did not consider the economic impact of the quota program on non-quota holders, but stressed any change to the quota program would create regulatory uncertainty and diminish the economic value of quota. The witness was of the opinion that Proposal 2 does not recognize the economic value of quota and would result in the devaluation of the asset, which would financially harm California quota holders. The witness concluded that Proposal 1 was the only proposal that would preserve and maintain the California quota program.

Twelve dairy farmers testified that a California FMMO must provide for the continuation of the California quota program. The farmers stressed the importance of the California quota program as an asset for dairy farms throughout the state. The witnesses explained that farms utilize quota not only for the monthly quota premium they receive, but also as an asset on farm balance sheets for lending purposes. The witnesses expressed concern that any devaluation of their quota asset would be financially harmful to their businesses. Of the 27 dairy farmers who testified, 8 said they owned quota, and both quota and non-quota holders expressed support for the quota program.

A witness testifying on behalf of WUD also elaborated on the importance of maintaining the quota program and the need for strict pooling provisions to ensure the quota premium could continue being paid. The witness said quota is considered an asset and if its value is diminished, it could create cash flow and lending difficulties for dairy farms. The witness was of the opinion that if a California order was adopted with pooling provisions similar to those found in other FMMOs, the quota value would likely be diminished, which would violate the California statute.

Proposal 2

A witness appearing on behalf of the Institute testified regarding Proposal 2's recognition of the California quota program. Like the Cooperative witness, the Institute witness provided a historical overview of the quota program's authorization and evolution. The witness stated that the quota program served as a way to compensate producers who shipped most of their milk to Class 1 plants through the contract system in place prior to marketwide pooling. At the time, the witness said, the industry believed prices to producers would become more uniform and quota allocation would be equalized among producers as Class 1 utilization grew.

The Institute witness outlined the problems they believe arise from Proposal 1's method for quota recognition. The witness was of the opinion, which also was stressed in the Institute's post-hearing briefs, that the Cooperatives have rendered an overly broad interpretation of the 2014 Farm Bill, and in doing so, proposed provisions that violate the AMAA. The witness said that before quota can be recognized, a California FMMO must first determine and pay a traditional FMMO blend price to out-of-state dairy farms who cannot own quota. The witness said that subtracting the quota value from the marketwide pool first, before computing a non-quota blend price, as suggested in Proposal 1, would result in non-uniform payments to producers and violate the AMAA.

The Institute witness explained the mechanics of quota recognition in Proposal 2, which were modeled after the former Oregon-Washington FMMO. The witness said that out-of-state producers would receive a traditional FMMO blend price for their milk pooled on the California FMMO. In-state producers would have the option to receive the CDFA calculated quota and non-quota prices, or they could irrevocably opt out of the quota program and receive the traditional FMMO blend price. The witness explained that producers opting to be paid on a quota/non quota basis would have their aggregate FMMO blend price monies transferred to CDFA for reblending and distribution to that producer subset. The witness was of the opinion that by giving in-state producers the payment choice, the uniform payment provision of the AMAA would be satisfied. The Institute witness said that Proposal 2 sought to recognize quota value as authorized by the 2014 Farm Bill while simultaneously upholding the purpose and provisions of the AMAA. These opinions were reiterated in the Institute's post-hearing brief.

The Institute witness highlighted California producer support for the quota program, and was of the opinion that USDA's Preliminary Economic Impact Analysis prediction that the program would quickly erode under Proposal 2 was overstated.

Proposal 3

Proposal 3, submitted by the CPHA, seeks to have exempt quota—as part of the California quota program—be recognized and preserved, should a California FMMO be recommended. CPHA also proposed that the terms of consanguinity, as currently applied to producer-handlers under CDFA regulations, be removed to allow indefinite perpetuation of exempt quota. CPHA withdrew the second part of their proposal at the hearing.

A consultant witness for CPHA provided testimony regarding the history of the Gonsalves Act and detailed how exempt quota was included as part of the State's milk marketing program from its inception. According to the witness, the CSO marketwide pooling system and quota program was developed as an alternative to a FMMO. The witness said the quota program was originally designed so that farmers who

historically served fluid milk processors would continue to receive a higher price for the portion of their milk that had previously been under Class 1 contract; under the CSO marketwide pooling system, all of the Class 1 revenue would be shared with the market's producers. Over time, the witness said, it was thought that quota holdings would be equalized among dairy farmers. Those who had not previously held contracts with fluid milk processors were expected to be assigned rights to new quota created as the fluid milk market expanded.

The consultant witness explained that dairy farmers who processed their own milk into fluid milk products were issued exempt quota, rather than regular quota, under the new CSO system. The exempt quota was allotted to these vertically integrated entities, known as producer-handlers, in recognition of how their milk was marketed. The witness said that there were originally 49 exempt quota holders, but only 4 remain. The witness said that the amount of exempt quota was legislatively capped in 1995.

The consultant witness clarified that exempt quota was issued as certificates of ownership to the producer entity. The witness explained that the handler side of the business is still required to report all its milk receipts to the CSO, and in turn, the handler entity receives a credit against its financial obligation to the pool for the volume of exempt quota owned by the producer entity. The handler entity then accounts to the CSO marketwide pool for Class 1 sales in excess of the exempt quota volume, said the witness. The producer entity side receives the Class 1 price from the handler side for the exempt quota volume of milk they produce, and then they receive a combination of the quota and overbase prices from the marketwide pool, depending on their regular quota holdings.

A witness from Producers, testifying on behalf of CPHA, said that all four members of CPHA own exempt quota, are referred to as ''Option 70'' producer-handlers, are fully regulated, and report to the CSO marketwide pool for all their Class 1 sales. The witness contrasted this to ''Option 66'' producer-handlers, who are fully exempt from the CSO and do not participate in the quota program. Of the original 49 ''Option 70'' producer-handlers, the witness said only the 4 CPHA members remain, and all have maintained essentially the same business structures since the quota program was established.

According to the Producers witness, CPHA members hold both exempt quota and regular quota, but most of the milk produced by CPHA members is accounted for as overbase production. Using 2015 CDFA data, the Producers witness calculated that ''Option 70'' producer-handler milk represents approximately 0.6 percent of all California production. The witness estimated that exempt quota represents 17.4 percent of ''Option 70'' producer-handler production and 4.6 percent of all California Class 1 sales. The witness said that all of the milk produced and sold by CPHA members, including volumes covered by exempt quota, is reported to the CSO marketwide pool.

The Producers witness said that the Gonsalves Act primarily addressed industry problems that did not impact producer-handlers because all the milk from their dairy operations flowed to their own Class 1 plants and the markets they had developed. The witness was of the opinion that the exempt quota feature was included as part of the quota program to recognize the vertically integrated producer-handler's unique business structure.

Additional CPHA witnesses representing Foster and Rockview joined the Producers witness in describing their acquisition and maintenance of exempt quota over the years. Each mentioned they had to make strategic business decisions or sacrifices in order to preserve their exempt quota status.

The CPHA witnesses attempted to quantify the value of exempt quota, explaining that exempt quota is carried as an asset on their farms' books and can be sold as or converted to regular quota. The CPHA witnesses measured the value of exempt quota as the difference between the CSO Class 1 and the quota prices. Using historical CDFA data, the Producers and Rockview witnesses calculated the average exempt quota value over the previous 20 years to be approximately $1.14 and $1.20 per cwt, respectively.

Using CDFA data for the preceding five years, a second Foster witness calculated the value of exempt quota in terms of regular quota for both northern and southern California. The witness estimated that every pound of exempt quota in northern California and southern California is worth 1.96 pounds and 2.12 pounds of regular quota, respectively. Valuing regular quota at $525 per pound of SNF, but not adjusting for RQAs, the witness estimated the value of exempt quota as $1,029 per pound of SNF in northern California, and $1,113 per pound of SNF in southern California. Citing CDFA production data, the witness calculated the value of the collective 40,244.51 pounds of SNF exempt quota in northern California as $41,411,600 and the 17,669.59 pounds of SNF exempt quota in southern California as $19,666,253.

The Rockview witness added that converting exempt quota to regular quota would make those volumes eligible for CSO transportation credits that are not currently available for exempt quota milk.

A Cooperative witness also testified with regard to the evolution of exempt quota for ''Option 70'' producer-handlers. The witness estimated that the four CPHA members market approximately five percent of all California Class 1 sales. The witness explained that exempt quota entitles the producer-handler to waive any pool obligation on those holdings. The witness described the value of exempt quota as the difference between the Class 1 and quota prices. The witness estimated that from 1970 through 2014, the additional value of exempt quota was approximately $0.58 per cwt in southern California. The witness estimated the monthly impact to the marketwide pool of recognizing exempt quota in this manner at less than one-half of one cent per cwt. The witness testified that the Cooperatives did not oppose adoption of Proposal 3.

A witness representing the Institute was of the opinion that exempt quota was offered to large producer-handlers for political expediency. According to the witness, as the Gonsalves Act and the particulars of marketwide pooling were being developed in the 1960s, larger producer-handlers worried they would lose advantages enjoyed under the then-prevailing system. To head off producer-handler opposition to marketwide pooling, the witness contended concessions were made to smaller producer-handlers who were exempted entirely from pooling and received no quota allocation. Larger entities were given the option to forgo the quota premium and instead exempt those pounds from their Class 1 pool obligations.

The Institute witness testified that exempt quota holds no real market value, as it cannot be bought and sold. The witness acknowledged that determining an equivalency between exempt quota and regular quota might be one method to assign a value to exempt quota. The Institute witness was of the opinion that exempt quota holders have already recovered the cost of their exempt quota, which they were last able to purchase 20 years ago.

A witness from Dean Foods testified that the competitive advantage producer-handlers gain from their exempt quota can be spread out over

their total volume of Class 1 sales. The witness argued that CPHA witnesses diluted the impact of exempt quota on Class 1 sales by comparing exempt quota volumes to total California milk production. The witness contended that it was more accurate to compare total ''Option 70'' producer-handler Class 1 production to total California Class 1 sales. The witness calculated that the total volume of the 4 producer-handlers, including their exempt quota volumes, accounted for 24 percent of total California Class 1 volume, including milk from out of state. The witness testified that 31 handlers process the other 76 percent of California Class 1 milk.

Additional fluid milk processor witnesses representing Clover Stornetta Farms and Farmdale Creamery, along with another Dean Foods witness, all testified that their companies face significant disadvantages compared to producer-handlers with exempt quota because, unlike exempt quota holders, their companies must account to the CSO pool at classified prices every month for all the milk they utilize. Some witnesses claimed they have lost sales to ''Option 70'' producer-handlers due to these regulatory disadvantages.

The Producers witness countered opposition testimony that exempt quota provides a competitive advantage enabling them to bid customers away from fully-regulated handlers. The witness said that Producers pays the Class 1 price to the farm side of the business for the exempt quota milk they use, and pays the quota or overbase price for the rest of the farm's milk it processes.

In its post-hearing brief, the Institute argued against recognition of exempt quota under a California FMMO. According to the Institute's brief, the recognition of exempt quota in a California FMMO would violate the AMAA's uniform pricing provisions. The Institute explained that by recognizing exempt quota, exempt-quota-holding-producer entities would not share the value of all their Class 1 sales with their fellow dairy farmers, and handler entities would not be required to pay uniform minimum prices for their raw milk supplies.

The Institute brief further argued that the 2014 Farm Bill language authorizing a California FMMO that recognizes quota value does not mean California's entire quota system should be preserved and maintained, nor that certain Class 1 handlers should be permitted to have a regulatory competitive advantage over other Class 1 handlers. The Institute brief also argued that permitting a differentiated status for only those few entities who currently own exempt quota would be inequitable to new market entrants.

In response, CPHA's reply brief asserted that CPHA handler entities currently pay Class 1 prices for all their raw milk, exempt quota provides no financial advantage over other fully-regulated handlers, and there are no market disruptions attributable to exempt quota. The reply brief stressed that CPHA producer entities, not their handler counterparts, hold exempt quota. Their reply brief also asserted the record contains no evidence that exempt quota holders enjoy raw milk price advantages. CPHA contended that all handlers pay the same classified price for raw milk in California despite misperceptions to the contrary. CPHA pointed out that competitors have won and lost accounts for milk sales for a variety of reasons not necessarily attributed to exempt quota ownership.

According to CPHA's reply brief, Congress's use of the term ''quota system,'' and its omission of specific reference to exempt quota in the 2014 Farm Bill language is consistent with its directive that the Secretary should hold a hearing to consider, and is authorized to recognize, all aspects of California's quota program under a California FMMO.

CPHA's reply brief clarified the intent of Proposal 3 to allow for the preservation of exempt quota status for those few producer-handlers who own it. CPHA argued its members are not seeking exemption from all pricing and pooling obligations under a California FMMO, but merely recognition of their ownership of exempt quota and the related volumes of production it represents.

A post hearing brief submitted by Trihope expressed concerns regarding the recognition of the California quota program within the FMMO framework. Trihope was of the opinion that any recognition of quota would violate the AMAA's uniform payments provision. Trihope also wrote that authorizing quota payments would give a revenue advantage to California dairy farms and create a trade barrier for out-of-state farms seeking to be pooled on the California FMMO.

Findings

The record contains detailed information about the establishment and evolution of the quota program administered by the State of California. The record reflects that the Gonsalves Act legislatively authorized both the California quota program and marketwide pooling within the structure of the CSO. Until that point, dairy farms were paid through individual handler pools that reflected a plant's use values for their milk—there was no marketwide pooling function that allowed all producers to share in the benefits from Class 1 sales and the burden of balancing the market to ensure an adequate supply of milk to meet Class 1 demand. Many witnesses spoke to the political compromise reached to compensate dairy farmers who held Class 1 supply contracts from the financial loss they would incur by pooling and sharing their Class 1 revenue with all dairy farmers in California. While the original quota allotment was based on existing Class 1 contracts, it was thought at the time that quota would equalize among producers as Class 1 utilization increased and future quota allotments were issued; however, this did not occur.

Many witnesses spoke of the importance they believe the California quota program has for the state's dairy industry. Producers spoke of the investments they made in purchasing quota allotments, and the continued financial benefit it provides through the monthly quota premium they receive. Even producers who own little or no quota spoke of the importance of continuing the program for their fellow dairy farmers.

The 2014 Farm Bill authorized the promulgation of a California FMMO, and specified that the order ''shall have the right to reblend and distribute order receipts to recognize quota value.'' The hearing record is replete with testimony on the proper interpretation of those final three words, ''recognize quota value.'' The Cooperatives conveyed, and stressed in their post-hearing brief submissions, that the 2014 Farm Bill mandates the quota program must be recognized, and only the method of recognition is to be decided through this rulemaking proceeding. The Cooperatives are of the opinion that the proper recognition of quota value is through the deduction of quota monies from the marketwide pool before a California blend price is calculated, as is current practice for the CSO.[17] The Cooperatives stressed repeatedly that should any conflict be found between the provisions of the 2014 Farm Bill and the AMAA, the 2014 Farm Bill language should be given more credence, as it is the most recent Congressional action.

Institute witnesses and post-hearing briefs stressed that quota recognition must be harmonized with the AMAA, in

[17] This position was slightly modified in their post-hearing brief to also adjust prices for out-of-state producers so that their price was not impacted by quota payments.

particular its uniform payments and trade-barrier provisions. Should any conflict arise, the Institute contends that because the Farm Bill did not amend the AMAA, the AMAA as the authorizing legislation should take precedent. The Institute's approach to recognizing quota value is to first allow producers the one-time decision to opt out of the quota program. Those producers who opt out of the quota program would be paid a FMMO blend price calculated without a deduction for quota. Those producers who remain in the quota program would have their FMMO blend price monies sent, in aggregate, to CDFA for reblending and redistribution according to their quota and nonquota milk marketings. The Institute is of the opinion that because dairy producers opting out of the quota program would not have their payments affected by quota, recognizing quota under a California FMMO would not violate the uniform pricing and trade-barrier provisions of the AMAA.

As discussed earlier, when promulgating or amending any FMMO, the Department must always evaluate whether the proposed action is authorized by the AMAA. The AMAA not only clearly defines its policy goal, which this decision has already discussed, but it also defines specific provisions that must be contained in the FMMO framework. The two most relevant to the discussion on quota recognition are the provision for uniform payments handlers make to producers, and the provision to prevent trade barriers. The uniform payment provisions require all handlers regulated by a FMMO to pay the same classified use value for their raw milk, and all producers whose milk is pooled on a FMMO to receive the same price for their milk regardless of how it is utilized. In this respect, similarly situated handlers are assured that they are paying the same raw milk costs as their competitors, and producers are indifferent as to where or how their milk is utilized, as they receive the same price regardless.

The trade barrier provision specifies that no FMMO may, in any manner, limit the marketing of milk or milk products within the marketing area. In this regard, FMMOs cannot adopt provisions that would create any economic barrier limiting the marketing of milk within marketing area boundaries.

To determine how to properly recognize quota value, Congress provided additional guidance to the 2014 Farm Bill language through the 2014 Conference Report.[18] In the report, Congress specified that the Department has discretion to determine how best to recognize quota value in whatever manner is appropriate on the basis of a rulemaking proceeding. Consistent with the Conference Report, this decision evaluated record evidence pertaining to how the current California quota program operates, how it can best be recognized within FMMO provisions tailored to the California market, and how all the FMMO provisions work in conjunction with each other to adhere to all AMAA provisions.

The California quota program, like the CSO, is administered by CDFA. The record reflects that 58 percent of California dairy farmers own quota. In its current form, the quota program entitles a quota holder to an additional $0.195 per pound SNF (equivalent to $1.70 per cwt) over the market's overbase price on the quota milk they market each month. Similar to their FMMO counterparts, California handlers pay classified use values for their milk, and those values make up the CSO marketwide pool. Each month, CDFA deducts quota monies from the CSO marketwide pool before a marketwide blend price, otherwise known as the overbase price, is calculated. CDFA then announces the quota and overbase prices[19] to be paid to California dairy farmers. As a result, in general, nonquota milk receives the market's overbase price, and quota milk receives the overbase price plus an additional $1.70 per cwt. CDFA enforces payments of both quota and overbase prices. Record data shows that the deduction from the CSO marketwide pool to pay quota premiums is approximately $12.5 to $13 million per month. Numerous witnesses estimated, at current quota market prices, the asset value of quota at $1.2 billion.

The record reflects that the California quota program is funded by California producers. All handlers regulated through the CSO pay minimum classified use values, and it is only once those values have been pooled that the quota value is deducted from the pool. Data on the record reflects all California dairy farmers, including quota holders, receive $0.37 per cwt less, on average, for all of their milk marketings in order to fund the $0.195 per pound of quota SNF payment to quota holders.

This decision finds the California quota program could be maintained, administered, and enforced by CDFA and that a California FMMO should operate as a stand-alone program. As is currently done in all FMMOs, handlers would pay classified use values into the pool, and all producers, both in state and out of state, would receive a FMMO blend price reflective of the market's use values. It is through this structure that a California FMMO could ensure the uniform payment and trade barrier provisions of the AMAA are upheld.

Should CDFA determine it can continue to operate the California quota program through the use of producer monies, as is the current practice, the proposed California FMMO could recognize quota values through an authorized deduction by handlers from the payments due to producers for those dairy farmers determined by CDFA to be participants in the state-administered California quota program. The amount of the deduction would be determined and announced by CDFA.

Currently, FMMOs allow for authorized deductions, such as the Dairy Promotion and Research Program assessment, from a producer's milk check. The California FMMO similarly would authorize a deduction for the state-administered California quota program. The California FMMO would allow regulated handlers to deduct monies, in an amount determined and announced by CDFA, from blend prices paid to California dairy farmers for pooled milk, and send those monies to CDFA to administer the quota program. CDFA would in turn enforce quota payments to quota holders.

In essence, this decision proposes that the California quota program could continue to operate in essentially the same manner as it currently does. The record reflects that the California quota program already assesses California producers to pay quota values to quota holders. While producers may not see this as an itemized deduction on their milk checks, their overbase price is lower than it otherwise would be. This is a result of deducting the quota value from the pool prior to calculating the overbase price.

The California FMMO would authorize deductions from those California producers whose milk is pooled on the order. As this decision will later explain, the proposed California FMMO would have performance-based pooling standards that allow for milk to not be pooled. CDFA would be responsible for the collection of California producer monies for milk not pooled, because a California FMMO would only apply to producer

[18] Official Notice is taken of the Agricultural Agreement of 2014 Conference Report. *https://www.congress.gov/congressional-report/113th-congress/house-report/333/1.*

[19] The record reflects that CDFA also announces a base price which is equal to the overbase price. For simplicity, this decision will refer only to the overbase price.

milk as defined by the order. USDA and CDFA could cooperate by sharing data through a memorandum of understanding to ensure that, between the two regulatory bodies, all appropriate California producers are assessed an amount necessary to administer the quota program.

In regard to the treatment of exempt quota as addressed in Proposal 3, this decision finds that exempt quota is part of the California quota program and therefore its proper recognition should be determined by CDFA. The record demonstrates that exempt quota was initially granted when the California quota program was established, and like regular quota, the provisions have been adjusted numerous times through both California legislative and rulemaking actions. This decision finds the continuation of exempt quota, in whatever manner appropriate, should be determined by CDFA.

The record reflects that under the proposed FMMO, the four California producer-handlers who own exempt quota would likely become fully-regulated handlers because their sales exceed three-million pounds per month. These fully-regulated handlers would be required to account to the marketwide pool for all of their Class I utilization and pay uniform FMMO minimum classified prices for all milk they pool. The CPHA witnesses testified that exempt quota is held on the producer side of their businesses. CDFA could best determine how those producers holding exempt quota should be compensated. Such compensation cannot be made from reducing the minimum Class I obligation of FMMO fully-regulated handlers without undermining the uniform handler payment provision of the AMAA.

Throughout the hearing and in post-hearing briefs, dairy farmers and their Cooperative representatives stressed that while a California FMMO would provide them a more equitable price for their milk, entry into the FMMO system must not diminish or disturb, in any form, California quota values. This decision finds that the package of FMMO provisions recommended in this decision would create more orderly marketing of milk in California, adhere to all the provisions of the AMAA, and allow the California quota program to operate independently of the FMMO. In doing so, the California quota program will not be diminished or disturbed in any form by California's entry into the FMMO system.

5. Definitions and Uniform Provisions

This section outlines definitions and provisions of a California FMMO that describe the persons and dairy plants affected by the FMMO and specify the regulation of those entities.

The Cooperatives and the Institute both proposed regulatory language for an entire FMMO, including definitions and regulations specific to a California FMMO, as well as adoption of several of the uniform provisions common to other FMMOs. In many cases, hearing witnesses simply provided the list of uniform provisions for which they supported adoption, and in most cases, proponents for Proposals 1 and 2 agreed on the inclusion of these provisions.

The FMMO system currently provides for uniform definitions and provisions, which are found in Part 1000 under the General Provisions of Federal Milk Marketing Orders. Where applicable, those provisions are incorporated by reference into each FMMO. The uniform provisions were developed as part of FMMO Order Reform to prescribe certain provisions that needed to be contained in each FMMO to describe and define those entities affected by FMMO regulatory plans.

As outlined in the Order Reform Proposed Rule [20] and as implemented in the Final Rule,[21] the establishment of a set of uniform provisions provides for regulatory simplification and defines common terms used in the administration of all FMMOs, resulting in the uniform application of basic program principles throughout the system. Application of standardized terminology and administrative procedures enhances communication among regulated entities and supports effective administration of the individual FMMOs.

This decision finds that a set of uniform provisions should continue to be maintained throughout the FMMO system to ensure consistency between uses of terms. Therefore, this decision finds that a California FMMO should contain provisions consistent with those in the 10 current FMMOs.

