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The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–1562]

RIN 7100–AE76

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective April 18, 2017. The rate changes for primary and secondary credit were applicable on March 16, 2017.

FOR FURTHER INFORMATION CONTACT: Clinton Chen, Attorney (202–452–3952), or Sophia Allison, Special Counsel, (202–452–3565), Legal Division, or Lyle Kumasaka, Senior Financial Analyst (202–452–2382); for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

On March 15, 2017, the Board voted to approve a ¼ percentage point increase in the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 1.25 percent to 1.50 percent the rate that each Reserve Bank charges for extensions of primary credit. In addition, the Board had previously approved to renew the formula for the secondary credit rate, the primary credit rate plus 50 basis points, on March 6, 2017. Under the formula, the secondary credit rate in effect at each of the twelve Federal Reserve Banks increased by ¼ percentage point as a result of the Board's primary credit rate action, thereby increasing from 1.75 percent to 2.00 percent the rate that each Reserve Bank charges for extensions of secondary credit. The amendments to Regulation A reflect these rate changes.

The ¼ percentage point increase in the primary credit rate was associated with an increase in the target range for the federal funds rate (from a target range of ½ to ¾ percent to a target range of ¾ to 1 percent) announced by the Federal Open Market Committee (''Committee'') on March 15, 2017, as described in the Board's amendment of its Regulation D published elsewhere in this **Federal Register**.

Administrative Procedure Act

In general, the Administrative Procedure Act (12 U.S.C. 551 *et seq.*) (''APA'') imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to congressionally delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' 12 U.S.C. 553(b)(3)(A). Section 553(d) of the APA also provides that publication not less than 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) an agency finding good cause for shortened notice and publishing its reasoning with the rule. 12 U.S.C. 553(d). The APA further provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, *loans,* grants, benefits, or contracts.'' 5 U.S.C. 553(a)(2) (emphasis added).

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to the final amendments to Regulation A for several reasons. The amendments involve a matter relating to loans, and are therefore exempt under the terms of the APA. In addition, the Board has determined that notice, public comment, and delayed effective date would be unnecessary and contrary to the public interest because delay in implementation of changes to the rates charged on primary credit and secondary credit would permit insured depository institutions to profit improperly from the difference in the current rate and the announced increased rate. Finally, because delay would undermine the Board's action in responding to economic data and conditions, the Board has determined that ''good cause'' exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[1] As noted previously, a general notice of proposed rulemaking is not required if the final rule involves a matter relating to loans. Furthermore, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's

[1] 5 U.S.C. 603 and 604.

requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3506; 5 CFR part 1320, appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.,* 347a, 347b, 347c, 348 *et seq.,* 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[3]

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 1.50 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under § 201.4(b) is 2.00 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 12, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–07742 Filed 4–17–17; 8:45 am]

BILLING CODE 6210–02–P

[3] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D—R–1563]

RIN 7100–AE77

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') is amending Regulation D (Reserve Requirements of Depository Institutions) to revise the rate of interest paid on balances maintained to satisfy reserve balance requirements (''IORR'') and the rate of interest paid on excess balances (''IOER'') maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORR is 1.00 percent and IOER is 1.00 percent, a 0.25 percentage point increase from their prior levels. The amendments are intended to enhance the role of such rates of interest in moving the Federal funds rate into the target range established by the Federal Open Market Committee (''FOMC'' or ''Committee'').

DATES: The amendments to part 204 (Regulation D) are effective April 18, 2017. The IORR and IOER rate changes were applicable on March 16, 2017.

FOR FURTHER INFORMATION CONTACT: Clinton Chen, Attorney (202–452–3952), or Sophia Allison, Special Counsel (202–452–3198), Legal Division, or Thomas Keating, Financial Analyst (202–973–7401), or Laura Lipscomb, Section Chief (202–973–7964), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''the Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions. Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[1] Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates. Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include depository institutions and certain other institutions.[2] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.[3] Prior to these amendments, Regulation D specified a rate of 0.75 percent for both IORR and IOER.[4]

[1] 12 CFR 204.5(a)(1).

II. Amendments to IORR and IOER

The Board is amending § 204.10(b)(5) of Regulation D to specify that IORR is 1.00 percent and IOER is 1.00 percent. This 0.25 percentage point increase in the IORR and IOER was associated with an increase in the target range for the federal funds rate, from a target range of ½ to ¾ percent to a target range of ¾ to 1 percent, announced by the FOMC on March 15, 2017 with an effective date of March 16, 2017. The FOMC's press release on the same day as the announcement noted that:

Information received since the Federal Open Market Committee met in February indicates that the labor market has continued to strengthen and that economic activity has continued to expand at a moderate pace. Job gains remained solid and the unemployment rate was little changed in recent months. Household spending has continued to rise moderately while business fixed investment

[2] Section 19(b)(1)(A) defines ''depository institution'' as any insured bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act; any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act; any savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act; any insured credit union as defined in section 101 of the Federal Credit Union Act or any credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act; any member as defined in section 2 of the Federal Home Loan Bank Act; [and] any savings association (as defined in section 3 of the Federal Deposit Insurance Act) which is an insured depository institution (as defined in such Act) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act. See 12 U.S.C. 461(b)(1)(A). Eligible institution also includes any trust company, corporation organized under section 25A or having an agreement with the Board under section 25, or any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978). 12 U.S.C. 461(b)(12)(C); see 12 CFR 204.2(y) (definition of ''eligible institution'').

[3] See 12 U.S.C. 461(b)(12).

[4] See 12 CFR 204.10(b)(5).

appears to have firmed somewhat. Inflation has increased in recent quarters, moving close to the Committee's 2 percent longer-run objective; excluding energy and food prices, inflation was little changed and continued to run somewhat below 2 percent. Market-based measures of inflation compensation remain low; survey-based measures of longer-term inflation expectations are little changed, on balance.

Consistent with its statutory mandate, the Committee seeks to foster maximum employment and price stability. The Committee expects that, with gradual adjustments in the stance of monetary policy, economic activity will expand at a moderate pace, labor market conditions will strengthen somewhat further, and inflation will stabilize around 2 percent over the medium term. Near-term risks to the economic outlook appear roughly balanced. The Committee continues to closely monitor inflation indicators and global economic and financial developments.

In view of realized and expected labor market conditions and inflation, the Committee decided to raise the target range for the federal funds rate to ¾ to 1 percent. The stance of monetary policy remains accommodative, thereby supporting some further strengthening in labor market conditions and a sustained return to 2 percent inflation.

A Federal Reserve Implementation note released simultaneously with the announcement stated that:

The Board of Governors of the Federal Reserve System voted unanimously to raise the interest rate paid on required and excess reserve balances to 1.00 percent, effective March 16, 2017.

As a result, the Board is amending § 204.10(b)(5) of Regulation D to change IORR to 1.00 percent and IOER to 1.00 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (12 U.S.C. 551 *et seq.*) (''APA'') imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to congressionally delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' 12 U.S.C. 553(b)(3)(A). Section 553(d) of the APA also provides that publication not less than 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) an agency finding good cause for shortened notice and publishing its reasoning with the rule. 12 U.S.C. 553(d).

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to the final amendments to Regulation D. The rate increases for IORR and IOER that are reflected in the final amendments to Regulation D were made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board's action from being effective as promptly as necessary in the public interest, and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[5] As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3506; 5 CFR part 1320, appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

[5] 5 U.S.C. 603 and 604.

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.10 is amended by revising paragraph (b)(5) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(5) The rates for IORR and IOER are:

	Rate (percent)
IORR	1.00
IOER	1.00

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 12, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–07743 Filed 4–17–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 170207154–7253–01]

RIN 0694–AH32

Revision to an Entry on the Entity List

AGENCY: Bureau of Industry and Security, Commerce

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by revising one existing entry in the Entity List, under the destination of Russia. The license requirement for the entry is being revised to conform with a general license issued by the Department of the Treasury's Office of Foreign Assets Control on February 2, 2017.