Marketing conditions in each regulated marketing area do not lend themselves to completely identical provisions. Consequently, some provisions are tailored to the marketing conditions of the individual order, and provisions recommended for a California FMMO in this decision are similarly tailored to the California market where appropriate. This section provides a brief description of the uniform definitions and provisions recommended for a California FMMO. Where a definition or provision does not lend itself to uniform application, it is discussed in greater detail here or in other sections of this document.

This decision recommends the following definitions for a California FMMO:

Marketing Area. The *Marketing Area* refers to the geographic area where handlers who have fluid milk sales would be regulated. In this case, the marketing area should include the entire state of California. The marketing area encompasses any wharves, piers, and docks connected to California and any craft moored there. It also includes all territory within California occupied by government reservations, installations, institutions, or other similar establishments.

Route Disposition. A *Route Disposition* should be a measure of fluid milk (Class I) sales in commercial channels. It should be defined as the amount of fluid milk products in consumer-type packages or dispenser units delivered by a distributing plant to a retail or wholesale outlet, either directly or through any distribution facility.

Plant. A *Plant* should be defined as what constitutes an operating entity for pricing and regulatory purposes. Plant should include the land, buildings, facilities, and equipment constituting a single operating unit or establishment where milk or milk products are received, processed, or packaged. The definition should include all departments, including where milk products are stored such as coolers, but not separate buildings used as reload points for milk transfers or used only as distribution points for storing fluid milk products in transit. On-farm facilities operated as part of a single dairy farm entity for cream separation or concentration should not be considered plants.

Distributing Plant. A *Distributing Plant* should be defined as a plant approved by a duly constituted regulatory agency to handle Grade A milk that processes or packages fluid milk products from which there is route disposition.

Supply Plant. A *Supply Plant* should mean a regular or reserve supplier of bulk milk for the fluid market that helps coordinate the market's milk supply and demand. A supply plant should be a plant, other than a distributing plant, that is approved to handle Grade A milk as defined by a duly constituted regulatory agency, and at which fluid milk products are received or from which fluid milk products are transferred or diverted.

[20] Official Notice is taken of Federal Order Reform Proposed Rule: 63 FR 4802.

[21] Official Notice is taken of Federal Order Reform Final Rule: 64 FR 47898.

Pool Plant. A *Pool Plant* should mean a plant serving the market to a degree that warrants their producers sharing in the added value that derived from the classified pricing of milk. The pool plant definition provides for pooling standards that are unique to each FMMO. The specifics of the pooling standards recommended for a California FMMO are discussed in detail in the Pooling section of this decision.

Nonpool Plant. A *Nonpool Plant* should be defined as plants that receive, process, or package milk, but do not satisfy the standards for being a pool plant. This provision provides additional clarity to define the extent of regulation applicable to plants. Nonpool plants should be further defined to include: *A Plant Fully Regulated under Another Federal Order,* which means a plant that is fully subject to the pricing and pooling provisions of another order; a *Producer-Handler Plant,* which means a plant operated by a producer-handler as defined under any Federal order; a *Partially Regulated Distributing Plant,* which means a plant from which there is route disposition in the marketing area during the month, but does not meet the provisions for full regulation; and an *Unregulated Supply Plant,* which is a supply plant that does not qualify as a pool supply plant.

Exempt Plant. An *Exempt Plant* also is a nonpool plant, and should be defined as a plant exempt from the pricing and pooling provisions of any order, although the exempt plant operator would still need to comply with certain reporting requirements regarding its route disposition and exempt status. Exempt plants should include plants operated by a governmental agency with no route disposition in commercial market channels, plants operated by duly accredited colleges or universities disposing of fluid milk products only through their own facilities and having no commercial route disposition, plants from which the total route disposition is for individuals or institutions for charitable purposes and without remuneration, and plants that have route disposition and sales of packaged fluid milk products to other plants of no more than 150,000 pounds during the month.

The exempt plant definition was standardized as part of Order Reform to provide a uniform definition of distributing plants which, because of their size, did not significantly impact competitive relationships among handlers in the market. The 150,000 pound limit on route disposition and sales of packaged fluid milk products was deemed appropriate because at the time it was the maximum amount of fluid milk products allowed by an exempt plant in any FMMO. Therefore, the uniform provisions ensured that exempt plants remained exempt from pricing and pooling provisions as part of Order Reform. This decision finds that to provide for regulatory consistency, the exempt plant definition in a California FMMO should be uniform with the 10 current FMMOs. This provision would allow for smaller California distributing plants that do not significantly impact the competitive relationship among handlers to be exempt from the pricing and pooling provisions of a California FMMO.

Both the Cooperatives and the Institute proposed adoption of the standard FMMO definition of exempt plants, and hearing witnesses were supportive of the proposals. However, in their post-hearing brief, the Cooperatives proposed two additional exempt plant categories to provide regulatory relief to small handlers under Proposal 1. The two additional exempt plant categories proposed include: (1) Plants that process 300,000 pounds or less of milk during the month into Class II, III, and IV products, and have no Class I production or distribution; and (2) plants that process, in total, 300,000 pounds or less of milk during the month, from which no more than 150,000 pounds is disposed of as route disposition or sales of packaged fluid milk products to other plants. Proposal 1, as originally drafted, would have fully regulated all handlers that received California milk, except for plants with 150,000 pounds or less of route disposition. Through the proposed modification, the Cooperatives sought to extend exempt plant status to smaller plants regardless of their use of milk. In essence, it would allow smaller plants with primarily manufacturing uses to be exempt from the pricing and pooling provisions. This decision finds the recommended performance-based pooling provisions make such additional exemptions unnecessary, as plants with manufacturing uses will have the option to elect not to pool their milk supply.

Handler. A *Handler* should be defined as a person who buys milk from dairy farmers. Handlers have a financial responsibility for payments to dairy farmers for milk in accordance with its classified use. Handlers must file reports with the Market Administrator detailing their receipts and utilization of milk.

The handler definition for a California FMMO should include the operator of a pool plant, a cooperative association that diverts milk to nonpool plants or delivers milk to pool plants for its account, and the operator of a nonpool plant.

The handler definition should also include intermediaries, such as brokers and wholesalers, who provide a service to the dairy industry, but are not required by the FMMO to make minimum payments to producers.

The Cooperatives proposed adoption of the uniform FMMO handler definition for a California FMMO. The Institute proposed adopting the uniform handler definition, modified to include proprietary bulk tank handlers (PBTH). A witness representing the Institute and Hilmar testified regarding the PBTH provision. The witness said a PBTH provision had been included in some former FMMOs to allow proprietary handlers to pool milk in a fashion similar to cooperative handlers, without needing to first deliver milk to a pool supply plant to meet the performance standards of the order. The witness explained that under Proposal 2, a PBTH would have to operate a plant—located in the marketing area—that does not process Class I milk and further, the PBTH would have to be recognized as the responsible handler for all milk pooled under that provision. The witness was of the opinion that the PBTH provision would promote efficient milk movements, reduce transportation costs, and eliminate unnecessary milk loading and unloading simply to meet the order's performance standards.

The witness said the flexibilities of a PBTH provision would offer operational efficiencies to Hilmar and allow them to meet criteria similar to the pool supply plant qualifications advanced in Proposal 2. The witness explained that Hilmar would be able to ship milk directly from a farm to a distributing plant, rather than shipping milk first to a pool supply plant and then on to a distributing plant.

In their post-hearing briefs, the Cooperatives opposed the PBTH provision, citing disorderly marketing conditions with its use in earlier marketing orders, and stating that the provision is unnecessary, prone to create disorder, and, as proposed, administratively unworkable.

The record supports adoption of the standard FMMO handler definition without the additional PBTH provision prescribed in Proposal 2. The Department has found in the past that PBTH provisions led to the pooling of milk that was not part of the legitimate reserve supply for distributing plants in

the marketing area.[22] In California, with a relatively low Class I utilization, such a provision is unnecessary to ensure an adequate supply of milk for Class I use. Therefore, this decision finds that the uniform handler definition, without the inclusion of a PBTH provision, is appropriate for a California FMMO.

Producer-Handler. Under the 10 existing FMMOs, *Producer-Handlers* are defined as persons who operate, as their own enterprise and at their sole risk, both a dairy farm and a distributing plant from which there is route disposition within the marketing area, and have total Class I fluid milk sales of no more than three million pounds per month. Seven of the existing orders also allow producer-handlers to receive up to 150,000 pounds of fluid milk products per month from fully-regulated handlers in any order. Producer-handlers are exempt from the pricing and pooling provisions under each of the existing orders.

As a result of their exemption from the pricing and pooling provisions, producer-handlers, in their capacity as handlers, are not required to pay the minimum class prices established under the orders, nor are they, in their capacity as producers, granted minimum price protection for disposal of their surplus milk. Producer-handlers, in their capacity as handlers, are not obligated to equalize their use-value of milk through payment of the difference between their use-value of milk and the respective order's blend price into the producer-settlement fund. Thus, producer-handlers retain the full value of milk processed and disposed of as fluid milk products by their operation.

Entities defined as FMMO producer-handlers must adhere to strict criteria that limit certain business practices, including the purchase of supplemental milk. Given these limitations, producer-handlers bear the full burden of balancing their milk production between fluid and other uses. Milk production in excess of their Class I route disposition does not enjoy minimum price protection under the orders and may be sold at whatever price is obtainable in the market.

Producer-handlers are required to submit reports and provide access to their books, records and any other documentation as deemed necessary by the Market Administrator to ensure compliance with the requirements for their regulatory status as producer-handlers. Therefore, producer-handlers are regulated under the orders, but are not ''fully regulated'' like other handlers who are subject to an order's pricing and pooling provisions.

Under the CSO, two categories of producer-handlers are recognized. ''Option 66'' producer-handlers may request exemption from the CSO's pooling regulations if both their farm production and their sales average less than 500 gallons of milk per day on an annual basis, and if they ship 95 percent of their production to retail or wholesale outlets. ''Option 66'' producer-handlers are fully exempt from the pool for their entire production and may not own quota or production base. The record reflects that there were two ''Option 66'' producer-handlers in California at the time of the hearing. No production data was submitted at the hearing to quantify the volume of ''Option 66'' producer-handler milk exempt from the CSO pool.

The CSO's second producer-handler category pertains to ''Option 70'' producer-handlers—large scale entities that own exempt quota, which exempts them from pooling a portion of their Class 1 milk. The exempt quota held by ''Option 70'' producer-handlers was discussed earlier in this decision.

Proposals 1 and 2 both include definitions and provisions for producer-handlers consistent with the 10 FMMOs that currently exempt persons who operate both dairy farms and distributing plants, and process and distribute no more than three million pounds of fluid milk per month. The producer-handler regulations under Proposal 2 more closely resemble those in the Pacific Northwest and Arizona FMMOs in that they contain additional specificity about producer-handler qualifications.

A Cooperative witness supported adoption of the standard FMMO producer-handler definition for a California FMMO as contained in Proposal 1. Under the standard definition, producer-handlers who sell or deliver up to three million pounds of Class I milk or packaged fluid milk products monthly would be exempt from the pricing and pooling provisions. The witness added that under Proposal 1, producer-handlers could own regular quota and qualify for transportation credits.

Two producer witnesses who also operate processing facilities in California described their individual experiences related to running small dairy farms and fluid milk processing operations. Both witnesses testified that they supported Proposal 1 because, among other things, they thought the proposed FMMO producer-handler definition could provide them exemptions from the pooling requirements for their Class I production and sales, something that they do not currently enjoy from the CSO.

A witness from Organic Pastures Dairy Company, LLC (Organic Pastures) testified on behalf of Organic Pastures and three other small San Joaquin Valley ''producer-distributor'' entities. According to the witness, these entities produce and bottle their own Class 1 milk, but do not qualify as ''Option 66'' producer-handlers, and must therefore account to the CSO pool. The witness explained that these businesses have taken risks to develop their own brands and customer bases, but struggle to survive financially. The witness said that Organic Pastures' monthly pool obligation for December 2014 was $50,000 for the milk they bottled and sold in California. The witness contended that because they produce, process, and distribute their own products, they should be exempt from regulation.

The entities represented by the witness supported a California FMMO because they believe they would meet the FMMO producer-handler definition and thus be exempt from the pricing and pooling provisions. The witness testified that the standard three-million pound limit would allow them to grow their businesses, but remain exempt from pricing and pooling provisions.

A witness from Dean Foods testified in support of the producer-handler provision contained in Proposal 2. The witness described similarities and differences between the producer-handler definitions in Proposals 1 and 2. The witness added that proponents of Proposal 2 recommended adoption of the additional ownership requirements, which mirror the standards in the Pacific Northwest and Arizona FMMOs. The witness explained that the additional requirements would ensure that larger-size operations typical of the western Federal orders that meet the producer-handler definition would not be able to undermine the intent of the provision.

The witness testified that Dean Foods fully supported the Institute's proposal to cap producer-handler exemptions at three million pounds of monthly Class I route disposition. The witness cited USDA decisions that found producer-handlers with greater than three million pounds of route disposition per month impacted the market, and thus their exemption from pricing and pooling provisions was disorderly.

Support for the producer-handler provisions contained in Proposal 2 was

[22] Official Notice is taken of Pacific Northwest and Western Marketing Areas Tentative Final Decision: 68 FR 49375.

also expressed by two small California processors and by the Cooperatives in their post-hearing brief.

The FMMO system has historically exempted producer-handlers from the pricing and pooling provisions of FMMOs on the premise that the burden of disposal of their surplus milk was borne by them alone. Until 2005, there was no limit on the amount of Class I route disposition producer-handlers were allowed before they would be fully regulated. A Pacific Northwest and Arizona FMMO rulemaking established a three-million pound per month limit on Class I route disposition.[23] The record of that proceeding revealed large producer-handlers were able to market fluid milk at prices below those that could be offered by fully regulated handlers in such volumes that the practice was undermining the order's ability to establish uniform prices to handlers and producers. That proceeding found that producer-handlers with more than three million pounds of Class I route disposition significantly affected the blend prices received by producers and should therefore be fully regulated. The producer-handler provisions in all FMMOs were later amended in 2010.[24] In that proceeding, USDA found a three-million pound monthly limit on producer-handler total Class I route dispositions was appropriate to maintain orderly marketing conditions throughout the FMMO system.

This decision finds the regulatory treatment of producer-handlers should continue to be uniform throughout the FMMO system. The monthly three-million pound limit on Class I route disposition would ensure that California FMMO producer-handlers could not use their pricing and pooling exemption to undermine orderly marketing conditions. Therefore, the proposed California FMMO should contain the uniform FMMO producer-handler provision that limits monthly Class I route disposition to three million pounds.

The adoption of the standard FMMO producer-handler definition was supported by proponents of Proposals 1 and 2, as well as by entities that could meet the proposed producer-handler definition. The record does not contain data to indicate how many California entities would meet the proposed FMMO producer-handler definition, but it does indicate that only a small number would be impacted.

The additional qualification standards contained in the Pacific Northwest and Arizona FMMOs were explained in the Order Reform Proposed Rule.[25] The decision explained the larger than average herd size of dairy farms in the western United States lent itself to the existence of producer-handlers that were a significant factor in the market. Therefore, the Pacific Northwest and Arizona FMMOs adopted producer-handler provisions with additional qualification standards tailored to the larger dairy farm size typical of the western region of the United States.

The record reveals that herd sizes in California tend to be typical of the larger herd sizes found in the western FMMOs. According to CDFA data, in 2015 California's average herd size was 1,215. This decision finds it appropriate that the producer-handler provision in a California FMMO should include the additional qualification standards similar to those in the nearby Pacific Northwest and Arizona FMMOs.

In their post-hearing brief, the Cooperatives proposed modifying Proposal 1 to broaden the producer-handler definition to include utilization other than Class I. The modification would allow producer-handlers with Class II, Class III, or Class IV manufacturing, in conjunction with their Class I processing, to be granted producer-handler status, as long as their total production remained under the three million pound processing limit. The Cooperatives contend this would provide regulatory relief to smaller producer-handlers, who would otherwise become regulated under the inclusive pooling provisions of Proposal 1. This decision finds that extending the producer-handler definition to include manufacturing uses is not necessary because the package of pooling provisions recommended in this decision allows for optional pooling of milk used in manufacturing.

California Quota Program. The *California Quota Program* should be defined as the program outlined by the applicable provisions of the California Food and Agriculture Code and related provisions of the pooling plan administered by CDFA. Details about the proposals, hearing record, and this decision's findings regarding appropriate recognition of the California quota program were discussed earlier in this decision.

Producer. A *Producer* should be defined as a dairy farmer that supplies the market with Grade A milk for fluid use or who is at least capable of doing so if necessary. Producers would be eligible to share in the revenue that accrues from marketwide milk pooling. The producer definition in each FMMO order typically differs with respect to the degree of association that dairy farmers must demonstrate within a marketing area, as provided in the producer milk definition. The details of the proposals, hearing evidence, and this decision's findings regarding the producer milk definition are described later in the Pooling section of this decision.

Producer Milk. Producer Milk should be defined to identify the milk of producers that is eligible for inclusion in the marketwide pool. This definition is specific to the proposed California FMMO marketing order, reflecting California marketing conditions, and provides the parameters for the efficient movement of milk between dairy farms and processing plants. The details of the proposals, hearing evidence, and this decision's findings regarding the producer milk definition are described later in the Pooling section of this decision.

Other Source Milk. The order should include the uniform FMMO definition of *Other Source Milk* to include all the skim milk and butterfat in receipts of fluid milk products and bulk fluid cream products from sources other than producers, cooperative handlers, or pool plants. Other source milk should also include certain products from any source that are used to make other products and products for which a handler fails to make a disposition.

Fluid Milk Product. A California FMMO should include the standard FMMO definition of a Fluid Milk Product, which sets out the criteria for determining whether the use of producer milk and milk-derived ingredients in those products should be priced at the Class I price. Under the definition, *Fluid Milk Product* includes any milk products in fluid or frozen form that are intended to be used as beverages containing less than 9 percent butterfat, and containing 6.5 percent or more nonfat solids or 2.25 percent or more true milk protein. Fluid milk products would include, but not be limited to: Milk, eggnog, and cultured buttermilk; and those products could be flavored, cultured, modified with added or reduced nonfat solids, sterilized, concentrated, or reconstituted. Nonfat solid and protein sources include, but are not limited to, casein, whey protein concentrate, dry whey, and lactose, among others.

Products such as whey, evaporated milk, sweetened condensed milk, yogurt beverages containing 20 or more percent yogurt by weight, kefir, and certain

[23] Official Notice is taken of Pacific Northwest and Arizona Proposed Rule: 70 FR 19636.

[24] Official Notice is taken of FMMO Producer-Handler Final Rule: 75 FR 21157.

[25] *See infra.*

packaged infant formula and meal replacements, would not be considered fluid milk products for pricing purposes.

Fluid Cream Product. The order should include the standard FMMO definition of *Fluid Cream Product.* Fluid cream product includes cream or milk and cream mixtures containing at least 9 percent butterfat. Plastic cream and frozen cream would not be considered fluid cream products.

Cooperative Association. The order should include the uniform FMMO definition of *Cooperative Association* to facilitate administration of the order as it applies to dairy farmer cooperative associations. Under the uniform definition, a cooperative association means any cooperative marketing association of producers that the Secretary determines is qualified to be so recognized under the Capper-Volstead Act. Cooperative associations have full authority to engage in the sales and marketing of their members' milk and milk products. The definition also provides the recognition of cooperative association federations that function as cooperative associations for the purposes of determining milk payments and pooling.

Commercial Food Processing Establishment. The uniform FMMO definition for *Commercial Food Processing Establishment* should be included in a California FMMO to describe those facilities that use fluid milk and cream as ingredients in other food products. The definition helps identify, for classification purposes, whether disposition to such a facility should be considered anything but Class I, and clarifies that packaged fluid milk products could not be further disposed of by the facility other than those received in consumer-type containers of one gallon or smaller. Producer milk may be diverted to commercial food processing establishments, subject to the diversion and pricing provisions of a California FMMO.

Market Administrator. The record supports a provision for the administration of the order by a *Market Administrator,* who is selected by the Secretary and responsible for the oversight of FMMO activities. The market administrator receives and reviews handler reports, allocates handlers' milk receipts to their proper utilization and classification, publicizes monthly milk prices, provides monthly written account statements to handlers, and manages the producer settlement fund which serves as a clearing house for marketwide pool revenues. The market administrator is authorized to make adjustments to the order's shipping and diversion provisions, where justified, and to investigate noncompliance with the order. The market administrator manages the marketwide pool, conducts handler audits, provides laboratory testing of milk samples, and performs many other functions that support the regulation of milk marketing in the area. Market administrator activities are funded through an administrative assessment on handlers.

Continuity and Separability of Provisions. Each FMMO prescribes uniform rules governing the implementation and maintenance of the marketing order itself, and a California FMMO should likewise include these provisions. These rules state that the Secretary determines when the FMMO becomes effective and whether and when it should be terminated. The rules also provide for the fulfillment of any outstanding obligations arising under the order and liquidating any assets held by the Market Administrator, if the order is terminated or suspended. Finally, the rules provide that if, for some reason, one provision of the order—or its applicability to a person or circumstance—were to be held invalid, the applicability of that provision to other persons or circumstances and the remaining order provisions would otherwise continue in force.

Handler Responsibility for Records and Facilities. Provision should be made for the maintenance and retention by handlers of the records pertaining to their operations under a California FMMO. Records of the handler's milk purchases, sales, processing, packaging, and disposition should be included, along with records of the handler's milk utilization, producer payments, and other records required by the market administrator to verify the handler's compliance with order provisions. The market administrator should be able to review and audit each handler's records, and should have access to the handler's facilities, equipment and operations, as needed to verify the handler's obligation under the order. Handlers should be required to retain all pertinent records for three years, or longer if part of a compliance enforcement action, or as directed by the market administrator.

Termination of Obligations. Provision should be made under a California FMMO for notification to any handler who fails to meet financial obligations under the order, including payments to producers, other handlers, and to the market administrator. Such provision is contained in the uniform provisions of all FMMOs, and specifies that the market administrator has two years after the receipt of the handler's report of receipts and utilization to notify the handler of any unmet financial obligation. Provisions are included for the enforcement of the handler's payment requirement and for the handler's opportunity to file a petition for relief as provided under the AMAA.

6. Classification

The AMAA authorizes FMMOs to regulate milk in interstate commerce, and its provisions require that milk be classified according to the form in which or purpose for which it is used. Therefore, the classification of milk is uniform in all FMMOs to maintain orderly marketing conditions within and between FMMOs and to ensure that handlers competing in the national market for manufactured products have similar raw milk costs.

This decision finds that because California would be joining the FMMO system it should contain the uniform classification provisions included in the 10 existing FMMOs. Adoption of standard FMMO product classification provisions in the proposed California FMMO is appropriate to maintain uniform pricing for similar products both within the California FMMO and throughout the FMMO system. This section provides a summary of the hearing evidence and post-hearing arguments regarding milk classification under a California FMMO.

Proposals 1 and 2 both offer standard FMMO product classifications for their respective California FMMO provisions. Proposal 2 also provides an additional shrinkage allowance for ESL production at qualified ESL pool distributing plants.

A Cooperative witness testified regarding the proposed classification provisions contained in Proposal 1. The witness reviewed the evolution of the FMMO classification provisions and noted that the CSO uses a similar classification system, with limited differences. The witness was of the opinion that the FMMO classification provisions should be adopted in a California FMMO to ensure uniform classification of milk and milk products throughout the entire FMMO system.

A Cooperative witness contended that ESL products are value-added products and should not be granted additional shrinkage allowances under a California FMMO. The Cooperatives further argued that ESL shrinkage allowances should be evaluated at a national hearing because ESL products are manufactured in other FMMO marketing areas, as well as in California.

A consultant witness, appearing on behalf of the Institute, testified in support of the portion of Proposal 2 that

establishes an additional shrinkage allowance for the manufacture of ESL and ultra-high temperature (UHT) milk products. The witness explained that the shrinkage allowance recognizes the inherent loss of milk from farm to plant and within the plant. The FMMO system currently allows for up to a 2 percent shrinkage allowance for pool distributing plants, depending on how the milk was received at the plant. The witness contended that the standard 2 percent allowance was developed before extensive use of ESL technology became common-place, and was based on typical shrinkage experienced in traditional high temperature, short time pasteurization (HTST) processing. The witness explained that under current FMMO classification provisions, a portion of the milk accounted for as shrinkage is classified at the lowest priced class for the month and shrinkage losses beyond 2 percent are considered excess shrinkage and classified as Class I.

The consultant witness testified that Proposal 2 provides an additional shrinkage allowance of 3 percent on ESL production at plants qualified as ESL pool distributing plants. Under the proposed provisions, the plants eligible for the additional shrinkage allowance would be distributing plants located in the marketing area that process 15 percent of the respective plant's total receipts of fluid milk products physically received at the plant into ultra-pasteurized or aseptically-processed fluid milk products.

The intent of Proposal 2, explained the witness, is for an eligible plant to have a maximum shrinkage allowance of up to 5 percent on milk used in its ESL production, not on all milk used in the plant. Data from the witness' ESL processing clients, all located outside of California, showed their total product pound shrinkage averaged above 5 percent. The witness also estimated based on 2013 to 2014 USDA record data, excess shrink in ESL and UHT plants throughout the country averaged 2.09 percent.

Another Institute consultant witness testified regarding a 19-plant shrinkage study of ESL plants; three of the plants in the study were located in California. The study showed a weighted average product pound shrinkage of 2.73 percent.

Two additional Institute consultant witnesses and a witness from HP Hood testified in support of the ESL shrinkage allowance provided in Proposal 2. The witnesses presented historical shrinkage data for ESL and UHT manufacturing facilities and offered extensive technical explanations for why shrinkage levels are higher in those systems than in HTST systems. The witnesses explained that shrinkage refers to milk lost in the manufacturing process due primarily to the fact it sticks to the equipment pipes and is lost in the cleaning process. The witnesses stressed that ESL equipment has longer piping, and noted numerous operational differences which inherently lead to higher losses of milk when compared to HTST processing.

The HP Hood witness provided a similar explanation of ESL processing and why it lends itself to higher product losses. The witness said that even though fluid milk sales across the United States are declining, HP Hood ESL product sales have grown. The witness was of the opinion that because increases in ESL fluid milk sales benefit the entire dairy industry, dairy producers should share the burden of producing these products through greater shrinkage allowances, as reflected in the classification provisions provided in Proposal 2.

HP Hood, in its post-hearing brief, reiterated its position that the heavy investment in the development of ESL technology and market expansion for those products should be shared by dairy farmers. The Institute, in its post-hearing brief, concurred with HP Hood's brief and argued the shrinkage allowances provided in Proposal 2 would assure ESL processors, like conventional fluid milk processors, would only be charged Class I prices for milk contained in fluid milk products and not for milk lost during processing. The Institute also stated that a promulgation proceeding for a new FMMO was an appropriate place to consider ESL shrinkage allowances.

The Cooperatives' reply brief reiterated that ESL products are value-added products and handlers already receive a premium in the market. As well, the Cooperatives claimed that the manufacturing costs cited by HP Hood in its brief were not significant enough to warrant the proposed change to the uniform classification rules.

Findings

As discussed earlier in this decision, the primary objective of FMMOs is to establish and maintain orderly marketing conditions. FMMOs achieve this goal through the classified pricing and the marketwide pooling of the proceeds of milk associated with a marketing area. To that end, the AMAA specifies that a FMMO should classify milk ''in accordance with the form in which or the purpose for which it is used.'' The classification of milk ensures competing handlers have the same minimum regulated price for milk used in a particular product category. Thus, FMMOs have found it is reasonable and appropriate that milk used in identical or nearly identical products should be placed in the same class of use. This reduces the incidence of disorderly marketing that could arise from regulated price differences between competing handlers.

Currently, the provisions providing the classification of milk pooled on the existing FMMOs are identical.[26] Uniform classification provisions are particularly important in assuring orderly marketing because markets are no longer isolated, and handlers often sell products outside of their local marketing area. The current FMMO classification provisions provide four classes of milk use, and specify provisions for the classification of milk transfers and diversions, plant shrinkages and overages, allocation of handler receipts to handler utilization, and Market Administrator reporting and announcements concerning classification.

Under the current FMMO uniform provisions, Class I consists of milk used to produce fluid milk products (whole milk, lowfat milk, skim milk, flavored milk such as chocolate milk). Class II milk includes milk used to make a variety of soft products, including cottage cheese, ice cream, yogurt and yogurt beverages, sour cream, baking mixes, puddings, meal replacements, and prepared foods. Class III includes milk used to make hard cheeses that may be sliced, grated, shredded, or crumbled, cream cheese, and other spreadable cheeses. Class IV milk includes milk used to produce butter, evaporated or condensed milk in consumer-type packages, and dried milk products. Other milk dispositions, including milk that is dumped, fed to animals, or accidentally lost or destroyed, is generally assigned to the lowest priced class for the month.

The record reflects that current product classification provisions under the CSO are comparable to those under FMMOs. While the CSO has five classes of milk (1, 2, 3, 4a and 4b), the record reflects that under the uniform FMMO classification provisions, products currently classified by the CSO as Class 2 and 3 would be classified by the California FMMO as Class II; CSO Class 4b products would be classified as California FMMO Class III; and CSO Class 4a products would be classified as California FMMO Class IV products.

Both the Cooperatives and the Institute supported the product classification provisions already

[26] 7 CFR 1000.40 through 1000.45.

provided in the current FMMOs. Neither group was of the opinion that the proposed FMMO classification provisions would disadvantage any handler currently regulated by the CSO.

This decision finds that a California FMMO should contain, to the maximum extent possible, provisions that are uniform with the FMMO system California producers are seeking to enter. To that end, the proposed California FMMO should include the same classification provisions as currently provided in existing FMMOs to allow for consistency of regulation between FMMOs. Adoption of these provisions would ensure that milk pooled on the California FMMO is classified uniformly with the rest of the FMMO system, and consequently, competing handlers will incur the same regulated minimum prices.

Therefore, this decision finds a California FMMO should provide the following product classifications used in existing FMMOs: Class I milk should be defined as milk used to produce fluid milk products; Class II milk should be defined as milk used to make a variety of soft products, including cream products, high-moisture cheeses like cottage cheese, ice cream, yogurt and yogurt beverages, sour cream, baking mixes, puddings, meal replacements, and prepared foods; Class III milk should be defined as milk used to make spreadable cheeses like cream cheese, and hard cheeses that may be sliced, grated, shredded, or crumbled; Class IV milk should be defined as milk used to make butter, evaporated or condensed milk in consumer-type packages, and dried milk products. Other uses for milk, including milk that is dumped, fed to animals, or accidentally lost or destroyed, should be assigned to the lowest-priced class for the month.

This decision also finds that the California FMMO should adopt the same provisions as the existing FMMOs regarding the classification of milk transfers and diversions, plant shrinkage and overages, and allocation of handler receipts to handler utilization.

The existing FMMOs also contain uniform provisions recognizing that some milk loss is inevitable in milk processing. This is referred to as shrinkage and is calculated as the difference between the plant's total receipts and total utilization. Pool handlers must account for all receipts and all utilization. Shrinkage provisions assign a value to milk losses at a plant. There is, however, a limit on the quantity of shrinkage that may be allocated to the lowest priced class. The limit depends on how the milk is received. For instance, milk physically received at the plant directly from producers based on farm weights and tests is limited to 2 percent, whereas, milk received directly from producers on a basis other than farm weights and tests is limited to 1.5 percent. Similar limits are placed on other types of bulk receipts. Quantities of milk in excess of the shrinkage limit are considered ''excess shrinkage.'' Excess shrinkage is assigned to the highest class of utilization at the plant to arrive at gross utilization, from which the allocation process begins.

The CSO provides a shrinkage allowance of up to 3 percent of the plant's total receipts, which is allocated on the basis of the plant's utilization. Similar to the FMMOs, excess shrinkage in the CSO is assigned as Class 1.

This decision does not find justification for an additional shrinkage allowance for ESL production at ESL pool distributing plants. While the record contains some ESL plant shrinkage data, data pertaining to ESL production at California plants is limited. The record does indicate that ESL production occurs throughout the country. Therefore, amending provisions that are uniform throughout the FMMO system to allow an additional shrinkage allowance on ESL production should be evaluated on the basis of a separate national rulemaking proceeding.

7. Pricing

The two main proposals in this proceeding offered end-product price formulas as the appropriate method for pricing producer milk pooled on a California FMMO, although the factors in the formulas differed. This section reviews arguments presented in testimony and post-hearing briefs regarding the appropriate way to value producer milk. This section further explains the finding that the recommended California FMMO should adopt the same end-product price formulas as contained in the 10 existing FMMOs.

Summary of Testimony

A LOL witness, appearing on behalf of the Cooperatives, testified in support of the classified price provisions contained in Proposal 1. The witness testified that under Proposal 1, California would adopt the classified prices (including the commodity price series, product yields, and make allowances), the component prices, and the advanced pricing factors presently used in the FMMO system. The witness stated that 65 percent of the United States milk production is currently priced under these common provisions, and the same should apply to the 20 percent of the national milk supply produced in California.

The witness provided testimony regarding the evolution of a national manufacturing price, starting with the Minnesota-Wisconsin price series in the 1960's, and ending with the national classified end-product price formulas adopted in 2000. The witness discussed the national pricing system that resulted from FMMO Order Reform (Order Reform), including the multiple component pricing (MCP) system used in 6 of the 10 current FMMOs. The witness explained that the MCP system met the criteria set forth by Congress to make pricing simple, transparent, and based on sound economic theory. Under the MCP system, the witness said, prices are derived from actual, observed market transactions for wholesale commodity milk products, and utilize yield factors and make allowances to determine the value of raw milk in each class. The witness explained that through the Dairy Product Mandatory Reporting Program (DPMRP), manufacturers of the four commodity dairy products (cheese, butter, NFDM, and dry whey) are required to submit sales information on current market transactions. The witness said that information is aggregated, released in the National Dairy Product Sales Report (NDPSR), and utilized in the FMMO price formulas. The witness stated that because many large-scale California dairy plants are part of the DPMRP, California commodity prices are reflected in the prices paid by FMMO handlers and received by producers in the rest of the country, and the same prices should be applicable to milk pooled under a California FMMO.

The witness also testified regarding the influence of California dairy manufacturing costs on the current FMMO make allowances. The witness noted that a USDA Rural Cooperative Business Service (RCBS) study, a Cornell University study of processing costs, and a CDFA cost-of-processing survey were relied upon by USDA to determine appropriate make allowance levels for cheese, butter, NFDM, and dry whey. In the witness's opinion, the inclusion of CDFA manufacturing cost data in the formulation of FMMO manufacturing allowances would justify the use of the same manufacturing allowances (butter: $0.1715 per pound; NFDM: $0.1678 per pound; cheese: $0.2003 per pound; and dry whey: $0.1991 per pound) in a California FMMO. The witness also reviewed the rulemaking history on the derivation of the product yields contained in the current FMMO price formulas, and was

of the opinion they are similar to product yields attainable by California manufacturing plants. The witness stated that the FMMO make allowances and product yields remained relevant, as they had been reaffirmed by USDA through a 2013 Final Rule.[27]

The witness also testified regarding the FMMO national Class I price surface. The witness said that Order Reform resulted in the adoption of a national pricing surface, which assigned a value to milk for every county in the United States based on milk supply and demand at those locations. The witness was of the opinion that since California was factored into USDA's Order Reform analysis to derive the price surface, it would be appropriate for the price surface to be adopted in a California FMMO. The witness noted the price surface identifies five pricing zones covering California, ranging from $1.60 to $2.10 per cwt. The witness explained that in the FMMO system, the Class I differential is added to the higher of the Class III or Class IV price to determine the Class I price for a distributing plant at its location. The witness elaborated that since Class I processors compete with Class III and IV manufacturers for a milk supply, Class I prices are linked to manufacturing prices in the FMMO system, and this concept should likewise apply to a California FMMO.

The witness also explained how the base Class I differential, $1.60 per cwt, was derived during Order Reform. The witness said that the $1.60 base differential assumes a cost per cwt of $0.40 to maintain a Grade A facility, $0.60 for marketing, and $0.60 for securing a milk supply in competition with manufacturers. The witness noted these values were established in 2000, and although still relevant, the actual costs are higher in the current marketplace. The Cooperatives provided additional information in their post-hearing brief, contending that current costs support a base Class I differential of $2.40, a 50 percent increase over the base listed above.

The witness concluded by saying that California dairy farmers should receive prices reflecting the current national market and that are comparable to what producers receive from FMMO regulated plants in the rest of the country. This position was reiterated in the Cooperatives' post-hearing brief.

Another Cooperative witness provided testimony on the handler's value of milk and related provisions. The witness proposed that handlers regulated by a California FMMO pay classified prices based on the components in the raw milk they receive (otherwise known as ''multiple component pricing''): Butterfat, protein, and other solids. Under Proposal 1, the witness said, regulated handlers would pay for milk on the following components:

- *Class I:* Butterfat and skim
- *Class II:* Butterfat and solids nonfat
- *Class III:* Butterfat, protein and other solids
- *Class IV:* Butterfat and solids nonfat

The witness reiterated the Federal Order Reform Recommended Decision justification for implementing a national pricing structure and contended the same reasons apply to extending national pricing to a California FMMO. The witness added that while California handlers would be paying the same national prices for milk components, there would be no need to adjust price formulas for regional product yields because handlers only pay for the components they receive. The witness also explained that Proposal 1 did not prescribe location adjustments in the price formulas because California plants are included in the price surveys that determine the national commodity prices used in the FMMO formulas.

The witness also testified that Proposal 1 provides for a fortification allowance on milk solids used to fortify Class I products to meet California's fluid milk standards, as is currently provided in the CSO. The witness noted that Proposal 1 does not propose a somatic cell adjustment or producer location differentials since both features are not currently contained in the CSO.

The witness said Proposal 1 seeks to have producers paid on the basis of butterfat, protein and other solids, and does not include a producer price differential (PPD) adjustment per se. The witness said that the PPD is typically viewed as the benefit to FMMO producers for participating in the marketwide pool since the PPD reflects the additional revenue shared from the higher value class utilizations. Instead, the witness explained that under Proposal 1, the California FMMO would calculate a monthly PPD, but the value of the PPD would be paid to producers according to each component's annual contribution to the Class III price. For example, said the witness, if on an annual basis butterfat accounted for 32 percent of the total value of the Class III price, then 32 percent of the monthly PPD value would be paid out through an adjustment to the butterfat price. This same adjustment, the witness said, would apply to the producer protein and other solids prices. The witness explained that FMMO producers typically find the monthly PPD concept confusing and complicated, especially in months when it is a negative value. The witness said that California producers, who do not receive a PPD adjustment under the CSO, might find Proposal 1's method of distributing the PPD value simpler to understand.

The witness also clarified that the Cooperatives were amending the proposal regarding announcement of producer prices contained in Proposal 1 from ''on or before the 11th'' to ''on or before the 14th day after the end of the month.''

Support for a national uniform pricing system was reiterated in the Cooperatives' post-hearing brief. The Cooperatives argued that the hearing record demonstrates California cheese competes in the national market. Having California milk priced uniformly in the FMMO system would not disadvantage California processors, reiterated the Cooperatives, but it would diminish the current pricing advantage they have under the CSO. The brief noted record evidence that many FMMO cheese processors paid higher than FMMO minimum prices for milk as proof that FMMO minimum prices are not too high.

The Cooperatives' brief also discussed California whey processing. The brief stated that 85.8 percent of cheese manufactured nationally is produced in plants that also process whey. In California, the Cooperatives wrote, the percentage is closer to 90 percent. Based on these comparable percentages, the Cooperatives stated whey pricing in California should be no different from the rest of the country.

The Cooperatives also stressed opposition to any adjustment to the price formulas to reflect a lower location value in California. The Cooperatives stated milk prices should not be California centric because manufactured products are sold nationally. If California classified prices were to be based solely on California product sales, the Cooperatives were of the opinion that California handlers would receive a raw milk cost advantage over other FMMO regulated handlers. The brief noted that the Cooperatives manufacture a majority of the butter and NFDM produced in California, and they did not believe the proposed California FMMO prices associated with those Class IV products would be too high. The Cooperatives stressed that any changes to the FMMO pricing system should be considered at a national hearing and not in this single-market proceeding.

[27] Official Notice is taken of FMMO Class III and IV Price Formula Final Rule 78 FR 24334.

An Institute witness testified regarding the pricing provisions included in Proposal 2. The witness explained that Class I products have the highest use value in order to encourage adequate milk production to meet Class I needs, and to attract milk to Class I rather than manufacturing uses. As manufacturing class uses balance the supply and demand needs of the marketing area, the witness said it would be important that those classified use values not be set above market-clearing levels.

The Institute witness testified that historically, as milk began to travel greater distances for processing, FMMO pricing policy became more coordinated to promote orderly marketing conditions both within and between FMMOs. The witness said that the Minnesota-Wisconsin price series served as the basis for FMMO pricing because the area surveyed represented the largest reserve supply of milk in the country, and therefore generated an appropriate market-clearing price for manufacturing milk. The witness stated that California is now the region with the largest reserve supply and because California products must compete for sales in the East, the value of raw milk in California is lower than in eastern parts of the country. Therefore, emphasized the witness, minimum prices for a California FMMO should not be set above market-clearing levels in California. This opinion was reiterated in the Institute's post-hearing brief.

The Institute witness cautioned against setting minimum prices too high because it could lead to the inability of dairy farmers to find a willing buyer for their milk. Alternatively, the witness said, if minimum prices are set too low, dairy farmers could be compensated by the market through over-order premiums. The witness said Class III and IV prices for a California FMMO need to be reflective of commodity prices received by California plants, and reflective of current California manufacturing costs. The witness was of the opinion that the national values used in the current FMMO Class III and IV formulas are not appropriate for California.

The Institute witness explained their preference would be to use western commodity prices in the Class III and IV formulas. However, the witness said that, due to data confidentiality issues, USDA is unable to report these prices. As an alternative, the witness said, Proposal 2 contains default commodity values that would adjust the NDPSR prices based on the historical difference between the NDPSR prices and California or western based prices as reported by either CDFA or Dairy Market News. This western adjustment, the witness said, would result in commodity prices in the price formulas more representative of the prices received by California handlers. The witness noted the only exception to how the adjustors are calculated is the default adjustor proposed for the Class III protein price. The Class III protein price adjustor utilized CME 40-pound block Cheddar cheese prices, because CDFA stopped reporting California 40-pound block Cheddar prices after August 2011.

The Institute witness also reviewed the manufacturing allowances contained in Proposal 2. Except for the dry whey manufacturing allowance, explained the witness, all are based on the most recent CDFA manufacturing cost survey for 2013.[28] The witness explained that CDFA no longer reports the dry whey cost data. Therefore, Proposal 2 provides for a dry whey manufacturing allowance that adds the difference between the FMMO manufacturing allowances for nonfat dry milk and dry whey to the most recent CDFA weighted average manufacturing cost for nonfat dry milk. The witness was of the opinion that the yields contained in the FMMO price formulas would be appropriate for California, and are therefore also prescribed in Proposal 2.

The Institute witness testified that many California cheese plants manufacture products other than dry whey that often do not generate revenues to match the dry whey value in the regulated formulas. Other plants, according to the witness, do not have the capability to process the whey by-product from their cheese making operations. Therefore, the witness offered an alternative Class III other solids price formula that would be based on whey protein concentrate (WPC), and would cap the whey value to recognize that not all plants are able to capture value from their whey stream. The witness testified that a more appropriate reference commodity for whey products, one that would be more applicable to most California cheesemakers' operations, would be WPC. The witness explained that over the previous eight years, the production of dry whey declined 3.3 percent, while the production of various WPC and Whey Protein Isolate (WPI) products has seen increases ranging from 1.1 percent to 9.5 percent.

The Institute witness testified that cheese and whey markets are vastly different, and not all cheese plants find it profitable to invest in whey processing. According to the witness, when cheese plants do invest, it is usually in the limited processing of whey into concentrate solids for transportation savings. The witness said that only one plant in California consistently dries whey, and of the 57 California cheese plants, only 13 process whey in any fashion. The witness explained that the alternative other solids price formula offered by the Institute incorporates the value of liquid WPC–34 sold to a plant that would then process the product further into a dry product. While there are a variety of liquid whey products marketed, the witness said using WPC–34 prices as a reference price for other solids would be most appropriate because WPC–34 is the predominant form of liquid whey sold. The witness explained how Proposal 2 would convert the WPC–34 reference price to a dry whey equivalent basis so that the other parts of the other solids price formula could be retained. The witness added that the dry whey make allowance would need to be increased to include the cost of cooling and delivering the liquid whey to a processing facility. To provide some protection to small cheesemakers when the price is very high, and to dairy producers when the price is very low, the witness proposed another solids price floor of $0.25 per pound and a ceiling of $1.50 per pound.

The Institute's post-hearing brief discussed several of the unique aspects of the California dairy industry. The brief stated that from 1995 to 2014, while the state's population grew 23 percent, California milk production increased 82 percent, which in turn fueled the expansion of cheese processing in the state. The brief stated that three processing facilities account for 25 percent of California's cheese manufacturing, and much of that production is marketed east of the Mississippi River. The brief cautioned that increasing minimum prices would create an economic trade barrier where California processors would no longer have the ability to compete in eastern markets due to higher minimum regulated prices.

The Institute's post-hearing brief also addressed the need for a national FMMO pricing hearing. The Institute reiterated hearing testimony that current pricing formulas are based on data from the 1990s, making the prices out of alignment with current market realities. The brief stated that pricing formulas need to be updated in order to be representative of current marketing conditions. The FMMO pricing system, the Institute stressed, needs all pricing

[28] Proposed manufacturing allowances were later amended to incorporate a marketing cost.

formulas to be set at market clearing levels that enable over-order premiums to be paid when appropriate.

A witness appearing on behalf of Leprino Foods, a mozzarella cheese and whey products manufacturer in Denver, Colorado, testified regarding the Class III price formula contained in Proposal 2. Leprino operates nine plants in the U.S., three of which are based in California. Leprino is a member of the Institute and supports adoption of Proposal 2 if USDA recommends a California FMMO.

The Leprino witness stressed the importance of minimizing the impacts of minimum regulated pricing on the dairy marketplace. The witness testified that the United States dairy industry is increasingly integrated with global dairy markets since more than 15 percent of United States milk solids are exported, and that many manufacturers, including Leprino, have made significant investments in developing export markets to increase demand for United States dairy products. The witness said it is important that any future California FMMO facilitate rather than inhibit the dairy industry's ability to leverage this export opportunity.