DATES: This rule is effective April 18, 2017.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) identifies entities and other persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to those listed. The ''license review policy'' for each listed entity or other person is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List. BIS places entities and other persons on the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

Entity List Revision

This rule implements the decision of the ERC to revise one existing entry in the Entity List, under the destination of Russia as described below.

Modification to License Requirements for an Entry on the Entity List

On February 2, 2017, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued General License No. 1, *Authorizing Certain Transactions with the Federal Security Service,* an entity in the Russian Federation. This general license authorizes transactions and activities, otherwise prohibited pursuant to Executive Order 13694 (E.O.) of April 1, 2015, as amended by E.O. 13757 of December 28, 2016, that are necessary and ordinarily incident to: Requesting, receiving, utilizing, paying for, or dealing in licenses, permits, certifications, or notifications issued or registered by the Federal Security Service (a.k.a. Federalnaya Sluzhba Bezopasnosti) (a.k.a. FSB) for the importation, distribution or use of information technology products in the Russian Federation, provided that (i) the exportation, reexportation, or provision of any goods or technology that are subject to the EAR, 15 CFR parts 730 through 774, are licensed or otherwise authorized by the Department of Commerce and (ii) the payment of any fees to the Federal Security Service for such licenses, permits, certifications, or notifications does not exceed $5,000 in any calendar year. The OFAC general license also authorizes transactions and activities ordinary and necessarily incident to complying with law enforcement or administrative actions or investigations involving the Federal Security Service and transactions and activities ordinary and necessarily incident to complying with rules and regulations administrated by the Federal Security Service. The general license does not authorize exportation, reexportation, or provision of any goods, technology, or services to the Crimea region of Ukraine or any transactions that otherwise violate E.O. 13757 of April 1, 2015. Any questions regarding to the scope of this general license should be directed to OFAC.

In light of OFAC's General License No. 1, BIS makes a conforming change by modifying the listing for the Federal Security Service on the Entity List under the destination of Russia (the term used in the EAR for the Russian Federation). This final rule modifies the license requirement column for this entity to specify that the Entity List's license requirements do not apply to items subject to the EAR that are related to transactions authorized by OFAC pursuant to new General License No. 1 (*i.e.,* transactions that are necessary and ordinarily incident to requesting, receiving, utilizing, paying for, or dealing in licenses, permits, certifications, or notifications issued or registered by the Federal Security Service (a.k.a. Federalnaya Sluzhba Bezopasnosti) (a.k.a. FSB) for the importation, distribution, or use of information technology products in the Russian Federation, so long as the transactions do not involve exportation, reexportation, or provision of any goods, technology, or services to the Crimea region of Ukraine and do not otherwise violate E.O. 13757). Except for the limited purposes described above, this conforming change does not authorize the exportation, reexportation, or provision of goods or technology to or on behalf of the Federal Security Service.

This final rule makes the following revision to one entry on the Entity List:

Russia

(1) Federal Security Service (FSB), a.k.a., the following one alias:

—Federalnaya Sluzhba Bezopasnosti. Ulitsa Kuznetskiy Most, Dom 22, Moscow 107031, Russia; and Lubyanskaya Ploschad, Dom 2, Moscow 107031, Russia.

Note: As described above, the changes this final rule makes to this Russian entity are limited to the License requirement column for this entry.

Export Administration Act of 1979

Although the Export Administration Act of 1979 expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act of 1979, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license

applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

4. Section 553(d) of the Administrative Procedure Act (APA) generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(1) because this rule is a substantive rule which relieves a restriction. This rule's revision of the license requirement for the Federal Security Service (FSB) reduces the compliance burden that may be imposed on exporters due to the inconsistent sanctions. The revision also reduces the parties that are affected by the license requirements, addressing an unintended consequence of listing this entity on the Entity List.