The Leprino witness testified about the importance of setting minimum regulated milk prices at market clearing levels that would allow for reasonable returns achievable under good management practices by California manufacturers. The witness testified that 80 percent of California milk production is utilized in Class III and IV products, a large percentage of which are marketed outside of California. Therefore, the witness said, California FMMO minimum prices should reflect values of California-manufactured products, f.o.b. the manufacturing plant. The witness added that because price formulas could only be changed through a hearing process, it would be important to set the regulated price formulas at minimum levels that allow market forces to function outside of the regulated system. The witness said regulated prices that are too high would lead to over-production of milk and disorderly marketing conditions. This concept was reiterated in the post-hearing briefs submitted by the Institute and Leprino.

The Leprino witness summarized findings from the Order Reform Final Decision that explained how manufacturing plant operators who find make-allowances inadequate to cover their actual costs are free to not participate in the order. The witness noted this option would not be available under Proposal 1, which underscores the importance of setting appropriate market clearing prices.

The Leprino witness testified that a California FMMO would require a Class III formula that is set in relation to achievable returns in California using the most recent data. The witness explained Leprino's preference that USDA suspend the California FMMO hearing to defer implementation until after a national hearing could be held to review and revise the existing Class III formula. The witness added that USDA should hold a national Class III and IV price formula hearing after this rulemaking to utilize more current data and account for the impacts of a California FMMO, if necessary.

The Leprino witness testified in support of establishing a DPMRP western price survey to determine minimum milk prices under a California FMMO. The witness explained how USDA might rely on surveyed commodity prices from other western states, if necessary, to overcome any data confidentiality issues. In brief, Leprino encouraged USDA to establish a definition for the Western Area, and recommended it include California, Oregon and Washington. In addition to these three states, the witness said that other areas should be considered in order to eliminate confidentiality constraints. However, the witness said that in the event confidentiality concerns continue to arise, Proposal 2 contained alternative default equations.

The Leprino witness discussed the justification for pricing western produced products differently than those in the rest of the country. The witness stressed that the location value of California manufactured products is lower because of the additional transportation costs required to deliver products to the population centers in the East. This opinion was reiterated in Leprino's post-hearing brief. The witness noted that nearly half of Leprino's cheese production sold domestically is shipped to markets east of the Mississippi, and they incur transportation costs ranging from $0.10 to $0.15 per pound.

The Leprino witness was of the opinion that bulk Cheddar cheese remains the most appropriate product from which to derive the FMMO Class III price, but California Class III price formulas should rely on 40-pound block Cheddar prices because all California Cheddar production is in blocks. The adoption of 40-pound block cheddar prices was reiterated in Leprino's post-hearing brief.

The witness testified in support of modifying the make allowances in Proposal 2 to incorporate a sales and administrative cost of $0.0015 per pound. Therefore, the new proposed make allowances per pound of product would be as follows: $0.2306 for cheese, $0.1739 for butter, $0.2310 for whey, and $0.2012 for NFDM.

The Leprino witness provided extensive testimony on the appropriate valuation of whey in FMMO Class III minimum pricing. The witness explained how the explicit whey factor had been a problem for cheesemakers and led the Institute to propose an alternative valuation. Proposal 2 would value the whey portion of the Class III price formula relative to its concentrated liquid whey value, which the witness said was the most generic whey product produced. The witness stated that the WPC–34 price index is the most common reference used for the sale of liquid whey by cheese plants selling concentrated whey in California. The witness added that the prices received for liquid whey are discounted to reflect additional processing required to produce a full-value whey product. Accordingly, said the witness, California FMMO minimum prices should rely on WPC–34 survey prices to approximate a whey value in the Class III price.

The Leprino witness testified in opposition to the Class III and IV formulas contained in Proposal 1. The formulas, the witness said, do not reflect California market conditions. The witness warned that higher regulated prices in California would lead to disorderly marketing conditions. In its post-hearing brief, Leprino stated the pricing formulas in Proposal 1 used old manufacturing cost data and the national weighted average prices for the four products exceeded the prices received in California. Leprino noted that there was no evidence provided by the Cooperatives related to the relevance of the Proposal 1 formulas to California.

A witness testifying on behalf of Hilmar spoke to how the current FMMO Class III and IV pricing formulas, if applied to a California FMMO incorporating inclusive pooling, would lead to disorderly marketing conditions. In its brief, Hilmar stated that disorderly marketing conditions would negate the competitive equilibrium present between eastern and western markets and lead to a trade barrier that would hinder the California dairy industry.

The witness testified that Hilmar had not experienced difficulties in sourcing raw milk supplies, and that there was currently no disorder in California to warrant promulgation of a California FMMO. The witness described several scenarios in the past where CSO whey pricing methodology over valued whey

and led to disorderly marketing conditions for Hilmar, its independent producer suppliers, and other California dairy farmers, which CDFA was able to remedy through an adjustment to the whey factor.

The Hilmar witness testified that if milk used in California cheese production was subject to the whey factor used in the current FMMO Class III price, the whey product stream in California would be overvalued. Use of that whey factor, along with the inclusive pooling provisions in Proposal 1, would give rise to disorderly marketing conditions.

The Hilmar witness was of the opinion that 2015 California milk production decreased for reasons not relevant to the differences in CSO 4b versus FMMO Class III pricing. Instead, the witness said, production was influenced by low milk powder prices related to global oversupply of milk powder, as well as drought, environmental regulations, and competition for land from other crops.

The Hilmar witness testified that CSO milk prices are minimums, and cooperatives have the ability to negotiate for higher milk prices from their proprietary plant customers. The witness said that Hilmar paid premiums of approximately $120 million for milk above the CSO 4b price over the last several years. The witness explained that these premiums were paid for milk characteristics such as component content and other market-based factors. The witness added that when CSO 4b prices were temporarily increased through CDFA's adjustment to the sliding scale whey factor, the premiums Hilmar paid for milk decreased.

The Hilmar witness testified that the make-allowances in the FMMO Class III and IV formulas are outdated, and new manufacturing cost studies are necessary. The witness stated that Hilmar's manufacturing costs for cheese and milk powders are higher than those provided for in the FMMO Class III and IV formulas. The witness said that if a California FMMO was adopted with inclusive pooling, it would be impossible for Hilmar to clear the market, unlike in existing FMMOs where manufacturing milk is not required to be pooled.

The Hilmar witness explained that California FMMO minimum milk prices need to reflect local supply and demand conditions. The witness entered Hilmar data showing that prices received for the sale of Hilmar cheese averaged $0.04 per pound lower than the announced NDPSR weighted average cheese price from 2010 to 2013. This price difference, the witness explained, is a function of the additional transportation cost incurred by Hilmar to transport product to eastern markets. The witness made similar price comparisons for NFDM and butter.

The Hilmar witness stressed that if California FMMO prices are not reflective of the California market, the California dairy industry will be less competitive in the global marketplace. The witness noted that in 2014, Hilmar exported 10 percent of its cheese, 50 percent of its WPC, and 95 percent of its lactose; and they planned to export all of the skim milk powder to be produced at a manufacturing facility nearing completion in Turlock, California. Inclusive pooling and U.S.-centric milk pricing in California, said the witness, would lead to competitive disadvantages for California manufacturers in international and domestic markets.

The Hilmar witness testified that they produce several types of whey products, but not dry whey. The witness was of the opinion that dry whey is a poor indicator of the value of Hilmar's WPC products. The witness said the potential minimum regulated cost under inclusive pooling provisions in a California FMMO would make production of Hilmar's whey products unprofitable.

In the post-hearing brief submitted by Hilmar, concerns regarding an adequate return on investment were raised. Hilmar was of the opinion that Proposal 1 does not provide an adequate level of return on investment to allow for processors to remain viable. The brief stated that adoption of provisions allowing for handlers to opt not to pool manufacturing milk could alleviate those concerns.

In its post-hearing brief, Hilmar sought to counter the Cooperatives' claim that California manufacturers have a competitive advantage over their FMMO counterparts and thus should be able to pay FMMO minimum prices. Hilmar countered that California handlers have a long-term competitive disadvantage when compared to their FMMO counterparts because of the CSO's mandatory pricing and pooling provisions. Hilmar maintained that the value of milk in California is lower than in the eastern part of the country, and California FMMO price formulas should reflect this reality.

A witness testified in support of Proposal 2 on behalf of Marquez Brothers International (Marquez), a Hispanic cheese manufacturer located in Hanford, California. The witness explained how their company invested in a processing facility in 2004 to address challenges with whey disposal. The witness explained that of the total milk solids they receive, approximately 48 percent is used in cheese, and 52 percent ends up in the whey stream. The formulation of Marquez's whey stream, the witness noted, is approximately 5.11 percent whey cream, 9.45 percent WPC–80, and 85.44 percent lactose permeate.

The Marquez witness testified that out of 57 California cheese plants, 49 plants (19.1 percent of California cheese production) have limited or no ability to process whey. The witness testified that whey disposal had been a burden for their business in the past, costing $1.5 million per year with no revenue offset and no recognition in the CSO 4b price of whey disposal costs. The witness added that the same problems existed in the FMMO Class III formula price contained in Proposal 1. The witness testified that the reliance on dry whey to price the other solids component of the FMMO Class III price would be inappropriate since cheesemakers must pay producers for the value of whey that can be generated from their milk, regardless of whether that price is actually obtained from the market.

The Marquez witness testified that adoption of Proposal 1 would discourage investment in cheese processing technologies. The witness said that a system of inclusive pooling coupled with other increases in operating costs would lead to competitive difficulties for California cheese plants.

A witness appeared on behalf of BESTWHEY, LLC (BESTWHEY), in opposition to adoption of Proposal 1. BESTWHEY provides consulting services to cheese manufacturing facilities, with a focus on specialty cheeses and whey handling and disposal. According to the witness, Proposal 1 would restrict the growth of California's cheese industry and eliminate most of the small cheese businesses in the state, and Proposal 1's inclusive pricing and pooling would lead to an over-supply of California milk. The witness highlighted the limited number of California plants with whey processing capabilities. The witness supported adoption of Proposal 2 because, according to the witness, it would provide a more realistic value for whey in the other solids price calculation, based on the actual value of liquid whey sold by cheese plants.

A witness appeared on behalf of Klondike Cheese (Klondike), a Wisconsin-based cheese manufacturer. The witness said that Klondike cools its liquid whey by-product and sells it to a larger whey processing facility. The witness provided detailed descriptions

of whey processing methodology and the associated costs. The witness testified that basing the other solids price on dry whey markets is inappropriate and does not accurately reflect the revenues from whey at their operation. The witness entered Klondike 2014 data showing an average loss on its whey production of $0.6516 per cwt of milk.

A witness testified on behalf of Decatur Dairy (Decatur), a cooperative-owned, Wisconsin-based cheese manufacturer, in regards to using dry whey as the basis for the other solids price. The witness provided detailed descriptions of whey processing methodology and the associated costs. The witness said that Decatur sells warm wet whey to a nearby plant for further processing. The witness said that dry whey prices contained in the FMMO product-price formulas did not reflect the revenue they receive from their liquid whey sales, and it is not feasible for them to invest in drying equipment. The witness entered Decatur data for 2012 to 2015 showing average annual losses on its whey production ranging from $0.0627 to $0.7114 per cwt of milk.

A consultant witness appeared on behalf Joseph Gallo Farms (Gallo Farms). The witness explained that Gallo Farms owns two dairy farms, as well as cheese and whey processing facilities in California, and supports adoption of Proposal 2. Gallo Farms processes WPC from their own cheese operation and from other cheese facilities.

The Gallo Farms witness testified that if they had been required to pay the FMMO Class III price for milk, they would not have been able to make updates or improvements to their facilities. The witness estimated their cheese costs would have increased by $0.2237 per pound if Proposal 1 had been in effect from January 2014 through September 2015. The witness was of the opinion that California dairy farmers should not compare the prices received in California to prices received in the Midwest or East Coast, where significant population centers are serviced. The witness characterized the California market as significantly different from eastern markets, as it includes not only the West Coast population centers, but also Mexico and other export markets. The witness was of the opinion that a California FMMO, as provided for in Proposal 1, could lead to the closure of small and medium sized manufacturing plants.

The Gallo Farms witness supported the portion of Proposal 2 that relies on WPC to determine the other solids price, as most whey pricing is related to the WPC market rather than dry whey.

An Institute witness testified regarding Class I pricing. The witness was of the opinion that the policy of assigning Class I milk the highest classified value should be reevaluated, given current market realities. The witness said that Proposal 1 relied on the current Class I price surface and fluid milk pricing system incorporated in the existing FMMOs, while other potential fluid milk pricing options have not been thoroughly investigated. The witness argued that although the ''higher of'' pricing mechanisms dampens Class I sales and limits the ability of fluid milk processors to hedge their Class I milk volumes, the Institute still supported the Class I milk pricing mechanism advanced in Proposal 2.

The Institute witness also testified regarding a technical modification to Proposal 2 that would affect how handlers pay for the milk components used in Class I products and how handler credits for fortifying fluid milk products would be determined. The witness explained that milk standards set by the State of California require a higher nonfat solids content than the Food and Drug Administration standard used elsewhere in the country. California fluid milk processors fortify raw milk with either condensed or nonfat dry milk to meet these higher standards.

The Institute witness described the differences between CSO and FMMO accounting for fluid milk fortification. Under FMMOs, the witness said, handlers account to the pool at the Class IV price for the solids used to fortify milk, but then are charged the two-factor (butterfat and skim) Class I price for the volumetric increase in fluid milk realized through fortification. Under the CSO, handlers account to the pool using a three-factor (butterfat, nonfat solids, and fluid carrier) Class 1 price for all solids used in Class 1 products, but then receive a credit for the solids used to fortify milk to meet the state standards. The Institute witness was of the opinion that the CSO three-factor system, coupled with its fortification credits, is superior to the FMMO system because it encourages orderly milk movements by making fluid milk handlers indifferent to the solids content of milk they receive, and it ensures that Class 1 handlers do not have a regulated milk price advantage over one another. The witness explained that plants receiving milk with a higher solids content might pay a higher Class 1 price for the raw milk, but less for fortification, while plants receiving milk with a lower solids content might pay a lower Class 1 price for the milk, but more for fortification, making both plants competitive with each other. The witness emphasized that in the absence of a fortification credit for meeting the California milk solids requirement, handlers under a California FMMO might make milk sourcing decisions solely to take advantage of a two-factor Class I price formula.

A witness appeared on behalf of Hilmar to outline the history of FMMO surplus milk pricing policies. The witness, referring to decisions from previous FMMO rulemakings and reports, stated that FMMO minimum pricing should be set at levels aligning with net revenues received by manufacturers in the local marketing area in order for milk to ''clear'' the market. Therefore, the witness concluded, USDA must examine the local California market situation when determining appropriate minimum prices in a California FMMO.

A Cooperative witness addressed the alternative Other Solids price formula that was offered by the Institute. The witness stressed that there was not then available a verifiable price series for WPC–34, nor had the Institute presented any third-party WPC–34 manufacturing cost studies. The witness estimated that 86 percent of the Class 4b milk was processed at plants that had whey drying capabilities. In addition, the witness said that the Cooperatives' modified exempt plant provision would exempt as many as 25 of the 57 cheese plants from FMMO minimum price regulation.

Findings

Handler's Value of Milk

The FMMO program currently uses product price formulas relying on the wholesale price of finished products to determine the minimum classified prices handlers pay for raw milk in the four classes of products. Class III and Class IV prices are announced on or before the 5th day of the month following the month to which they apply. The Class III and Class IV price formulas form the base from which Class I and Class II prices are determined. The Class I price is announced in advance of the applicable month. It is determined by adding a Class I differential assigned to the plant's location to the higher of an advanced Class III or Class IV price computed by using the most recent two weeks' DPMRP data released on or before the 23rd of the preceding month. The Class II skim milk price is announced at the same time as the Class I price, and is determined by adding

$0.70 to the advanced Class IV skim milk price. The Class II butterfat price is announced at the end of the month, at the same time as the Class III and Class IV prices, by adding $0.70 to the Class IV butterfat price.

AMS administers the DPMRP to survey weekly wholesale prices of four manufactured dairy products (cheese, butter, NFDM and dry whey), and releases weekly average survey prices in the NDPSR. The FMMO product price formulas use these surveyed products to determine the component values in raw milk. The pricing system determines butterfat prices for milk used in products in each of the four classes from surveyed butter prices; protein and other solids prices for milk used in Class III products from surveyed cheese and dry whey prices, respectively; and a nonfat solids price for milk used in Class II and Class IV products from surveyed NFDM product prices. The skim milk portion of the Class I price is the higher of either the protein and other solids prices of the advanced Class III skim milk price or the NFDM price of the advanced Class IV skim milk price.

The butterfat, protein, other solids, and nonfat solids prices are derived through the average monthly NDPSR survey price, minus a manufacturing (make) allowance, multiplied by a yield factor. The make allowance factor represents the cost manufacturers incur in making raw milk into one pound of product. The yield factor is an approximation of the product quantity that can be made from a hundredweight of milk received at the plant. The milk received at the plant is adjusted to reflect farm-to-plant shrinkage when using farm weights and tests. This end-product pricing system was implemented as a part of Order Reform on January 1, 2000,[29] and last amended on July 1, 2013.[30]

The pricing methodology described above were proposed by the Cooperatives to apply in a California FMMO and are contained in Proposal 1. The Cooperatives maintain USDA has for many years held that the market for manufactured dairy products is national in scope and that the price of milk used to manufacture those products should therefore be the same across the nation. Proponents of Proposal 1 explained that the commodity prices used in the formulas are based on a survey of prices for manufactured dairy products from plants across the country, including California. They went on to point out that the surveyed manufacturing costs were from plants in California, as well as in other states. These surveyed costs have been used to determine FMMO make allowances in the product-price formulas since their inception.

The Cooperatives, through witness testimony and post-hearing briefs, stressed that prices used to determine California handlers' value of milk should be based on the same national average factors as those used in the FMMOs. They repeatedly stressed that manufactured products compete in a national market, and therefore California dairy farmers should receive a milk price reflective of those commodity values. The Cooperatives' primary justification for a California FMMO is that the CSO does not provide dairy farmers a milk price reflective of these national values, and they are now seeking to be included in the FMMO system so California dairy farmers can receive prices similar to their counterparts in the rest of the country.

The Institute, through witness testimony and post-hearing briefs, argued that classified prices in a California FMMO must be reflective of the current market conditions in California. They were of the opinion that not only has data used in the formulas become outdated, but that the value of California milk is inherently lower because of California's geographic location in the West and the additional cost of transporting finished product to population centers in the East. They argued that these conditions make it hard for the Institute's dairy manufacturing member companies to remain competitive in the market.

In Proposal 2, the Institute proposed several changes to the current FMMO pricing formulas that would be applicable in California. First, the Institute proposed a western states price series for each commodity surveyed by the DPMRP. If a western price could not be used because of data confidentiality issues, the Institute proposed that a fixed value for each commodity be subtracted from the current NDPSR prices to represent the lower value of products in the West. Second, the Institute suggested that a Western states manufacturing cost survey be conducted to determine relevant California make allowances for each commodity, and if this was not feasible, they proposed specific make allowance levels that they asserted are representative of manufacturing costs in California. Third, they proposed that the NDPSR Cheddar cheese price used in the FMMO protein price formula for California only consider 40-pound block prices. They proposed that 500-pound barrel Cheddar cheese prices should not be included as they are in current FMMOs.

Class III and Class IV Pricing. This decision recommends that the classified and component price formulas used in the 10 current FMMOs[31] be utilized without change in the proposed California FMMO. These formulas were adopted nationally as part of Federal Order Reform and were described at the beginning of this section. The Order Reform Final Decision[32] found that because commodity dairy products compete in the national market, it was appropriate that the raw milk used in those products be priced uniformly across the FMMO system. This hearing record contains testimony explaining the FMMO evolution toward national uniform pricing for manufactured products. Such explanation was also outlined in the Order Reform Final Decision.

In the early 1960s, FMMOs used a Minnesota-Wisconsin (M–W) manufacturing grade milk price series to determine a price for milk used in manufactured products based on the supply and demand for Grade B milk. As Grade B milk production and the number of plants purchasing Grade B milk declined, FMMOs moved to a Basic Formula Price (BFP). The BFP price incorporated an updating formula with the base M–W price to account for the month-to-month changes in the prices paid for butter, NFDM, and cheese. The Order Reform decision recognized that Grade B milk would only continue to decline and that the FMMO system needed a new way of determining the value of producer milk.

As outlined in the Order Reform Final Decision, the goals for replacing the BFP price were: (1) To meet the supply and demand criteria set forth in the AMAA; (2) not to deviate greatly from the general level of the current BFP; and (3) to demonstrate the ability to change in reaction to changes in supply and demand. The product-price and component formulas currently used in the FMMO system were found to be the appropriate market-oriented alternative to the BFP. Additionally, that final decision specifically addressed the national market for commodity dairy products:

"... the current BFP may have a greater tendency to reflect supply and demand conditions in Minnesota and Wisconsin rather than national supply/demand conditions. The formulas in this decision use national commodity price series, thereby reflecting the

[29] *See infra.*

[30] *See infra.*

[31] 7 CFR 1000.50 and 1000.52.

[32] Official Notice is taken of FMMO Reform Final Decision: 64 FR 16026.

national supply and demand for dairy products and the national demand for milk.'' [33]

The Department subsequently reiterated the necessity for FMMO classified prices to reflect national markets in a later final decision on Class III and IV pricing when it specifically addressed public comments pertaining to the relationship of the CSO and FMMOs:

''Class III and Class IV dairy products compete in a national market. Because of this, Class III and Class IV milk prices established for all Federal milk marketing order areas are the same.'' [34]

This decision finds the prices used in the California FMMO should also reflect the national marketplace for cheese, butter, NFDM and dry whey. The record reflects that commodity products produced in California compete in the same national market as products produced throughout the country. Uniform FMMO price formulas ensure similarly situated handlers have equal minimum raw milk costs regardless of where the handler is regulated. As California is seeking to join the FMMO system, it is appropriate that the milk pooled on the California FMMO be priced under the same uniform price provisions found in all current FMMOs. Additionally, this decision finds that by pricing California milk under these uniform pricing provisions, prices received by farmers whose milk is pooled on the California FMMO would be more reflective of the national market for commodity products for which their milk is utilized. Therefore, adopting a western adjusted price series, a 40-pound only Cheddar cheese price, and California-specific make allowances is not appropriate. As explained below, FMMO price formulas already account for California market conditions; therefore, it is reasonable to use these price formulas in a California FMMO. This decision finds that the national FMMO pricing policy continues to reflect the marketing conditions of the entire FMMO system and is appropriate for adoption in California.

FMMO product-price formulas generally consist of three factors: Commodity price, manufacturing allowance, and yield factor. Product yields contained in the formulas reflect standard industry norms. The yields were last updated in 2013,[35] and the record shows that these values continue to reflect current market conditions, as there was no dispute as to their continued relevancy.

Commodity prices used in the FMMO formulas are announced by AMS in the NDPSR every month and reflect current commodity prices received for products over the previous four or five weeks. While surveyed plant names and locations are not released by USDA, several witnesses testified that California dairy product sales meeting the reporting specifications [36] are included in the NDPSR. These California sales are part of the NDPSR prices used by the FMMOs in the same way that sales from plants located in other areas of the United States are currently included.

FMMO pricing formulas currently contain the following per-pound make allowances: Cheese—$0.2003, butter—$0.1715, NFDM—$0.1678, and dry whey—$0.1991. These make allowances were last updated in 2013.[37] They were determined on the basis of a 2006 CDFA survey (plants located inside of California) and a 2006 Cornell Program on Dairy Markets and Policy (CPDMP) survey (plants located outside of California) of manufacturing costs. The butter and NDFM make allowances were computed by taking a weighted average of the CDFA and CPDMP surveys, weighted by national commodity production volumes, and adjusting for marketing costs. The cheese make allowance was computed by relying solely on the CDFA survey and adjusting for marketing costs. The dry whey make allowance was computed by relying solely on the CPDMP survey and adjusting for marketing costs. California dry whey data was not considered because at the time, it was restricted and therefore not available.

As the record demonstrates, most of the manufacturing allowances already account for California manufacturing costs. In regard to the Institute's position that data used to determine make allowance levels is not current, this decision recognizes 2006 data was used to determine current make allowance levels. Since that time, USDA has not received a hearing request to amend the levels. It may be appropriate to amend these levels in the future, and USDA would evaluate any changes to those levels on the basis of a formal rulemaking record.

Institute witnesses stressed that California manufacturers would be competitively harmed should California FMMO minimum classified prices not reflect a solely western location value. This decision finds that California manufacturers would not face competitive harm with the adoption of the uniform FMMO prices. Western manufacturing handlers who purchase milk pooled on the Pacific Northwest and Arizona FMMOs already routinely pay these prices. The record reflects that the Institute's primary concern was the adoption of the current FMMO price formulas for California, coupled with the adoption of the inclusive pooling provisions contained in Proposal 1. The provisions recommended by this decision allow handlers to elect not to pool milk used in manufacturing as determined appropriate for their individual business operations. The proposed California FMMO provisions would not prohibit handlers and producers from utilizing the Dairy Forward Pricing Program [38] to forward contract for pooled manufacturing milk.

Other Solids Price. Currently, the FMMO system determines the other solids price using the same basic formula used to determine the other component prices: (Commodity price less make allowance) times yield, using dry whey as the NDPSR-referenced commodity price. As the market price for dry whey moves and is reflected in the NDPSR price, it moves the other solids price accordingly.

At the hearing, the Institute proposed an alternative method for computing the whey value in the other solids formula. The Institute argued, in testimony and post-hearing brief, that dry whey is not an appropriate reference commodity for California because little dry whey is produced in the state. Instead, they testified that prices from the more commonly produced WPC–34 should be used. The Institute provided evidence regarding WPC–34 production in California. The record contains testimony explaining how WPC–34 and dry whey production practices and manufacturing costs differ.

This decision finds that prices adopted in the California FMMO should be uniform with all current FMMOs and be reflective of the dry whey market. Therefore, it is not appropriate on the basis of this hearing record to adopt a change in other solids pricing for only one FMMO. The data and testimony presented by the Institute could warrant further consideration, but to consider such a change for only one FMMO is inappropriate. While an academic expert did provide testimony on the record about a WPC–34 manufacturing cost survey, results of the survey, which would be of interest if such a proposal was being evaluated, were not available.

[33] *See infra.*

[34] Official Notice is taken of FMMO Class III and IV Final Decision: 67 FR 67937.

[35] *See infra.*

[36] 7 CFR 1170.8.

[37] *See infra.*

[38] *See* 7 CFR part 1145.

Class II Pricing. The FMMO system currently prices milk used in Class II products uniformly. The Class II skim milk price is computed as the advanced Class IV skim price plus $0.70 per cwt. The Class II butterfat price is the Class III butterfat price for the month, plus $0.007 cents per pound. The $0.70 differential between the Class IV and Class II skim milk prices adopted in the Order Reform Final Decision was an estimate of the cost of drying condensed milk and re-wetting the solids for use in Class II products.

The record reflects—and this decision finds—that milk pricing in the FMMO system should be as uniform as possible. Therefore, this decision finds that Class II pricing in the California FMMO should be the same as in current FMMOs. Class II pricing in the California FMMO would result in forward pricing the skim portion of Class II while pricing butterfat on a current basis. Butterfat used in Class II products competes on a current-month basis with butterfat used in cheese and butter, and its price should be determined on the basis of the same month's value.

Class I Pricing. Currently, FMMOs determine Class I prices as the higher of the advanced Class III or Class IV price, plus a location-specific differential referred to as a Class I differential. Class I differentials have been determined for every county in the continental United States, including California.[39] Class I prices paid in all current FMMO's are on a skim/butterfat basis. Handlers who fortify their Class I products have the NFDM or condensed skim used to fortify classified as a Class IV use, and pay the Class I price for the volumetric increase attributed to fortification.

The Cooperatives have proposed that the California FMMO adopt the same Class I pricing structure: The higher of the advanced Class III or Class IV price plus a Class I differential based on the plant location. They argued that the Class I price surface was designed as a nationally coordinated structure and already includes differential levels for all California counties. According to the Cooperatives, any change to the Class I differential surface should be done through a national rulemaking hearing where all interested parties can participate.

The Institute argued, in testimony and post-hearing brief, that the Class I differential surface adopted as part of Order Reform did not consider California in its inception, and is inappropriate for adoption here. The Institute did not offer an alternative.

This decision finds that the Class I price formula contained in Proposal 1, and as currently used in all current FMMOs, is appropriate for the proposed California FMMO. This decision finds that prices for milk pooled on the California FMMO and used in Class I products should be location-specific, since Class I products generally compete on a more local market. Therefore, the Class I differential surface that applies in all current FMMOs is recommended for the California FMMO. As such, Class I prices for milk pooled on the California FMMO would be determined by the higher of the advanced Class III or Class IV milk price announced on or before the 23rd day of the preceding month, plus the Class I differential at a plant's location.

This decision recommends for a California FMMO the same Class I differential surface used in the current FMMOs. Contrary to Institute testimony, this differential surface was determined through a United States Dairy Sector Simulator (USDSS) model that included California supply and demand factors. An academic expert testifying in this proceeding was one of the lead authors of the model and stated that California was included when the model was constructed. This price surface was designed to facilitate the movement of milk to Class I markets without causing disorderly marketing conditions within or across markets. Therefore, it is inappropriate on the basis of this hearing record to make a change to this nationally coordinated Class I price surface.

The Institute repeatedly argued that the Department did not consider California when determining the nationally coordinated Class I price surface. Prior to January 1, 2000, there were 31 FMMOs. As part of the 1996 Farm Bill, the Department was instructed by Congress to consolidate the existing orders into as few as 10, and no more than 14, FMMOs, reserving one place for California. Since California stakeholders did not express a desire to enter the FMMO system at that time, the Order Reform process only considered the FMMO marketing areas in existence at the time for consolidation. In the Order Reform Final Decision, the reference to ''not including the State of California'' [40] pertained to determining appropriate consolidated marketing areas, not the analysis pertaining to Class I pricing, which included California.

Three-Factor FMMO Class I Pricing and Fortification. The Institute proposed that California Class I prices be paid on a 3-factor basis: Butterfat, nonfat solids and fluid carrier, as well as incorporate a fortification credit similar to what is currently provided for in the CSO. The fortification credit offered in Proposal 2 provides a credit to a Class I handler's pool obligation for the NFDM or condensed skim milk a handler uses to fortify Class I products to meet the State's higher nonfat solids content requirement. The proposed fortification credit would be paid out of the California FMMO marketwide pool funds.

The Institute explained these two features are currently provided for in the CSO and work together to financially assist Class 1 handlers in meeting the State-mandated higher nonfat solids content for Class 1 products. The Institute explained that handlers receiving high solids milk pay a higher Class 1 price, but use less solids to fortify Class 1 products, and thus incur less cost to meet the state's nonfat solids standards for fluid milk products. Conversely, handlers purchasing low solids content milk pay a lower Class 1 price, but then incur a higher cost to fortify their Class 1 products. The Cooperatives supported this concept in their post-hearing brief.

The current FMMO system prices all Class I skim milk at the same price regardless of the solids content. The record does not contain enough justification to deviate from the uniform treatment of Class I pricing. Therefore Class I milk pooled on the California FMMO will be paid on a skim and butterfat basis. This uniform treatment will avoid disorderly marketing with adjacent or other Federal orders, as handlers could seek to engage in inefficient milk movements solely for the purpose of seeking a Class I price advantage.

Current FMMOs do not provide credits to a handler's pool obligation for fortification of Class I products. Instead, NFDM or condensed skim used to fortify Class I products is classified as a Class IV product on a skim equivalent basis. The volumetric increase due to fortification is classified and priced as Class I. Proposal 2 contains this same system of credits to a handler's pool obligation for fortification.

The record reflects that the CSO fortification credit system is also included in Proposal 2. The record indicates the CSO fortification credit system was designed in response to California's legislatively mandated higher nonfat solids standard for Class 1 products. The record does not address how incorporation of the CSO fortification credit system would operate in the context of the existing

[39] 7 CFR 1000.52.

[40] *See infra.*

FMMO fortification classification provisions without resulting in a double credit for fortification.

This decision does not find justification for incorporating into the California FMMO a modification to how the FMMO system uniformly addresses fortification of Class I products. As described above, and as contained in the proposed classification structure in both Proposals 1 and 2, the California FMMO would provide a lower classification for products used to fortify Class I products. Handlers would only be charged the Class I price on the volumetric increase in Class I products resulting from fortification.

In its post-hearing brief, the Institute filed a Negative Inference Motion asserting that because the Cooperatives did not enter into the record of this proceeding a study they commissioned evaluating their proposed milk pricing provisions, USDA should conclude that the study results contradict the Cooperatives' justification for adopting the price formulas contained in Proposal 1.

It is left to the discretion of the trier of fact to determine whether or not a negative inference will be drawn from the failure to present any specific piece of evidence under one party's exclusive control. The USDA finds that the recommended pricing provisions are properly based on testimony of those witnesses who appeared and the evidence that has been presented by all parties on the record.

Producer's Value of Milk

Currently, 6 of the 10 FMMOs utilize multiple component pricing to determine both the handler's and producer's value of milk. In the six orders, producers are paid for the pounds of butterfat, pounds of protein, pounds of other solids of milk pooled, as well as a per hundredweight (cwt) price known as the producer price differential (PPD). The PPD reflects the producer's pro rata share of the value of Class I, Class II, and Class IV use in the market relative to Class III use. The Class III butterfat, protein, and other solids prices are the same component prices charged to handlers based on the value of the use of milk in Class III. In four of these six FMMOs, there is an adjustment to the producer's payment for the somatic cell count (SCC) of the producers' milk.

Proposal 1 and Proposal 2 seek to pay producers on a multiple component basis for the milk they produce. As will be discussed below, the proposals differ on how they would apply a PPD to producer payments. Unlike Proposal 2, Proposal 1 does not specify a somatic cell adjustment to the producer's value of milk.

The record reflects that milk use in California is concentrated in manufactured dairy products. In 2015, California Class 1 utilization was 13 percent, Class 2 and Class 3 utilization combined was 8.6 percent, while 78.4 percent was used in Class 4a and Class 4b products (cheese, butter and dried milk powders). As California is clearly a manufacturing market, it is appropriate for producers to be paid for the components they produce that are valued by the manufacturers. Therefore, this decision recommends producer payments on a multiple component basis. Producers would be paid for the butterfat, protein, and other solids components in their producer milk and for the cwt of milk pooled.

This decision recommends that producers be paid a PPD calculated in the same manner as six current FMMOs. The PPD represents to the producer the value from the Class I, Class II, and Class IV uses in the pool that they are entitled to share because they participate in the FMMO pool. In general, the PPD is computed by deducting the Class III component values from the total value of milk in the pool, and then dividing the result by the total pounds of producer milk in the pool. The PPD paid to producers participating in the California FMMO pool would be adjusted to reflect the applicable producer location adjustment for the handler location where their milk is received.

Therefore, under the proposed California FMMO, the minimum payment to producers would be determined by summing the result of: Multiplying the hundredweight of a producer's milk pooled by the PPD adjusted for handler location; multiplying the pounds of butterfat in the producer's milk by the butterfat price; multiplying the pounds of protein in a producer's milk by the protein price; and multiplying the pounds of other solids in a producer's milk by the other solids price.

Proponents of Proposal 1 proposed distributing the PPD value across the butterfat, protein and other solids components, based on the average value each component contributed to the Class III price during the previous year. The Cooperatives purported that the PPD is confusing to producers, particularly when it is negative, and spreading the value of the PPD across the components would be a simpler method of distribution.

The PPD is the difference between value associated with all the milk pooled during the month and the producers' value for the butterfat, protein, and other solids priced at the Class III component prices for the month. In general, if the marketwide utilization value of all milk in the pool, on a per cwt basis, is greater than the marketwide utilization value of the producer's components priced at Class III component values, dairy farmers receive a positive PPD.

A negative PPD occurs when the value of the priced producer components in the pool exceeds the total value generated by all classes of milk. This is possible since all producer components are priced at the Class III components values, but pooled milk is utilized in all four classes, each with its own separately derived value.

Specifically, negative PPDs can happen when large increases occur in NDPSR survey prices from one month to the next resulting in the Class III price (announced at the close of the month) exceeding, or in a close relationship to, the Class I price (announced in advance of the month). Negative PPDs can also occur in markets with a large Class IV use when the Class IV price is significantly lower than the Class III price. A negative PPD does not mean that there is less total revenue available to producers. It often means the Class III component values are high relative to Class I prices. Because component values are the biggest portion of a producer's total revenue, high component prices coupled with negative PPDs often result in higher *overall* revenue to producers than when component prices are lower and PPDs are large and positive.

This decision does not find justification for distributing the PPD through the component prices as offered in Proposal 1. Current FMMO producers receive and understand that the PPD represents the additional value from the higher classified markets that they are able to share because they participate in the FMMO. This includes times when the PPD is negative.

While the proponents claim a negative PPD is confusing, this decision finds that distributing the PPD through the component prices would distort market signals to producers. As in the current FMMOs, a negative PPD in the California FMMO would inform producers that component values are rising rapidly. Regulated FMMO prices should not block those market signals. Producers in other FMMOs have been able to adapt to a multiple component pricing system that incorporates an announced PPD. This decision finds that California producers can do the same.

Four of the current FMMOs provide for a SCC adjustment on producer milk values. The CSO does not include any such adjustment. Proposal 1 did not include a provision for a SCC adjuster, and a Cooperative witness specifically testified against its inclusion. Proposal 2 included a SCC adjuster, but no Proposal 2 witnesses testified regarding this aspect of their proposal. This decision does not recommend a SCC adjuster for the California FMMO, as the record does not contain evidence to support its inclusion.

This decision proposes that handlers regulated by the California FMMO should be allowed to make various deductions from a producer's milk check, identical to what is allowed in the current FMMOs. These deductions include such things as hauling expenses and National Dairy Promotion charges, as well as other authorized deductions such as insurance payments, feed bills, equipment expenses, and other dairy related expenses. Authorized deductions from the producer's check must be authorized in writing by the producer. For the California FMMO, authorized deductions would include any assessment identified by CDFA for the payment of California quota values. A quota assessment would be authorized upon announcement by CDFA; it would not have to be authorized in writing by the producer.

Some hearing witnesses suggested that changes to the FMMO pricing system need to be considered in a separate rulemaking proceeding before California producers vote on a FMMO. This decision finds no justification for California producers to wait for a decision on a California FMMO until after what would most likely be a lengthy proceeding on national FMMO pricing. California producers should have the opportunity to vote on whether to join the FMMO system and adopt the provisions recommended in this decision with the full awareness that prices can be re-evaluated at a future hearing.

8. Pooling

This section addresses the pooling provisions of the recommended California FMMO. A summary of testimony for the pooling provisions contained in Proposals 1 and 2 is provided below. Additionally, Proposal 4 is addressed in this section as it seeks to allow handlers the ability to elect partially regulated distributing plant status with respect to milk received from farmers located outside of the marketing area. Proposal 4 would continue the practice of handlers paying the plant blend price for milk produced from outside of the state, instead of the market's blend price, since such interstate transactions cannot be regulated by the State. Essentially, Proposal 4 pertains to whether or not out-of-state milk would be incorporated into the proposed California FMMO marketwide pool and therefore it is addressed in this section.

This decision recommends pooling provisions for a California FMMO that are conceptually similar to the current 10 FMMOs, but tailored for the California market. The recommended pooling provisions are performance based and designed to determine those producers who consistently supply the Class I market, and therefore should share in the revenues from the market. There would be no regulatory producer payment difference given to milk based on the location of the dairy farm where it was produced.

Summary of Proposals

A Cooperative witness testified regarding the pooling provisions contained in Proposal 1. The witness said the Proposal 1 pooling provisions are designed to address the wide disparity in producer and handlers prices that currently exists in California when compared to the FMMO system. The witness stated that in order to design adequate California pooling standards, the Cooperatives evaluated historical producer blend prices using both CSO classified prices and the proposed California FMMO classified prices, from January 2000 through July 2015. The witness estimated that producer blend prices would have averaged $14.65 per cwt using CSO classified prices and $15.22 per cwt using the proposed California FMMO classified prices, an average difference of $0.57 per cwt. The witness' analysis showed that in every month, the estimated CSO blend price was less than the FMMO blend price, and that in using the most recent data (January 2015 through July 2015) the average difference was $0.86 per cwt. The witness stressed that to bring California producer blend prices in closer alignment with FMMO producer blend prices, the pooling provisions of a California FMMO must require the pooling of all classified use values.

The witness was of the opinion that California's combination of low utilization in the higher valued classes (Class 1, 2, and 3) and a state-administered quota program requires strict pooling provisions to prevent handlers from electing not to pool a significant portion of California milk each month. The witness was of the opinion that when the California overbase price is below Class 4a or 4b prices, there is an incentive to not pool milk in those classes because the handler can avoid a payment into the marketwide pool. The witness stated that from January 2000 through July 2015, the California overbase price was below either the Class 4a or 4b price 91 percent of the time. Thus, in those months, if not all milk was pooled, producers would receive different minimum prices—those producers whose milk was pooled would receive the minimum FMMO blend price, and those producers whose milk was not pooled had the potential to receive a higher price because the handler avoided sharing the additional revenue with all the producers in the market through the marketwide pool. This concern regarding producer price disparity was reiterated in the Cooperatives' post-hearing brief.

The Cooperative witness added that even after adjusting producer blend prices to account for quota payments (−$0.37), transportation credits (−$0.09), and RQAs ($0.03), there would be a financial incentive to not pool a significant portion of California milk in most months. Using the pricing provisions contained in Proposal 1, the witness estimated that from August 2012 through July 2015, handlers would have chosen not to pool Class III or Class IV milk 94 percent of the time. The consequence, the witness emphasized, would not only be unstable producer prices, but the inability of the FMMO to achieve uniform producer prices. The witness stressed that to accumulate the revenue needed to provide adequate, uniform producer blend prices and facilitate orderly marketing, all the milk delivered to California plants must be pooled. While provisions requiring all milk to be pooled cannot be found in another FMMO, the witness explained that FMMO pooling provisions have always been tailored to the market and the pooling provisions contained in Proposal 1 are no different. The Cooperatives' post-hearing brief stressed California's need to have tailored pooling provisions that are different from other FMMOs. The Cooperatives' brief reiterated that allowing for milk to not be pooled would inhibit a California producer's ability to receive the national FMMO prices they are seeking.

The witness proceeded to describe the proposed pooling provisions contained in Proposal 1. The witness explained that under Proposal 1, any California plant receiving milk from California farms would be qualified as a pool plant, and all California milk delivered to that plant would be qualified as

producer milk. The witness said Proposal 1 also contains provisions for plants located outside of the marketing area that demonstrate adequate service to the California Class I market to qualify as pool plants on the order. The witness highlighted an additional provision that would regulate all plants located in Churchill County, Nevada, and receiving milk from farms located in Churchill County or California. According to the witness, producers in the Churchill County milkshed have historically supplied milk to the California Class 1 market and this provision would ensure they could remain affiliated. The witness proposed the partially regulated distributing plant (PRDP) provision should be the same as in other FMMOs; a plant qualifies as a PRDP if the plant does not have more than 25 percent of the plant's total disposition within the marketing area.

The Cooperative witness defined a producer as any dairy farmer producing Grade A milk received by a pool plant or a cooperative handler. This provision allows for dairy farmers located inside or outside of the marketing area to qualify as producers under the order, the witness added. The witness said a majority of the producer milk pooled on a California FMMO would be milk received by a pool plant directly from qualified producers or cooperative handlers. Proposal 1 also contains a provision to allow producer milk to be pooled in the order if it was received by a cooperative handler, the witness noted.

The Cooperative witness explained that Proposal 1 prohibits milk from being diverted to nonpool plants outside of the marketing area and remaining qualified for pooling on a California FMMO until five days' production is delivered to a pool plant, and subsequently diversions are limited by the amount the plant delivers to distributing plants. The witness said the California market appears to have an adequate reserve supply of Class I milk, so strict diversion limit standards are needed to ensure that additional milk being pooled is needed in the market.

The Cooperative witness provided examples of previous FMMO changes that the witness described as significant policy shifts, including the elimination of individual handler pools in favor of marketwide pools, the regulation of large producer-handlers, adoption of multiple component pricing, and the establishment of transportation credit programs. The witness said that in these examples the Department found it appropriate to significantly deviate from historical precedent because market conditions justified such changes. The witness stated that Federal Order Reform provided a FMMO foundation that was national in scope, while also allowing for some provisions to be tailored to meet the marketing conditions of individual orders. The witness concluded that the AMAA provides the Department the flexibility to tailor pooling provisions, and Proposal 1 recognizes the unique needs of the California market.

Another Cooperative witness offered testimony modifying Proposal 1 to include call provisions. The witness explained that call provisions are currently contained in the CSO, and while not often utilized, their existence alone encourages milk to be supplied to fluid processing plants when needed. As proposed, the witness said, call provisions should only be used on a temporary basis when the market's milk supply cannot meet distributing plant demand, not when an individual distributing plant is short on milk.

The Cooperatives' post-hearing brief reiterated the justification for the inclusive pooling provisions contained in Proposal 1. The brief stressed that the AMAA authorizes the pooling of milk, irrespective of use.

The Cooperatives' post-hearing brief also offered a modification to extend exempt plant status to small plants that process products other than, or in addition to, fluid milk products. The modification would increase the exempt plant production limit from route sales under 150,000 pounds of fluid milk product to sales under 300,000 pounds of milk in Class I, II, III or IV products during the month. The brief explained that this would allow for small fluid and manufacturing plants to be exempt from the pricing and pooling provisions of the order that would otherwise be required to participate in the marketwide pool.

A witness testifying on behalf of Western United Dairymen said that without inclusive pooling provisions, as outlined in Proposal 1, handlers could opt not to pool large amounts of milk. The witness said this would have a substantial impact on the pool value and consequently lower blend prices to those producers who remain pooled.

An Institute witness testified regarding the pooling provisions contained in Proposal 2. The witness explained how current FMMO provisions work together to assure an adequate milk supply for fluid use. First, said the witness, higher Class I revenues attract producers and producer milk to participate in the pool, then pooling provisions direct the producer milk to fluid plants. Class I plants, which by regulation are required to be pooled and pay the higher Class I price, receive in exchange the assurance that the regulations provide them an adequate supply of milk, the witness explained. The witness summarized a previous USDA decision finding that performance-based pooling provisions are the appropriate method for determining those producers who are eligible to share in the marketwide pool. The witness stressed that performance-based pooling provisions are essential in maintaining orderly milk movements to Class I.

The Institute witness objected to the Cooperatives' assertion that Class I premiums would be sufficient to move milk to Class I use. The witness was of the opinion that Class I plants already pay a high regulated Class I price and they should not have to pay additional over-order Class I premiums to attract milk to their plant. The witness questioned the purpose of Class I differentials if the use of premiums would be the primary way to attract milk for fluid uses in a California FMMO.

The Institute witness also spoke to Proposal 1's dependence on transportation credits to ensure that the Class I market is served. The witness was of the opinion that transportation credits are not an appropriate substitute for performance-based pooling standards.