In addition, the Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act (APA) requiring prior notice and the opportunity for public comment for the revision included in this rule because they are either unnecessary or contrary to the public interest. The revision is limited to ensure consistency with OFAC's General License No. 1, and thus prior notice and the opportunity for public comment are unnecessary. The conforming change to the listing for Federal Security Service (FSB) is intended to ensure consistent treatment of this entity under both the EAR and OFAC's sanctions regime. Narrowing the scope of the license requirements addresses unintended consequences and unnecessary economic losses that U.S. exporters may face as they turn away potential sales due to this entity being listed on the Entity List. By publishing without prior notice and comment, U.S. exporters will be able to submit licenses, permits, certifications and notifications that are required under Russian law for information technology products imported into, distributed or used in Russia immediately, an action which was approved under OFAC's General License No. 1 since February 2, 2017. A prolonging of the inconsistent treatment for the sanctioned entity would create unnecessary compliance burden on exporters who are complying with OFAC and BIS regulations as well as additional delay and loss of potential sales for U.S. exporters.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016); Notice of November 8, 2016, 81 FR 79379 (November 10, 2016); Notice of January 13, 2017, 82 FR 6165 (January 18, 2017).

■ 2. Supplement No. 4 to part 744 is amended by revising, under Russia, one Russian entity ''Federal Security Service (FSB), a.k.a., the following one alias:

Federalnaya Sluzhba Bezopasnosti. Ulitsa Kuznetskiy Most, Dom 22, Moscow 107031, Russia; *and* Lubyanskaya Ploschad, Dom 2, Moscow 107031, Russia'' to read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
RUSSIA	* *	*	* *	*
	Federal Security Service (FSB), a.k.a., the following one alias: —Federalnaya Sluzhba Bezopasnosti. Ulitsa Kuznetskiy Most, Dom 22, Moscow 107031, Russia; *and* Lubyanskaya Ploschad, Dom 2, Moscow 107031, Russia.	For all items subject to the EAR (see § 744.11 of the EAR), apart from items that are related to transactions that are authorized by the Department of the Treasury's Office of Foreign Assets Control pursuant to General License No. 1 of February 2, 2017.	Presumption of denial	82 FR 724, 1/4/17. 82 FR [INSERT FR PAGE NUMBER AND 4/18/17].
	* *	*	* *	*
*	* *	*	* *	*

Dated: April 13, 2017.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2017–07833 Filed 4–17–17; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 950

[Docket No. 161107999–6999–01]

RIN 0648–BG39

Schedule of Fees for Access to NOAA Environmental Data, Information, and Related Products and Services

AGENCY: National Environmental Satellite, Data and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, NESDIS adds a new service/product to the NESDIS FY 2017 schedule of fees for the sale of its data, information, and related products and services to users. NESDIS is authorized under the United States Code to assess fees, up to fair market value, for access to environmental data, information, and products derived from, collected, and/or archived by NOAA. This action adds a new user fee for a data product titled, High Definition Geomagnetic Model—Real Time.

DATES: Effective May 18, 2017.

FOR FURTHER INFORMATION CONTACT: Lynn Hodges (301) 713–7064.

SUPPLEMENTARY INFORMATION:

Background

NESDIS operates NOAA's National Center for Environmental Information (NCEI). Through NCEI, NESDIS provides and ensures timely access to global environmental data from satellites and other sources, provides information services, and develops science products. NESDIS maintains some 1,300 databases containing over 2,400 environmental variables at NCEI and seven World Data Centers. These centers respond to over 2,000,000 requests for these data and products annually from over 70 countries. This collection of environmental data and products is growing rapidly, both in size and sophistication, and as a result the associated costs have increased.

Users have the ability to access the data offline, online and through the NESDIS *e-Commerce System (NeS) online store.* Our ability to provide data, information, products and services depends on user fees.

Fee Schedule

In an October 22, 2015, final rule (80 FR 63914), NESDIS established a new schedule of fees for the sale of its data, information, and related products and services to users (''October 2015 Fee Schedule Rule''). NESDIS revised the fee schedule that had been in effect since 2013 to ensure that the fees accurately reflect the costs of providing access to the environmental data, information, and related products and services.

NESDIS will continue to review the user fees periodically, and will revise such fees as necessary. Any future changes in the user fees and their effective date will be announced through notice in the **Federal Register**.