The Institute witness testified that Proposal 1 provides no incentive for plants to serve the Class I market in order to qualify its producers to share in the market's Class I revenues. Instead, said the witness, Proposal 1 would allow plants to gain access to Class I revenues for their producers without bearing any burden in servicing the Class I market, thus making pooling provisions ineffective.

Another issue the Institute witness highlighted was inclusive pooling provisions in combination with regulated classified prices that are not market-clearing. If regulated classified prices are set above what a plant can pay for that milk, the witness stressed that many of those plants would exit the industry and available market plant capacity would shrink. According to the witness, this would lead to uneconomic milk movements as excess milk would need to find willing processing capacity.

The Institute witness opposed Proposal 1's provision to automatically grant pooling status to any dairy manufacturing plant located in Churchill County, Nevada. The witness said that all plants, whether located in state or out of state should qualify for pooling by meeting appropriate performance-based pooling standards.

The Institute witness concluded that pooling standards play a pivotal role in ensuring consumers an adequate supply of fluid milk. Inclusive pooling challenges the usefulness of pooling standards by allowing producers and handlers to benefit from the pool without actually being required to serve the Class I market, the witness said. The witness urged the Department to adopt the performance-based pooling standards contained in Proposal 2.

The Institute's post-hearing brief reiterated its position that the Department's policy has consistently ensured marketwide pool proceeds are distributed to those that demonstrate service to the Class I market. The brief maintained this standard should be upheld through performance-based pooling standards in a California FMMO. The Institute stressed that the inclusion of provisions to recognize the California quota program is not an adequate justification to exclude performance-based pooling standards.

The Institute also raised the issue in its post-hearing brief that adoption of mandatory pooling in California would result in trade barriers that are prohibited by the AMAA. With no way to avoid minimum regulatory pricing, the brief stressed that California handlers would be at a disadvantage since handlers regulated by other FMMOs can elect not to pool milk and avoid minimum regulated prices. With the inability to elect not to pool, the Institute was of the opinion that California plants would be discouraged from expanding plant capacity to handle surplus milk because they would be required to pay prices above market-clearing values.

Lastly, as it pertains to the proposed pooling provisions, the Institute expressed the opinion that inclusive pooling would de facto regulate farmers, something that is expressly prohibited by the AMAA.

A Dean Foods witness, on behalf of the Institute, testified regarding specific pooling provisions contained in Proposal 2. The witness revised Proposal 2 and expressed support for the distributing plant in-area route disposition standard of 25 percent offered by the Cooperatives. The witness explained the Class I route disposition levels that determine a plant's pool status is set by each of the individual orders, depending on the Class I utilization of the market, among other factors. The witness was of the opinion that a 25 percent in-area route disposition standard is appropriate for a California FMMO with a low Class I utilization.

The Dean Foods witness also supported the unit pooling provision provided in Proposal 2. The witness testified that the unit pooling provision allows two or more plants, operated by the same handler and located in the marketing area, to qualify for pooling as a unit by meeting the total and in-area route disposition standards as an individual distributing plant. Proposal 2 requires one of the plants to qualify as a distributing plant and other plant(s) in the unit to process at least 50 percent or more of the total milk processed or diverted by the plant into Class I or II products.

The witness expressed concern that the pooling provisions contained in Proposal 1 would not ensure Dean Foods an adequate milk supply to meet their needs because it provides no incentive to supply Class I plants.

A Hilmar consultant testified on behalf of the Institute regarding the pool supply plant performance standards contained in Proposal 2. The witness explained that the proposed supply plant performance standards and diversion limits would establish the volume of milk that could be associated with the California marketwide pool. The witness said that 10 percent is an appropriate base shipping standard for supply plants seeking to be pooled on a California FMMO. The witness explained this standard is similar to that in the Upper Midwest FMMO, which has a similar Class I utilization. The witness described Proposal 2's sliding scale system that would automatically change the supply plant shipping standard based on market Class I utilization over the previous three months. The witness was of the opinion that the sliding scale system would ensure the Class I market is adequately served by automatically adjusting should there be a change in the market's Class I utilization.

The Hilmar consultant witness also described different performance standards proposed for pool supply plants that receive quota milk. Proposal 2 would require 60 percent, or a volume equivalent, of a pool supply plant's quota receipts to be delivered to pool distributing plants, the witness said. The witness was of the opinion this additional requirement on quota milk would ensure that Class I needs would always be met. However, if additional milk is needed, that responsibility would fall first on quota milk as the Market Administrator would have the ability to adjust the quota milk shipping standard up to 85 percent if warranted. The witness added that this additional standard on quota milk is similar to provisions in the CSO.

The Hilmar consultant witness also testified that servicing the fluid milk needs of the market, the responsibility of quota milk to service the fluid market, and flexibility and supply chain efficiency should guide the Department in its decision making. The witness highlighted additional proposed provisions that would provide regulatory flexibility such as allowing for split-plants, the pooling of supply plant systems, and a provision to allow the Market Administrator to investigate market conditions and adjust shipping percentages if warranted by current market conditions.

The Hilmar consultant witness also addressed what Hilmar believes are appropriate producer milk provisions for a California FMMO, namely provisions modeled after the Upper Midwest FMMO. The witness was of the opinion that an appropriate producer touch-base standard would be the lesser of one-day's production or 48,000 pounds of milk, delivered to a pool plant during the first month the dairy farmer is a producer. In the following months, explained the witness, the producer's milk would be eligible for diversion to nonpool plants and still be pooled and priced under the terms of a California FMMO. The witness testified that handlers should not be allowed to pool more than 125 percent of the volume they pooled during the previous month, except during March when the appropriate limit should be 135 percent, due to the fewer number of days in February. The witness testified that the Institute relied on justification and methodology provided in Upper Midwest FMMO rulemaking decisions to determine appropriate repooling standards for a California FMMO.

In addition, the Hilmar consultant witness said that a California FMMO should not allow milk to be simultaneously pooled on a FMMO and a State order with marketwide pooling. Handlers, or a group of handlers, should be penalized if they attempt to not pool large volumes of Class III or Class IV milk to avoid pooling standards, the witness added.

A Leprino witness expressed opposition to mandatory-regulated minimum prices as advanced in Proposal 1. The witness characterized the inclusive pooling provisions of Proposal 1 as actually being mandatory minimum pricing provisions because they would cause all California milk to be pooled and priced under the terms of the FMMO. The witness explained how the CSO has applied minimum regulated pricing to all Grade A milk produced and processed in the state for decades, which the witness believed has

led to negative market impacts. For example, the witness described how mandatory pricing and pooling has reduced competition across manufactured product classes and lessened incentives for milk to move to higher-valued uses.

The Leprino witness did not characterize the CSO as disorderly, but rather explained how there had been periods of dysfunction when CDFA set minimum-regulated prices that exceeded market-clearing levels, leading to overproduction of milk. The witness added that when there have been periods of large milk surpluses, milk has been shipped and sold outside of the state at discounted rates. The witness said this led to losses for California producers that could have been reduced under a more flexible regulatory scheme.

The Leprino witness stressed that a California FMMO should have voluntary pricing and pooling for manufactured milk, as is the case in all other FMMOs. The witness was of the opinion this promotes market efficiency, allowing milk to move to its highest valued use. In its brief, Leprino stated that the inclusive pooling provisions are over-reaching by regulating all milk and are inconsistent with the goals of the AMAA. Leprino stated that inclusive pooling standards combined with overvalued pricing formulas would result in a disorderly California market.

Another witness appeared on behalf of HP Hood in support of adoption of Proposal 2. HP Hood operates fluid milk processing facilities in California and in existing FMMOs, and is a member of the Institute. The witness testified that if a California FMMO were adopted that included inclusive pooling, there would be an oversupply of California milk, leading to decreased investment in dairy product manufacturing facilities. The witness supported a California FMMO that allows for optional milk pooling for non-fluid milk uses.

A Gallo Farms consultant witness testified that unlike other FMMOs, Proposal 1 would not allow handlers to elect not to pool manufacturing milk, which would lead to disorderly marketing conditions and increased operational costs for cheese plants. The witness supported the ability of cheese plants to elect not to pool milk as provided in Proposal 2.

A witness spoke on behalf of Nestle S.A. (Nestle) in support of Proposal 2. Nestle is the world's largest food company, headquartered in Switzerland. Its U.S. operations include Nestle USA, Nestle Nutrition, Nestle Purina Pet Care Company, and Nestle Waters North America.

The Nestle witness was of the opinion that milk marketing in California is orderly. However, if a California FMMO is adopted, Nestle supports Proposal 2 that would allow for optional pooling of manufactured milk. The witness stated that in all current FMMOs, handlers have the option to pool manufacturing milk. Inclusive pooling as contained in Proposal 1, according to the witness, would place Nestle at a competitive disadvantage with competitors in other FMMOs that can avoid minimum-regulated prices. Should mandatory pooling standards, in conjunction with the higher-regulated prices contained in Proposal 1 be adopted, the witness asserted that Nestle would seek to move more of its manufacturing outside of the state.

The Nestle witness added that the vast majority of its purchased California manufactured dairy powder products is utilized in its international plants. If California regulated prices increase and pooling becomes mandatory, the witness said that Nestle would look elsewhere globally to replace those products. The witness concluded that Nestle would like to see a consistent approach to regulations in all FMMOs so that its business continues to be competitive and grow.

Proposal 4 was submitted by Ponderosa Dairy (Ponderosa) in response to the Cooperatives' original Proposal 1. Proposal 4 would amend the provisions that regulate payments by a handler operating a partially-regulated distributing plant—under either Proposal 1 or 2—to allow handlers to elect partially regulated distributing plant status with respect to milk received from out-of-state farms.

A consultant witness on behalf of Ponderosa testified in support of Proposal 4. The witness described past judicial decisions regarding the treatment of out-of-state milk delivered to California handlers. According to the witness, out-of-state producers cannot currently obtain quota, are not eligible for transportation benefits under the CSO, and do not participate in the CSO marketwide pool. Instead, the witness said, they negotiate separate prices with the California handlers who buy their milk. The witness speculated that out-of-state producers receive the plant's blend price, although that is not enforced or verified by CDFA.

The Ponderosa consultant witness outlined the provisions of Proposal 4, which would modify the standard payment provisions for partially-regulated plants under a California FMMO. Proposal 4 would allow California handlers to elect partially-regulated status with respect to milk from out-of-state producers, and out-of-state milk would be classified according to the plant's overall utilization and receive the plant blend price. Since the milk would not be pooled under the FMMO, it would not receive the marketwide blend price. The witness clarified that although the out-of-state milk would be isolated for payment purposes, the handler's status as a fully regulated pool plant should not be lost if it otherwise meets the definition of a pool plant.

The Ponderosa consultant witness said that features of Proposal 4 are similar to those of individual handler pools that are no longer provided in the FMMO system. Such accommodation is needed, the witness said, to counter the inherent inequalities of California's unique quota system, which would otherwise disadvantage out-of-state producers. In the witness's opinion, the provisions of Proposal 4 should be contained in any California FMMO recommended by the Department, as it would establish a regulated and audited pricing mechanism to ensure out-of-state producers receive at least the price they would have if they shipped to an otherwise fully-regulated plant—something that is not provided in the CSO.

A witness representing Ponderosa explained that Ponderosa Dairy was founded in southern Nevada to supply raw milk to the Rockview plant in southern California with the expectation of receiving the plant blend price reflective of Rockview's plant utilization even though the plant was regulated by the CSO. With a Class 1 utilization of approximately 85 percent, the witness said that the plant blend price compensates Ponderosa for its inability to participate in the California quota program and for its higher transportation expenses to haul its milk 280 miles to Rockview.

Another Nevada producer, representing Desert Hills Dairy (Desert Hills), a dairy farm with 4,000 cows that delivers 50 percent of its production to California processing plants, testified in opposition to any California FMMO. However, the witness said that should a FMMO be adopted, Proposal 4 should be included as it most closely resembles the current CSO provisions for out-of-state milk. The witness testified that Desert Hills receives the plant blend price for the milk shipped to California, and that the dairy farm pays all transportation costs. The Desert Hills witness said that should Proposal 4 not be adopted, it would be financially harmful because Desert Hills would be pooled on a California FMMO and

receive more than $1.00 per cwt less for the milk they ship to California.

Without addressing Ponderosa's concern that out-of-state producers are unable to own quota, the Cooperatives modified Proposal 1 in their post-hearing brief. Modified Proposal 1 would provide for the payment of a blend price adjuster to out-of-state producers so that those producers' total receipts would not be diminished by the deduction of quota premium payments from the marketwide pool.

The Cooperatives' brief argued that out-of-state producers have taken advantage of the fact that the CSO cannot regulate out-of-state milk and have sold milk to California Class 1 handlers for prices higher than the CSO regulated blend price but lower than the CSO classified use value. According to the Cooperatives, modified Proposal 1 does not erect trade barriers as it provides for uniform payment to California producers in similar circumstances by establishing uniform quota premium payments for milk covered by quota, and establishing a uniform blend price for production not covered by quota.

An Institute witness explained that under Proposal 2, out-of-state producers would receive the traditional FMMO blend price for their milk pooled on a California FMMO. That blend price, the witness said, would be determined before the value of quota is deducted from total marketwide pool revenues. According to the witness, out-of-state producers, who could never own quota under California's current laws, and in-state producers should be paid uniformly through a traditional FMMO blend price calculation.

The Institute witness explained they originally considered proposing the establishment of two marketwide pools or blend price calculations. The first would pay out-of-state producers, and then the second would recalculate and apportion all the remaining funds to California producers in the pool, on the basis of quota/non-quota prices and whether handlers elected to pool their milk. But the witness said that upon further consideration they realized that this solution would present additional problems.

The Institute witness provided examples where two producers shipping into the same California plant received different prices by virtue of their farms' locations. The witness was of the opinion that this treatment erects a trade barrier, provides non-uniform payments to producers, and violates the AMAA.

The Institute witness said Proposal 2 addresses these issues by providing that out-of-state producers receive the traditional FMMO blend price for their milk pooled on a California FMMO. According to the witness, by paying the traditional blend to out-of-state producers, rather than the non-quota price, no trade barrier is erected with respect to out-of-state milk.

A consultant witness representing Hilmar supported the Institute's position regarding the treatment of out-of-state milk.

Ponderosa's reply brief argued that the Cooperatives' proposed remedy—the out-of-state adjustment rate—would not resolve the discriminatory trade barrier issue raised in Ponderosa's initial brief. Ponderosa asserted the mechanics of the Cooperatives' proposal are unclear, but they seemed to add complication to the pooling process without fairly compensating out-of-state producers for their inability to participate in the quota program. According to Ponderosa, out-of-state producers can never realize the historic and ongoing benefits of quota ownership and can only avoid discriminatory treatment by being allowed to receive the plant blend price.

Findings

Two fundamentally different pooling philosophies have been proposed in this proceeding. The first, contained in Proposal 1, has been termed ''inclusive pooling'' and would automatically pool all California produced milk delivered to California plants, similar to how milk currently becomes pooled by the CSO. The Cooperatives are of the opinion that any change that would allow handlers to opt not to pool milk would be disorderly in an industry where all of the milk has historically been regulated. The Cooperatives testified that because California has a high percentage of both Class III and Class IV milk, in any given month handlers would elect to not pool one of those classes of milk because of price. The Cooperatives estimated the incentive to not pool one or both classes of manufacturing milk could occur 94 percent of the time. The resulting fluctuation in uniform producer prices, they claim, would be disorderly.

The second pooling philosophy, offered by the Institute, is performance-based pooling standards that are more typical of what exists in the current 10 FMMOs. These standards require the pooling of plants with predominantly Class I milk sales. Handlers have the option of pooling Class II, III and IV milk diverted to nonpool plants. The provisions set out standards for what plants, producers, and producer milk are eligible to be pooled and priced by the FMMO. The Institute testified that the inclusive pooling standards offered in Proposal 1 are not authorized by the AMAA, and performance-based pooling standards are the only means to ensure that Class I demand is always met.

The pooling standards of all current FMMOs are contained in the *Pool Plant, Producer* and *Producer Milk* provisions of an order. Taken together, these provisions are intended to ensure an adequate supply of milk is available to meet the Class I needs of the market, and provide the criteria for determining the producers that have demonstrated a reasonable measure of service to the Class I market, and thereby should share in the marketwide distribution of pool proceeds.

While the Cooperatives have put forth the argument that inclusive pooling is authorized by the AMAA, the analysis of the record of this proceeding finds that performance-based pooling standards remain the appropriate method for identifying the producers and producer milk that serves the Class I market. Therefore, performance-based pooling provisions, tailored to the local market, are recommended for the proposed California FMMO.

Pooling standards that are performance based provide a viable method for determining those eligible to share in the marketwide pool. It is primarily the additional revenue generated from the higher-valued Class I use of milk that adds additional revenue, and it is reasonable to expect that only producers who consistently bear the costs of supplying the market's fluid needs should be the ones to share in the returns arising from higher-valued Class I sales. Therefore, FMMOs require the pooling of milk received at pool distributing plants, which is predominately Class I milk. Handlers of Class II, III and IV uses of milk qualify their milk to be pooled by meeting the pooling and performance standards of an order. Pooling of Class II, III and IV milk is optional. By delivering a portion of their milk receipts to Class I distributing plants, handlers benefit from the marketwide pool by receiving the difference between their use-value of milk and the order's blend price in order to pay their producer suppliers the uniform producer blend price. This decision finds that the following performance-based pooling provisions are appropriate for the proposed California FMMO.

Pool Plant. The *Pool Plant* definition of each order provides the standards to identify plants engaged in serving the fluid needs of the marketing area and that receive milk eligible to share in the marketwide pool. The *Pool Plant* provisions recommended in this decision are a combination of those offered in both Proposal 1 and Proposal

2. Both proposals recommend similar distributing plant and supply plant provisions. However, Proposal 1 would automatically regulate any plant located in California that receives milk from a producer located in the marketing area, and the remaining proposed pool plant provisions (both distributing plant and supply plant provisions) would apply to only plants located outside of the marketing area. As discussed earlier, this decision finds that pooling provisions should be performance based, and therefore it is not appropriate to recommend provisions that would regulate plants based solely on location.

There are two performance standards applicable to distributing plants. First, this decision finds that a pool distributing plant should have a minimum of 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) that are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. This decision finds that a 25 percent route disposition standard for the proposed California FMMO is adequate to determine those plants that are sufficiently associated with the fluid market. The second criteria is an ''in-area'' standard and is designed to recognize plants that have an adequate association with the fluid market in the California marketing area. The record supports the adoption of the same in-area standard of 25 percent of total route disposition that is found in the current 10 FMMOs.

The *Pool Plant* provision also provides for regulation of distributing plants that distribute ultra-pasteurized or aseptically-processed fluid milk products. The record evidence shows that plants specializing in these types of products tend to have irregular distribution patterns that could cause the plant to shift its regulatory status. This shifting can be considered disorderly to the producers and cooperatives who supply those plants. Therefore regulating those plants based on location, as is done in other FMMOs, provides regulatory stability. Current FMMOs allow these plants to be regulated in the marketing area where they are located, as long as they process a minimum percent of their milk receipts into ultra-pasteurized or aseptically-processed fluid milk products during the month.

The record reveals that both the Cooperatives and the Institute used the Upper Midwest FMMO, which contains a 15 percent standard for distributing plants producing ultra-pasteurized or aseptically-processed products, as a template for pooling provisions. However, as explained in the Federal Order Reform Final Decision,[41] this standard was set equal to the total route disposition standard required for pool distributing plants in the respective FMMO. In this decision, the pool distributing plant standard is proposed to be 25 percent. Accordingly, this decision recommends that plants located in the marketing area that process at least 25 percent of their total quantity of fluid milk products into ultra-pasteurized or aseptically-processed fluid milk products would be fully regulated by the proposed California FMMO.

Performance standards for pool supply plants are designed to attract an adequate supply of milk to meet the demands of the fluid milk market by encouraging pool supply plants to move milk to pool distributing plants that service the marketing area. The record reveals that California has significant volumes of manufacturing milk, and the California Class 1 utilization in 2015 was only 13 percent. This decision recommends that a pool supply plant should deliver at least 10 percent of the plant's total milk receipts from producers, including milk diverted by the handler, to plants (qualified as pool distributing plants, plants in a distributing plant unit, producer-handlers, partially regulated distributing plants, or distributing plants fully regulated by another order) each month in order to qualify all of the milk associated with the supply plant for pricing and pooling under a California FMMO. This shipping provision is reasonable given that it mirrors the approximate Class I utilization of the market and is low enough to avoid uneconomic shipments of milk.

To prevent uneconomic shipments of milk solely for the purpose of pool qualification, this decision finds it appropriate to recommend two additional pooling provisions. First, this decision recommends a unit pooling provision that allows for two or more plants located in the marketing area and operated by the same handler to qualify for pooling as one unit. This applies as long as one or more of the plants in the unit qualifies as a pool distributing plant and the other plant(s) processes at least 50 percent of its bulk fluid milk products into Class I or II products. This unit pooling provision is designed to provide regulatory flexibility and avoid uneconomic milk movements in markets, like California, where there is often specialization in plant operations.

Second, this decision recommends a system pooling provision that allows for two or more supply plants, located in the marketing area and operated by one or more handlers, to qualify for pooling as a system by meeting the supply plant shipping requirements as a single plant. This system pooling provision recognizes the benefits supply plants provide by balancing the market's fluid needs, while ensuring that the plant is a consistent supplier to the market and therefore eligible to benefit from participation in the marketwide pool. Both unit and system pooling provisions are provided in other FMMOs.

The Cooperative and Institute witnesses testified in support of authorizing the Market Administrator to adjust shipping percentages if warranted by changing market conditions. This decision finds it appropriate to adopt such provisions should the Market Administrator conclude, after conducting an investigation, that justification for adjusting shipping standards for supply plants, and systems of supply plants to encourage shipments of milk to meet Class I demand, or to prevent uneconomic shipments of milk is warranted. This provision will ensure that California FMMO provisions can quickly respond to changing market conditions and that orderly marketing can be maintained. This provision negates the need to add call provisions, as advanced by the Cooperatives, to ensure that fluid milk demand is always met.

Like other FMMOs, the proposed California FMMO allows a plant, qualifying as a pool plant in the immediately preceding three months, to be granted relief from performance standards for no more than two consecutive months if it is determined by the market administrator that it cannot meet the performance standards because of circumstances beyond the control of the handler operating the plant. Examples of such circumstances include natural disaster, breakdown of equipment, or work stoppage.

In their post-hearing brief, the Cooperatives offered a modification to the exempt plant definition that would expand exempt plant status to plants with less than 150,000 pounds of Class I route disposition, and less than 300,000 pounds of total Class I, II, III or IV milk usage during the month. This modification was offered to exempt smaller plants that would otherwise be regulated under the inclusive pooling provisions of Proposal 1. This decision puts forth a package of performance-based pooling provisions; therefore,

[41] *See infra.*

there is no need to alter the standard exempt plant definition, as plants with manufacturing uses can elect to not participate in a California FMMO.

Proposal 2 offered a sliding scale supply plant shipping standard that would automatically adjust if the average Class I utilization percentage over the prior three months changed. Justification provided for this provision centered on administrative ease and flexibility of the regulations to change in order to reflect market conditions, without necessitating a formal rulemaking hearing. This decision recommends provisions allowing the market administrator to adjust supply plant shipping standards if warranted by changing market conditions. Therefore, it is not necessary to incorporate automatic adjustments to the standards, as that is provided with the flexibilities granted to the market administrator.

This decision does not recommend separate pooling standards for plants receiving California quota milk, as offered in Proposal 2. As discussed previously, this decision finds that proper recognition of the California quota program could be through an authorized deduction to payments to producers if deemed appropriate by CDFA. Therefore, it is not appropriate for the supply plant shipping standards to differ on the basis of whether or not they receive quota milk.

Proposal 1 contained a provision that would regulate a plant located in Churchill County, Nevada, receiving milk from producers within the county or in the California marketing area. The Cooperatives argued that currently a plant located in Churchill County has a long standing association with the California market, and this provision would ensure the plant would remain associated within the FMMO framework. This decision does not find it appropriate to regulate a supply plant based on its location and not in combination with some form of performance standard. If the Churchill County plant meets the pool plant provisions of the recommended California FMMO, and thus demonstrates an adequate association to the market, then that plant would become regulated and enjoy the benefits of participating in a California FMMO marketwide pool.

Lastly, this decision incorporates provisions contained in all other FMMOs implementing the provisions of the Milk Regulatory Equity Act of 2005 (MREA). The MREA amended the AMAA to ensure regulatory equity between and among dairy farmers and handlers for sales of packaged fluid milk in FMMO areas and into certain non-Federally regulated milk marketing areas from Federal milk marketing areas. Incorporation of these provisions is required to ensure that the proposed California FMMO does not violate the MREA.

Producer. The *Producer* definition identifies those dairy farmers supplying the market with milk for fluid use, or who are at least capable of doing so if necessary. Producers are eligible to share in the revenue that accrues from the marketwide pooling of milk. The *Producer* provisions proposed in Proposals 1 and 2 were virtually identical. This decision finds that the proposed California FMMO will recognize producers as any person who produces Grade A milk that is received at a pool plant directly from the producer or diverted from the plant, or received by a cooperative in its capacity as a handler. A dairy farmer would not be considered a producer under more than one FMMO with respect to the same milk. Additionally, the proposed California FMMO exempts producer-handlers and exempt plants from the pricing provisions, so the term producer would not apply to a producer-handler, or any dairy farmer whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant. Finally, the term producer would not apply to a dairy farmer whose milk is received at a nonpool plant as other than producer milk. Such a provision is commonly referred to as a dairy farmer for other markets provision.

The Cooperatives proposed an additional provision that would identify those dairy farmers who had lost their Grade A permit for more than 30 consecutive days as dairy farmers for other markets, and therefore would lose their ability to qualify as a producer on a California FMMO for 12 consecutive months. The Cooperatives explained that this provision was part of the inclusive pooling provisions and was designed to prevent producers from voluntarily giving up their Grade A status to avoid regulation. This decision is recommending a package of pooling provisions that are performance based and only those dairy farmers who meet the producer definition would be entitled to share in the marketwide pool. Therefore, any dairy farmer who delivers Grade A milk to a pool plant will be considered a producer.

Producer milk. The *Producer Milk* definition identifies the milk of producers that is eligible for inclusion in the marketwide pool. The recommended provisions are a combination of the provisions contained in Proposals 1 and 2, and uphold the performance-based pooling philosophy advanced in this decision.

This decision finds that for the proposed California FMMO, producer milk is defined as the milk of a producer that is received at a pool plant, or received by a cooperative association in its capacity as a handler.

The proposed California FMMO must also provide for the diversion of producer milk to facilitate its orderly and efficient disposition when not needed for fluid use. Diversion provisions are needed to ensure that milk pooled on the order but not used for Class I purposes is part of the legitimate reserve supply of Class I handlers. Providing for the diversion of milk is a desirable and needed feature of a FMMO because it facilitates the orderly and efficient disposition of milk when not needed for fluid use.

Accordingly, the recommended California FMMO would allow a pool plant to divert milk to another pool plant, and pool plants and cooperatives in their capacity as handlers could also divert milk to nonpool plants located in California, or in the surrounding states of Arizona, Nevada and Oregon. Milk would not be eligible to be diverted to a nonpool plant and remain priced and pooled under the terms of a California FMMO, unless at least one day of the dairy farmer's production is physically received as producer milk at a pool plant during the first month the dairy farmer is qualifying as a producer on the order. Given the large supply of milk for manufactured use in California, the record supports that a one-day ''touch base'' provision during the first month would be adequate to define the producer milk that should be included in a California marketwide pool. Proposal 2 offered an alternative touch base standard of the lesser of one-day's production or 48,000 pounds. This decision finds that a one-day touch base standard is an adequate demonstration of a dairy farmer's ability to service the market. Conversely, a higher standard, such as the five-day standard contained in Proposal 1, could lead to uneconomic milk movements for the sole purpose of meeting regulatory standards.

It is equally appropriate to safeguard against excessive milk supplies becoming associated with the market as the recommended California FMMO one-day touch base standard could lead to milk from far distances associating with a California marketwide pool without actually being available to service the market's fluid needs. Therefore, this decision recommends diversions be limited to 100 percent minus the supply plant shipping percentage (or 90 percent of all milk

being pooled by the handler). Diversions would further be limited to nonpool plants within California and its surrounding states. This limit should allow the economic movement of milk to balance the fluid needs of the market, while simultaneously preventing the milk of producers located in areas distant from the marketing area from being delivered to a pool plant once, and then all the milk of that producer being diverted to a distant plant and still pooled on and receiving the recommended California FMMO blend price.

The recommended California FMMO also contains repooling standards of 125 percent for the months of April through February, and 135 percent for the month of March of the producer milk receipts pooled by the handler in the previous month. The record contains evidence that other FMMOs have experienced large swings in the volume of milk pooled on the order. This volatility was attributed to manufacturing handlers having opted to not pool all their eligible milk received in a month in order to avoid payment to the marketwide pool. The unrestricted ability of manufacturing handlers and cooperatives to elect not to pool milk and avoid payment into the marketwide pool is inequitable and contrary to the intent of the FMMO system.[42] Repooling standards have been found to be an appropriate remedy to safeguard marketwide pooling and deter the disorderly conditions that occur when milk is not pooled. These standards would not prevent manufacturing handlers or cooperatives from electing to not pool milk. However, they should serve to maintain and enhance orderly marketing by encouraging participation in the marketwide pooling of all classified uses of milk.

Therefore, this decision finds that repooling standards are justified for the proposed California FMMO to avoid known disorderly marketing conditions that have occurred in numerous FMMOs. As California is currently regulated by the CSO, there is no data on the record from which to discern how much milk plants that will qualify as pool plants on the recommended California FMMO will seek to pool. Therefore, the 125 and 135 percent repooling standards serve as a reasonable starting point for determining a handler's consistent supply of milk available to service the market's fluid needs. Any milk delivered to a pool distributing plant in excess of the previous month's pooled volume would not be subject to the repooling standards. The recommended California FMMO also contains a provision that allows the market administrator to waive these provisions for new handlers, or existing handlers with a significant change in their milk supply due to unusual circumstances.

Lastly, milk that is subject to inclusion and participation in a State-authorized marketwide equalization pool and classification system would not be considered producer milk. Without such exclusion, milk could be simultaneously pooled on a California FMMO and on a marketwide equalization pool administered by another government entity, resulting in a double payment on the same milk and giving rise to competitive equity issues between producers.

The record reflects that under the CSO, milk serving the California Class I market but produced from outside the state is not priced and pooled, and out-of-state producers commonly receive the plant blend price. Proposal 4 seeks to allow plants that otherwise qualify as fully regulated distributing plants to elect partially regulated distributing plant status with respect to milk received from out-of-state farms. If Proposal 4 were adopted, the recommended California FMMO would enforce payment to out-of-state producers of at least the plant blend price on the out-of-state milk and thus the out-of-state producers would receive the same price as they currently do by being exempt from CSO regulation.

Throughout the hearing, California producers extolled the virtues of joining the FMMO system and enjoying system-wide uniform product classification and pricing, which they believed would put them on a level-playing field with their producer counterparts across the country. In an effort to fairly compensate out-of-state producers while accommodating the California quota program under the proposed FMMO, proponents offered various payment alternatives. Under the modified provisions of Proposal 1, out-of-state producers would be entitled to a uniform blend price adjusted for quota. Under Proposal 2, out-of-state producers would be entitled to the traditional FMMO blend price calculated before quota premiums are paid.

Proponents of Proposal 4 argued that out-of-state producers should be allowed to continue receiving the plant blend price for milk shipped to plants regulated under a California FMMO to compensate for the fact that they have not historically been entitled to own and benefit from California quota and cannot expect to in the future. Under Proposal 4, otherwise fully regulated handlers could elect partially regulated distributing plant status with respect to out-of-state milk, for which they would pay the plant's blend price, based on classified use.

The record reflects that out-of-state milk is not priced and pooled by the CSO because the State of California is prohibited from regulating interstate commerce. One benefit of Federal regulation is the ability to regulate the interstate marketing of milk, something that states are expressly prohibited from doing. FMMO provisions ensure that all milk servicing a market's Class I needs is appropriately classified and priced, and the producers who supply that milk share in the marketwide revenues from all Class I sales in the market.

A key feature of FMMOs is that producer milk is classified and priced at the plant where it is utilized, regardless of its source. Similarly situated handlers pay at least the class prices under each order, and producers are paid at least the order's minimum uniform blend price, determined through marketwide pooling. This allows producers to share equally in the classified use value of milk in the market, while minimizing uneconomic milk movements.

As explained earlier, this decision recommends that a California FMMO operate independent of the State's quota program. Under the recommended provisions, no quota premium would be subtracted from the FMMO pool, and all producers delivering to regulated pool plants under the order would be paid at least the same minimum producer blend price, less authorized deductions. Therefore, all producers are paid uniformly, as is allowed by the uniform payments provision of the AMAA.

Accordingly, this decision finds no justification for differential producer treatment for milk servicing California's Class I needs and produced outside the marketing area. If an out-of-state dairy farmer qualifies as a producer on the recommended California FMMO, then their milk will be priced and pooled uniformly with all other producers serving the Class I market.

9. Transportation Credits

Transportation credits were contained in both Proposals 1 and 2 to reimburse handlers for part of the cost of transporting milk to Class I and/or Class II use. This decision does not recommend transportation credit provisions for a California FMMO.

A witness appearing on behalf of the Cooperatives testified in support of the transportation credit provisions

[42] Official Notice is taken of Upper Midwest Final Decision (71 FR 54136), Central Final Decision (71 FR 54152), and Mideast Final Decision (71 FR 54172).

contained in Proposal 1. The witness said that transportation credits are needed because Class I differentials are not high enough to cover the cost of moving milk from the Central Valley where most of the milk is produced, to Class I distributing plants which are primarily located on the coast where most of the population resides.

The Cooperative witness utilized April 2013 to October 2014 CDFA hauling cost data of milk deliveries to plants with Class 1, 2 and/or 3 utilization, and compared it to the proposed California FMMO Class I differentials that would be applicable for comparable hauls. The witness said the average cost to haul a load of milk from a supply region to a demand region was $0.75 per cwt, with a range of $0.35 to $1.82 per cwt. According to the witness, in all instances, the difference in FMMO Class I differentials between the two locations was much less than the actual haul cost, therefore an additional cost recovery mechanism is needed to assure orderly movements of milk to Class I plants.

The witness explained that Proposal 1 contains transportation credit provisions similar to the current CSO where marketwide pool monies are used to provide a credit for farm-to-plant milk movements within designated transportation zones to handlers with greater than 50 percent Class 1, 2 and/or 3 utilization. The witness said that the transportation credit zones represent current market procurement patterns where transportation credit assistance is necessary, and a similar credit system should be incorporated into a California FMMO. The witness stressed that the proposed credits would be mileage and transaction based, with a reimbursement rate cap of 175 miles,[43] and a fuel cost adjustor. The witness noted that the transportation credit rate would be calculated on a per-farm basis. So one haul route could have more than one farm stop and each farm stop would be eligible individually for a transportation credit. In their post-hearing brief, the Cooperatives modified their proposal to allow for milk outside the marketing area to be eligible for transportation credits.

The Cooperative witness explained that their proposed reimbursement equations were a result of Cooperative members' transportation cost data analyzed by the Pacific Northwest FMMO office. The Cooperatives requested that the FMMO office analyze the data and determine cost equations based on actual observed costs, minus $0.30 per cwt which represents the a producer's responsibility for a local haul. The witness said that the resulting equations are valid because they calculated a $5.205 million payment which was close to the actual observed costs of $5.261 million. The witness explained that because diesel prices are a key variable cost to transportation, a monthly fuel cost adjustor is needed to ensure that the transportation credit provisions maintain an accurate reflection of costs. The witness noted that Proposal 1 does not contain transportation credit reimbursement for plant-to-plant milk movements.

The Cooperative witness elaborated that Proposal 1 seeks to pay all producers the same FMMO blend price, unadjusted for location. Therefore the incentive to supply milk to Class I plants is borne solely through their proposed transportation credit provisions. The witness said that because all producers share in the higher valued class uses, it is appropriate that they share in the cost of supplying and balancing those markets by using marketwide pool monies to provide a handler credit on those milk movements.

The Institute, in its post-hearing brief, expressed support for the transportation credit provisions contained in Proposal 1, subject to the transportation credits being adjusted for the difference in location differentials.

A witness representing Ponderosa testified that any proposed California FMMO should allow for transportation credits of out-of-state milk that serves the California Class I and/or Class II market. The witness explained that Ponderosa experiences high-transportation costs because they haul their milk approximately 280 miles to a southern California Class I plant. The witness was of the opinion that this milk should be eligible for transportation credits if it is serving the California fluid market.

Findings

The record of this proceeding reflects that the California fluid market is structured such that some handlers and cooperative associations rely on the current CSO transportation credit system to assist them in making an adequate milk supply available for fluid use. The record reveals that Los Angeles, San Francisco, San Diego and Sacramento metropolitan areas contain an overwhelming majority of the state's population as well as the Class I plants that service those areas. However, these plants must often source milk from milk production regions of the state located farther away. The record reveals that this supply/demand imbalance, coupled with flat producer pricing necessitated the development of the CSO transportation credits for milk deliveries from designated supply regions to Class 1, 2 and/or 3 handlers located in demand regions where a majority of the population resides. The Cooperatives designed their transportation credit proposal to replicate the transportation credits currently paid by the CSO on farm-to-plant milk shipments, but attempted to make the proposed system more transaction based.

As previously discussed, this decision does not recommend flat producer pricing. The record of this proceeding supports the finding that producer payments should be adjusted to reflect the applicable producer location adjustment for the handler location where their milk is received. Therefore, the incentive to producers to supply Class I plants is embodied within the proposed producer payment provisions. As in all FMMOs, producers are responsible for finding a market for their milk, and consequently bear the cost of transporting their milk to a plant. Therefore the record of this proceeding does not support reducing the producers' value of the marketwide pool through the payment of transportation credits to handlers. The proposed Class I differential structure provides for higher differentials in the major metropolitan areas of Los Angeles, San Diego, San Francisco, and Sacramento to incentivize movements of Class I milk. If additional monies are needed above minimum classified prices to supply Class I plants, marketplace principles should dictate the source and amount of those additional funds.

10. Miscellaneous and Administrative Provisions

This section discusses the various miscellaneous and administrative provisions that would be necessary to administer the proposed California FMMO. All current FMMOs contain administrative provisions that provide for the handler reporting dates, announcements by the Market Administrator, and payment dates that are necessary to administer the provisions of the FMMOs. A California FMMO likewise needs similar administrative provisions to ensure its proper administration. The provisions outlined below generally conform to provisions contained in the 10 current FMMOs with reporting and payment dates tailored to the California dairy market.

Handler Reports. Handlers subject to a California FMMO would be required to submit monthly reports detailing the

[43] The mileage rate cap was modified at the hearing to 175 miles.

sources and uses of milk and milk products so that market average use values, or uniform prices, could be determined and administered. Under a California FMMO, handler reports of receipts and utilization would be due by the 9th day following the end of the month. To ensure the minimum payments to producers are made in accordance with the terms of a California FMMO, handlers would need to report producer payroll by the 20th day following the end of the month to the Market Administrator.

Announcements by the Market Administrator. In the course of administering a California FMMO, the Market Administrator would be required to make several announcements each month with respect to classification, class prices and component prices, an ''equivalent price'' when necessary, and various producer prices. Under a California FMMO, the Market Administrator would make these announcements on or before the 14th day following the end of the month.

Producer-Settlement Fund. Handlers regulated by a California FMMO would be required to pay minimum class prices for the milk received from producers. These minimum values would be aggregated in a California FMMO marketwide pool so that producers could receive a uniform price, or blend price for their milk. The equalization of a handler's use value of milk and the uniform value would occur through the producer-settlement fund that would be established and administered by the Market Administrator.

The producer-settlement fund ensures that all handlers would be able to return the market blend price to producers whose milk was pooled under the order. Payments into the producer-settlement fund would be made each month by handlers whose total classified use value of milk exceeds the values of such milk calculated at the announced producer prices. In a California FMMO, handlers would be required to pay into the producer-settlement fund by the 16th day following the end of the month.

Payments out of the producer-settlement fund would be made each month to any handler whose use value is below the value of their milk at producer prices. Under a California FMMO, the Market Administrator would distribute payments from the producer-settlement fund by the 18th day following the end of the month. This transfer of funds would enable handlers with a classified use value of milk below the average for the market to pay their producers the same uniform price as handlers whose classified use value of milk exceeds the market average.

In view of the need to make timely payments to handlers from the producer-settlement fund, it is essential that money due to the fund is received by the due date. Accordingly, payment to the producer-settlement fund is considered made upon receipt of funds by the Market Administrator. Payment cannot be received on a non-business day. Therefore, if the due date for a payment, including a payment to or from the producer-settlement fund, falls on a Saturday, Sunday, or national holiday, the payment would not be due until the next business day.

Payments to Producers and Cooperative Associations. The AMAA states that handlers must pay the uniform price to all producers and producer associations. As under other FMMOs, a California FMMO would provide for proper deductions authorized by the producer in writing. Such authorized deductions would be those that are unrelated to the minimum value of milk in the transaction between the producer and handler. The proposed California FMMO would also allow a deduction for any assessment announced by CDFA for the administration of the California quota program. The producer would not need to authorize this deduction in writing.

As in other FMMOs, producer associations would be allowed to ''reblend'' their payments to their producer members. The Capper Volstead Act and the AMAA make it clear that cooperative associations are unique in this regard.

A California FMMO would require handlers to make at least one partial payment to producers in advance of the announcement of the applicable uniform prices. The partial payment rate for milk received during the first 15 days of the month could not be less than the lowest announced class price for the preceding month, and would be paid to producers by the last day of the month. The final payment for milk under a California FMMO would be required to be made so that it is received by producers no later than the 19th day after the end of the month.

Handlers would pay Cooperatives for bulk milk and skim milk, and for bulk milk received by transfer from a cooperative's pool plant, on the terms described for individual producers, with the exception that payment would be due one day earlier. An earlier payment date for cooperative associations is warranted because it would then give cooperative associations the time they need to distribute payments to individual producer members.

All payment dates specified in the proposed California FMMO are receipt dates. Since payment cannot be received on a non-business day, payment dates that fall on a Saturday, Sunday, or national holiday would be delayed until the next business day. While this has the effect of delaying payments to cooperatives and producers, the delay is offset by the shift from ''date of payment'' to ''date of payment receipt.''

Payment Obligation of a Partially Regulated Distributing Plant. All FMMOs provide a method for determining the payment obligations due to producers by handlers that operate plants not fully regulated under any Federal order. These unregulated handlers are not required to account to dairy farmers for their milk at classified prices or to return a minimum uniform price to producers who have supplied the handler with milk. However, such handlers may sell fluid milk products on routes in a regulated area in competition with handlers who are fully regulated. To address this, FMMOs provide a minimum degree of regulation to all handlers who have route sales in a regulated marketing area. Partial regulation preserves the integrity of the FMMO classified pricing and pooling provisions and assures that orderly marketing conditions can be maintained. Without these provisions, milk prices under an order would not be uniform among handlers competing for sales in the marketing area, a milk pricing requirement of the AMAA. Like the other FMMOs, a California FMMO would partially regulate handlers who have route sales into the marketing area, but do not meet the threshold to be fully regulated.

The proposed California FMMO would provide regulatory options for a partially regulated plant handler. All partially regulated plant handlers would account to the California FMMO producer-settlement fund on the volume of packaged Class I sales in the California marketing area that exceeds receipts previously priced as Class I under a FMMO. Under the first option, a payment could be made by the partially regulated plant handler into the producer-settlement fund of the California FMMO at a rate equal to the difference between the Class I price and the California FMMO uniform price. Under the second option, the operator of a partially regulated plant handler could pay any positive difference between the gross obligation of the plant, had it been fully regulated, and the actual payments made for its milk supply. This is commonly referred to as the Wichita

Option. The third option applies to a partially regulated plant handler that is subject to a marketwide pool operated under the authority of a State. In this last case, the partially regulated plant handler would account to the producer settlement fund at the difference between the Federal order Class I value and the value at which the handler accounts to the State order pool on such route sales, but not less than zero.

Adjustment of Accounts. Current FMMOs provide for the audit of handler reports by the Market Administrator. The Market Administrator may adjust, based on verification of handler records, any amount due to or from the Market Administrator, or to a producer or cooperative association. Adjustments can affect the Producer-Settlement Fund, the Administrative Fund, and/or the Marketing Service Fund. A California FMMO would likewise provide for the adjustment of handler accounts based on audits of handler reports and records. The Market Administrator would promptly notify the handler of any necessary adjustments so that payments could be made on or before the next date for the payment related to the adjustment.

Charges for Overdue Accounts. The proposed California FMMO provisions require handlers to make payments to producers and cooperatives by the dates described earlier in this section. Payments not made by the specified due dates would be subject to a late payment charge of 1 percent per month by the Market Administrator and would accrue to the administrative fund. Additional late payment charges would accrue on any amounts that continue to be late on the corresponding due dates each succeeding month.

Assessment of Order Administration. The AMAA provides that the cost of order administration be financed by an assessment on handlers. Under the proposed California FMMO, a maximum rate of $0.08 per cwt would apply to all of a handler's receipts pooled under the order. The specific rate would be announced by the Market Administrator. Partially-regulated handlers would be assessed the same administrative rate on their volume of Class I route disposition inside of the marketing area. The money paid to the administrative fund is each handler's proportionate share of the cost of administering the FMMO.

Deduction for Marketing Services. The proposed California FMMO would provide marketing services to producers for whom cooperative associations do not perform services. Such services include providing market information and establishing or verifying weights, samples, and tests of milk received from such producers. In accordance with the AMAA, these marketing services are intended to benefit all nonmember producers under a California FMMO. Accordingly, as is uniform in the current FMMOs, each handler regulated by a California FMMO would be allowed to deduct a maximum of $0.07 per cwt from amounts due each producer for whom a cooperative association does not provide such services. The specific allowable rate would be announced by the Market Administrator and would be subtracted from the handler's obligation.

Rulings on Proposed Findings and Conclusions. In accordance with the Administrative Procedure Act, 5 U.S.C. 557(c), USDA has analyzed and reached a conclusion on all material issues of facts, law, and discretion presented on the record. Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or reach such conclusions are denied for the reasons stated in this decision.

General Findings

(a) The proposed marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for the milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed marketing agreement and order will regulate the handling of milk in the same manner as, and will be applicable only to, persons in the respective classes of industrial and commercial activity specified in the marketing agreement and order upon which a hearing has been held.

(d) All milk and milk products handled by handlers covered by the proposed marketing agreement and order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as their pro rata share of such expense, 8 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to the milk specified in § 1051.85 of the aforesaid tentative marketing agreement and the order.

Recommended Marketing Agreement and Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be established. The following order regulating the handling of milk in California marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions maybe carried out.

List of Subjects in 7 CFR Part 1051

Milk marketing orders.

The Agricultural Marketing Service proposes to add 7 CFR part 1051 to read as follows:

PART 1051—MILK IN THE CALIFORNIA MARKETING AREA

Subpart A—Order Regulating Handling

General Provisions

Sec.

1051.1 General provisions.

Definitions

1051.2 California marketing area.
1051.3 Route disposition.
1051.4 Plant.
1051.5 Distributing plant.
1051.6 Supply plant.
1051.7 Pool plant.
1051.8 Nonpool plant.
1051.9 Handler.
1051.10 Producer-handler.
1051.11 California quota program.
1051.12 Producer.
1051.13 Producer milk.
1051.14 Other source milk.
1051.15 Fluid milk product.
1051.16 Fluid cream product.
1051.17 [Reserved]
1051.18 Cooperative association.
1051.19 Commercial food processing establishment.

Market Administrator, Continuing Obligations, and Handler Responsibilities

1051.25 Market administrator.
1051.26 Continuity and separability of provisions.
1051.27 Handler responsibility for records and facilities.
1051.28 Termination of obligations.

Handler Reports

1051.30 Reports of receipts and utilization.
1051.31 Payroll reports.
1051.32 Other reports.

Subpart B—Milk Pricing

Classification of Milk

1051.40 Classes of utilization.
1051.41 [Reserved]
1051.42 Classification of transfers and diversions.
1051.43 General classification rules.
1051.44 Classification of producer milk.
1051.45 Market administrator's reports and announcements concerning classification.

Class Prices

1051.50 Class prices, component prices, and advanced pricing factors.
1051.51 Class I differential and price.
1051.52 Adjusted Class I differentials.
1051.53 Announcement of class prices, component prices, and advanced pricing factors.
1051.54 Equivalent price.

Producer Price Differential

1051.60 Handler's value of milk.
1051.61 Computation of producer price differential.
1051.62 Announcement of producer prices.

Subpart C—Payments for Milk

Producer Payments

1051.70 Producer-settlement fund.
1051.71 Payments to the producer-settlement fund.
1051.72 Payments from the producer-settlement fund.
1051.73 Payments to producers and to cooperative associations.
1051.74 [Reserved]
1051.75 Plant location adjustments for producer milk and nonpool milk.
1051.76 Payments by a handler operating a partially regulated distributing plant.
1051.77 Adjustment of accounts.
1051.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1051.85 Assessment for order administration.
1051.86 Deduction for marketing services.

Subpart D—Miscellaneous Provisions

1051.90 Dates.

Authority: 7 U.S.C. 601–608.

Subpart A—Order Regulating Handling

General Provisions

§ 1051.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part unless otherwise specified. In this part, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1051.2 California marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

California

All of the State of California.

§ 1051.3 Route disposition.

See § 1000.3.

§ 1051.4 Plant.

See § 1000.4.

§ 1051.5 Distributing plant.

See § 1000.5.

§ 1051.6 Supply plant.

See § 1000.6.

§ 1051.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 10 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1051.12(b)) and handlers described in § 1000.9(c), including milk diverted pursuant to § 1051.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (c)(1)(i) through (iv) of this section, except that whenever shipping requirements are increased pursuant to paragraph (g) of this section, only shipments to pool plants described in paragraphs (a), (b), and (d) of this section shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1051.7(a), (b), and (d);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants shall be limited to the quantity shipped to (and physically unloaded into) pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(d) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without

further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(e) A system of two or more supply plants operated by one or more handlers may qualify for pooling by meeting the shipping requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area. Cooperative associations or other handlers may not use shipments pursuant to § 1000.9(c) to qualify supply plants located outside the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a system for the period of August through July of the following year. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through July. The handler(s) that have established a system may add a plant operated by such handler(s) to a system if such plant has been a pool plant each of the 6 prior months and would otherwise be eligible to be in a system, upon written request to the market administrator no later than the 15th day of the prior month. In the event of an ownership change or the business failure of a handler who is a participant in a system, the system may be reorganized to reflect such changes if a written request to file a new marketing agreement is submitted to the market administrator; and

(3) If a system fails to qualify under the requirements of this paragraph (e), the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(f) Any distributing plant, located within the marketing area as described in § 1051.2:

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk, provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class 1 use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1051.7(a), (b), or (e);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1051.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved]

(g) The applicable shipping percentages of paragraphs (c) and (e) of this section and § 1051.13(d)(2) and (3) may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views, and arguments. Any decision to revise an applicable shipping or diversion percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route disposition in this marketing area for 3 consecutive months, or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood, fire, earthquake,

breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1051.8 Nonpool plant.

See § 1000.8.

§ 1051.9 Handler.

See § 1000.9.

§ 1051.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route disposition in the marketing area, from which total route disposition and packaged sales of fluid milk products to other plants during the month does not exceed 3 million pounds, and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) *Requirements for designation.* Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (5) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month:

(1) The care and management of the dairy animals and the other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control, ownership, and management of the producer-handler and are operated as the producer-handler's own enterprise and at its sole risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control, ownership, and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) No milk produced by the herd(s) or on the farm(s) that supplies milk to the producer-handler's plant operation is:

(i) Subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns; or

(ii) Marketed in any part as Class I milk to the non-pool distributing plant of any other handler.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation, under the sole and exclusive ownership of the producer-handler.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are solely owned, operated, and which the producer-handler has designated as a source of milk supply for the producer-handler's plant operation. However, for purposes of this paragraph (b)(1), any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely owned by, and directly operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (5) of this section are not continuing to be met, or under any of the conditions described in paragraph (c)(1), (2), or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph (c) shall be effective on the first day of the month following the month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who

is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund, provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or § 1000.76(a).

§ 1051.11 California quota program.

California Quota Program means the applicable provisions of the California Food and Agriculture Code, and related provisions of the pooling plan administered by the California Department of Food and Agriculture (CDFA).

§ 1051.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1051.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1051.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1051.13 Producer milk.

Except as provided for in paragraph (e) of this section, *producer milk* means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph (a) shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant located in the States of California, Arizona, Nevada, or Oregon, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion unless at least one day's production of the dairy farmer has been physically received as producer milk at a pool plant during the first month the dairy farmer is re-associated with the market;

(2) The quantity of milk diverted by a handler described in § 1000.9(c) may not exceed 90 percent of the producer milk receipts reported by the handler pursuant to § 1051.30(c) provided that not less than 10 percent of such receipts are delivered to plants described in § 1051.7(c)(1)(i) through (iii). These percentages are subject to any adjustments that may be made pursuant to § 1051.7(g); and

(3) The quantity of milk diverted to nonpool plants by the operator of a pool plant described in § 1051.7(a), (b) or (d) may not exceed 90 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1051.12(b)) including milk diverted pursuant to this section. These percentages are subject to any adjustments that may be made pursuant to § 1051.7(g).

(4) Diverted milk shall be priced at the location of the plant to which diverted.

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

(f) The quantity of milk reported by a handler pursuant to either § 1051.30(a)(1) or (c)(1) for April through February may not exceed 125 percent, and for March may not exceed 135 percent, of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool. Milk in excess of this limit received at pool plants, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) and (b). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants in excess of the previous month's pooled volume shall not be subject to the 125 or 135 percent limitation;

(2) Producer milk qualified pursuant to § _____.13 of any other Federal Order and continuously pooled in any Federal Order for the previous six months shall not be included in the computation of the 125 or 135 percent limitation;

(3) The market administrator may waive the 125 or 135 percent limitation:

(i) For a new handler on the order, subject to the provisions of paragraph (f)(4) of this section; or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances; and

(4) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the

purpose of evading the provisions of this paragraph (f).

§ 1051.14 Other source milk.

See § 1000.14.

§ 1051.15 Fluid milk products.

See § 1000.15.

§ 1051.16 Fluid cream product.

See § 1000.16.

§ 1051.17 [Reserved]

§ 1051.18 Cooperative association.

See § 1000.18.

§ 1051.19 Commercial food processing establishment.

See § 1000.19.

Market Administrator, Continuing Obligations, and Handler Responsibilities

§ 1051.25 Market administrator.

See § 1000.25.

§ 1051.26 Continuity and separability of provisions.

See § 1000.26.

§ 1051.27 Handler responsibility for records and facilities.

See § 1000.27.

§ 1051.28 Termination of obligations.

See § 1000.28.

Handler Reports

§ 1051.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph (a); and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1051.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1051.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1051.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1051.32 Other reports.

In addition to the reports required pursuant to §§ 1051.30 and 1051.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Subpart B—Milk Pricing

Classification of Milk

§ 1051.40 Classes of utilization.

See § 1000.40.

§ 1051.41 [Reserved]

§ 1051.42 Classification of transfers and diversions.

See § 1000.42.

§ 1051.43 General classification rules.

See § 1000.43.

§ 1051.44 Classification of producer milk.

See § 1000.44.

§ 1051.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1051.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1051.51 Class I differential and price.

The Class I differential shall be the differential established for Los Angeles County, California, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Los Angeles County, California.

§ 1051.52 Adjusted Class I differentials.

See § 1000.52.

§ 1051.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1051.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1051.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the values computed in paragraphs (i) and (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon

the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price; and

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month and by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b).

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to §§ 1000.43(d) and 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1051.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1051.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this introductory paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1051.60 for all handlers required to file reports prescribed in § 1051.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1051.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1051.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1051.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

§ 1051.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, nonfat solids, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Subpart C—Payments for Milk

Producer Payments

§ 1051.70 Producer-settlement fund.

See § 1000.70.

§ 1051.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1051.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of

producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1051.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1051.60(i) by the producer price differential as adjusted pursuant to § 1051.75 for the location of the plant from which received.

§ 1051.72 Payments from the producer-settlement fund.

No later than the 18th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1051.71(b) exceeds the amount computed pursuant to § 1051.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1051.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the last day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 19th day after the end of the month (except as provided in § 1000.90) in an amount not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1051.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) Less any payment made pursuant to paragraph (a)(1) of this section;

(vi) Less proper deductions authorized in writing by such producer, and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator;

(vii) Less deductions for marketing services pursuant to § 1000.86; and

(viii) Less deductions authorized by CDFA for the California Quota Program pursuant to § 1051.11.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraphs (a)(1) and (2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(vii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1051.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month; and

(v) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1051.72 by the payment date specified in paragraph (a), (b), or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The

payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1051.74 [Reserved]

§ 1051.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1051.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1051.73 and 1000.76.

§ 1051.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1051.77 Adjustment of accounts.

See § 1000.77.

§ 1051.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1051.85 Assessment for order administration.

On or before the payment receipt date specified under § 1051.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1051.60 (h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii).

§ 1051.86 Deduction for marketing services.

See § 1000.86.

Subpart D—Miscellaneous Provisions

§ 1051.90 Dates.

See § 1000.90.

Dated: February 6, 2017.

Bruce Summers,

Acting Administrator.

[FR Doc. 2017–02732 Filed 2–9–17; 4:15 pm]

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FEDERAL REGISTER

Vol. 82 Tuesday,

No. 29 February 14, 2017

Part III

The President

Executive Order 13773—Enforcing Federal Law With Respect to Transnational Criminal Organizations and Preventing International Trafficking

Executive Order 13774—Preventing Violence Against Federal, State, Tribal, and Local Law Enforcement Officers

Executive Order 13775—Providing and Order of Succession Within the Department of Justice

Executive Order 13776—Task Force on Crime Reduction and Public Safety

Federal Register
Vol. 82, No. 29
Tuesday, February 14, 2017

Presidential Documents

Title 3—

The President

Executive Order 13773 of February 9, 2017

Enforcing Federal Law With Respect to Transnational Criminal Organizations and Preventing International Trafficking

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* Transnational criminal organizations and subsidiary organizations, including transnational drug cartels, have spread throughout the Nation, threatening the safety of the United States and its citizens. These organizations derive revenue through widespread illegal conduct, including acts of violence and abuse that exhibit a wanton disregard for human life. They, for example, have been known to commit brutal murders, rapes, and other barbaric acts.

These groups are drivers of crime, corruption, violence, and misery. In particular, the trafficking by cartels of controlled substances has triggered a resurgence in deadly drug abuse and a corresponding rise in violent crime related to drugs. Likewise, the trafficking and smuggling of human beings by transnational criminal groups risks creating a humanitarian crisis. These crimes, along with many others, are enriching and empowering these organizations to the detriment of the American people.

A comprehensive and decisive approach is required to dismantle these organized crime syndicates and restore safety for the American people.

Sec. 2. *Policy.* It shall be the policy of the executive branch to:

(a) strengthen enforcement of Federal law in order to thwart transnational criminal organizations and subsidiary organizations, including criminal gangs, cartels, racketeering organizations, and other groups engaged in illicit activities that present a threat to public safety and national security and that are related to, for example:

(i) the illegal smuggling and trafficking of humans, drugs or other substances, wildlife, and weapons;

(ii) corruption, cybercrime, fraud, financial crimes, and intellectual-property theft; or

(iii) the illegal concealment or transfer of proceeds derived from such illicit activities.

(b) ensure that Federal law enforcement agencies give a high priority and devote sufficient resources to efforts to identify, interdict, disrupt, and dismantle transnational criminal organizations and subsidiary organizations, including through the investigation, apprehension, and prosecution of members of such organizations, the extradition of members of such organizations to face justice in the United States and, where appropriate and to the extent permitted by law, the swift removal from the United States of foreign nationals who are members of such organizations;

(c) maximize the extent to which all Federal agencies share information and coordinate with Federal law enforcement agencies, as permitted by law, in order to identify, interdict, and dismantle transnational criminal organizations and subsidiary organizations;

(d) enhance cooperation with foreign counterparts against transnational criminal organizations and subsidiary organizations, including, where appropriate and permitted by law, through sharing of intelligence and law enforcement information and through increased security sector assistance to foreign partners by the Attorney General and the Secretary of Homeland Security;

(e) develop strategies, under the guidance of the Secretary of State, the Attorney General, and the Secretary of Homeland Security, to maximize coordination among agencies—such as through the Organized Crime Drug Enforcement Task Forces (OCDETF), Special Operations Division, the OCDETF Fusion Center, and the International Organized Crime Intelligence and Operations Center—to counter the crimes described in subsection (a) of this section, consistent with applicable Federal law; and

(f) pursue and support additional efforts to prevent the operational success of transnational criminal organizations and subsidiary organizations within and beyond the United States, to include prosecution of ancillary criminal offenses, such as immigration fraud and visa fraud, and the seizure of the implements of such organizations and forfeiture of the proceeds of their criminal activity.

Sec. 3. *Implementation.* In furtherance of the policy set forth in section 2 of this order, the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, or their designees, shall co-chair and direct the existing interagency Threat Mitigation Working Group (TMWG), which shall:

(a) work to support and improve the coordination of Federal agencies' efforts to identify, interdict, investigate, prosecute, and dismantle transnational criminal organizations and subsidiary organizations within and beyond the United States;

(b) work to improve Federal agencies' provision, collection, reporting, and sharing of, and access to, data relevant to Federal efforts against transnational criminal organizations and subsidiary organizations;

(c) work to increase intelligence and law enforcement information sharing with foreign partners battling transnational criminal organizations and subsidiary organizations, and to enhance international operational capabilities and cooperation;

(d) assess Federal agencies' allocation of monetary and personnel resources for identifying, interdicting, and dismantling transnational criminal organizations and subsidiary organizations, as well as any resources that should be redirected toward these efforts;

(e) identify Federal agencies' practices, any absence of practices, and funding needs that might hinder Federal efforts to effectively combat transnational criminal organizations and subsidiary organizations;

(f) review relevant Federal laws to determine existing ways in which to identify, interdict, and disrupt the activity of transnational criminal organizations and subsidiary organizations, and ascertain which statutory authorities, including provisions under the Immigration and Nationality Act, could be better enforced or amended to prevent foreign members of these organizations or their associates from obtaining entry into the United States and from exploiting the United States immigration system;

(g) in the interest of transparency and public safety, and in compliance with all applicable law, including the Privacy Act, issue reports at least once per quarter detailing convictions in the United States relating to transnational criminal organizations and their subsidiaries;

(h) to the extent deemed useful by the Co-Chairs, and in their discretion, identify methods for Federal agencies to coordinate, as permitted by law, with State, tribal, and local governments and law enforcement agencies, foreign law enforcement partners, public-health organizations, and non-governmental organizations in order to aid in the identification, interdiction,

and dismantling of transnational criminal organizations and subsidiary organizations;

(i) to the extent deemed useful by the Co-Chairs, and in their discretion, consult with the Office of National Drug Control Policy in implementing this order; and

(j) within 120 days of the date of this order, submit to the President a report on transnational criminal organizations and subsidiary organizations, including the extent of penetration of such organizations into the United States, and issue additional reports annually thereafter to describe the progress made in combating these criminal organizations, along with any recommended actions for dismantling them.

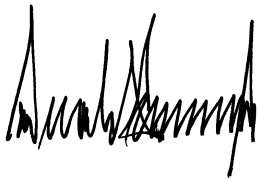
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, 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 order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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.



THE WHITE HOUSE,
February 9, 2017.

[FR Doc. 2017–03113
Filed 2–13–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Executive Order 13774 of February 9, 2017

Preventing Violence Against Federal, State, Tribal, and Local Law Enforcement Officers

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It shall be the policy of the executive branch to:

(a) enforce all Federal laws in order to enhance the protection and safety of Federal, State, tribal, and local law enforcement officers, and thereby all Americans;

(b) develop strategies, in a process led by the Department of Justice (Department) and within the boundaries of the Constitution and existing Federal laws, to further enhance the protection and safety of Federal, State, tribal, and local law enforcement officers; and

(c) pursue appropriate legislation, consistent with the Constitution's regime of limited and enumerated Federal powers, that will define new Federal crimes, and increase penalties for existing Federal crimes, in order to prevent violence against Federal, State, tribal, and local law enforcement officers.

Sec. 2. *Implementation.* In furtherance of the policy set forth in section 1 of this order, the Attorney General shall:

(a) develop a strategy for the Department's use of existing Federal laws to prosecute individuals who commit or attempt to commit crimes of violence against Federal, State, tribal, and local law enforcement officers;

(b) coordinate with State, tribal, and local governments, and with law enforcement agencies at all levels, including other Federal agencies, in prosecuting crimes of violence against Federal, State, tribal, and local law enforcement officers in order to advance adequate multi-jurisdiction prosecution efforts;

(c) review existing Federal laws to determine whether those laws are adequate to address the protection and safety of Federal, State, tribal, and local law enforcement officers;

(d) following that review, and in coordination with other Federal agencies, as appropriate, make recommendations to the President for legislation to address the protection and safety of Federal, State, tribal, and local law enforcement officers, including, if warranted, legislation defining new crimes of violence and establishing new mandatory minimum sentences for existing crimes of violence against Federal, State, tribal, and local law enforcement officers, as well as for related crimes;

(e) coordinate with other Federal agencies to develop an executive branch strategy to prevent violence against Federal, State, tribal, and local law enforcement officers;

(f) thoroughly evaluate all grant funding programs currently administered by the Department to determine the extent to which its grant funding supports and protects Federal, State, tribal, and local law enforcement officers; and

(g) recommend to the President any changes to grant funding, based on the evaluation required by subsection (f) of this section, including recommendations for legislation, as appropriate, to adequately support and protect Federal, State, tribal, and local law enforcement officers.

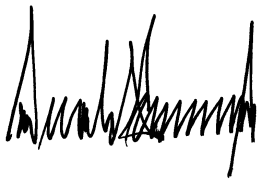
Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, 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 order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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.



THE WHITE HOUSE,
February 9, 2017.

[FR Doc. 2017–03115
Filed 2–13–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Executive Order 13775 of February 9, 2017

Providing an Order of Succession Within the Department of Justice

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.,* it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this order, the following officers, in the order listed, shall act as and perform the functions and duties of the office of Attorney General during any period in which the Attorney General, the Deputy Attorney General, the Associate Attorney General, and any officers designated by the Attorney General pursuant to 28 U.S.C. 508 to act as Attorney General, have died, resigned, or otherwise become unable to perform the functions and duties of the office of Attorney General, until such time as at least one of the officers mentioned above is able to perform the functions and duties of that office:

(a) United States Attorney for the Eastern District of Virginia;

(b) United States Attorney for the Northern District of Illinois; and

(c) United States Attorney for the Western District of Missouri.

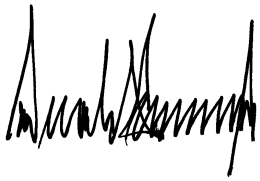
Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 of this order in an acting capacity, by virtue of so serving, shall act as Attorney General pursuant to this order.

(b) No individual listed in section 1 shall act as Attorney General unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Attorney General.

Sec. 3. *Revocation of Executive Order.* Executive Order 13762 of January 13, 2017, is revoked.

Sec. 4. *General Provision.* This order 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.



THE WHITE HOUSE,
February 9, 2017.

[FR Doc. 2017–03116
Filed 2–13–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Executive Order 13776 of February 9, 2017

Task Force on Crime Reduction and Public Safety

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reduce crime and restore public safety to communities across the Nation, it is hereby ordered as follows:

Section 1. *Policy.* It shall be the policy of the executive branch to reduce crime in America. Many communities across the Nation are suffering from high rates of violent crime. A focus on law and order and the safety and security of the American people requires a commitment to enforcing the law and developing policies that comprehensively address illegal immigration, drug trafficking, and violent crime. The Department of Justice shall take the lead on Federal actions to support law enforcement efforts nationwide and to collaborate with State, tribal, and local jurisdictions to restore public safety to all of our communities.

Sec. 2. *Task Force.* (a) In furtherance of the policy described in section 1 of this order, I hereby direct the Attorney General to establish, and to appoint or designate an individual or individuals to chair, a Task Force on Crime Reduction and Public Safety (Task Force). The Attorney General shall, to the extent permitted by law, provide administrative support and funding for the Task Force.

(b) The Attorney General shall determine the characteristics of the Task Force, which shall be composed of individuals appointed or designated by him.

(c) The Task Force shall:

(i) exchange information and ideas among its members that will be useful in developing strategies to reduce crime, including, in particular, illegal immigration, drug trafficking, and violent crime;

(ii) based on that exchange of information and ideas, develop strategies to reduce crime;

(iii) identify deficiencies in existing laws that have made them less effective in reducing crime and propose new legislation that could be enacted to improve public safety and reduce crime;

(iv) evaluate the availability and adequacy of crime-related data and identify measures that could improve data collection in a manner that will aid in the understanding of crime trends and in the reduction of crime; and

(v) conduct any other studies and develop any other recommendations as directed by the Attorney General.

(d) The Task Force shall meet as required by the Attorney General and shall be dissolved once it has accomplished the objectives set forth in subsection (c) of this section, as determined by the Attorney General.

(e) The Task Force shall submit at least one report to the President within 1 year from the date of this order, and a subsequent report at least once per year thereafter while the Task Force remains in existence. The structure of the report is left to the discretion of the Attorney General. In its first report to the President and in any subsequent reports, the Task Force shall summarize its findings and recommendations under subsections (c)(ii) through (c)(v) of this section.

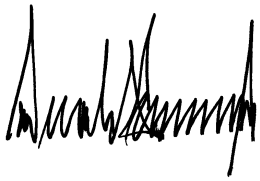
Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, 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 order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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.



THE WHITE HOUSE,
February 9, 2017.

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