Need for Addition

High Definition Geomagnetic Model—Real Time accurately models the magnetic fields originating in the Earth's magnetosphere in real-time using a combination of solar-wind observing satellites situated between Earth and sun and a chain of geomagnetic observatories on the Earth's surface.

We are adding a new user fee for this data product—High Definition Geomagnetic Model—Real Time—to the current user fee schedule. Accordingly, Appendix A to Part 950—Schedule of User Fees for Access to NOAA Environmental Data includes the user fees established in October 2015 and the new fee established by this final rule: High Definition Geomagnetic Model—Real Time Fee. In addition, NESDIS has deleted the New Fee column in Appendix A to avoid confusion given that this final rule is not issuing a new schedule of fees but rather the addition of one new fee.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public comment are inapplicable because this rule falls within the public property exception of subparagraph (a)(2) of section 553, as it relates only to the assessment of fees, as authorized by 15 U.S.C. 1534, that accurately reflect the costs of providing access to publicly available environmental data, information, and related products. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 950

Organization and functions (government agencies).

Dated: April 5, 2017.

Cherish Johnson,

Chief Financial Officer/Chief Administrative Officer.

For the reasons set forth above, 15 CFR part 950 is amended as follows:

PART 950—ENVIRONMENTAL DATA AND INFORMATION

■ 1. The authority citation for part 950 continues to read as follows:

Authority: (5 U.S.C. 552, 553). Reorganization Plan No. 4 of 1970.

■ 2. Appendix A to part 950 is revised to read as follows:

Appendix A to Part 950—Schedule of User Fees for Access to NOAA Environmental Data

Name of product/data/publication/information/service	Current fee
NOAA National Center for Environmental Information:	
Department of Commerce Certification	$116.00
General Certification	92.00
Paper Copy	3.00
Data Poster	18.00
Shipping Service	8.00
Rush Order Fee	60.00
Super Rush Order Fee	100.00

Name of product/data/publication/information/service	Current fee
Foreign Handling Fee	43.00
NEXRAD Doppler Radar Color Prints	21.00
Paper Copy from Electronic Media	8.00
Offline In-Situ Digital Data	175.00
Microfilm Copy (roll to paper) per frame from existing film	20.00
Satellite Image Product	92.00
Offline Satellite, Radar, and Model Digital Data (average unit size is 1 terabyte)	753.00
Conventional CD–ROM/DVD	110.00
Specialized CD–ROM/DVD	208.00
CD–ROM/DVD Copy, Offline	43.00
CD–ROM/DVD Copy, Online Store	16.00
Facsimile Service	89.00
Order Handling	11.00
Non-Digital Order Consultation	10.00
Digital Order Consultation	28.00
Non-Serial Publications	32.00
Non-Standard Data; Select/Copy to CD, DVD or Electronic Transfer, Specialized, Offline	77.00
Digital and Non-Digital Off-the-Shelf Products, Online	13.00
Digital and Non-Digital Off-the-Shelf Products, Offline	17.00
Order Consultation Fee	4.00
Handling and Packing Fee	12.00
World Ocean Database-World Ocean Atlas 2009 DVDs	(*)
Mini Poster	2.00
Icosahedron Globe	1.00
Convert Data to Standard Image	8.00
Single Orbit OLS & Subset	19.00
Single Orbit OLS & Subset, Additional Orbits	6.00
Geolocated Data	50.00
Subset of Pre-existing Geolocated Data	32.00
Global Nighttime Lights Annual Composite from One Satellite	74,924.00
Most Recent DMSP–OLS Thermal Band/Cloud Cover Mosaics from Multiple Satellites	(*)
Daily or Nightly Global Mosaics (visible & thermal band, single spectral band or environmental data)	332.00
Global Nighttime Lights Lunar Cycle	8,259.00
Radiance Calibrated Global DMSP–OLS Nighttime Lights Annual Composite from One Satellite	(*)
Research Data Series CD–ROM/DVD	25.00
Custom Analog Plotter Prints	(*)
NOS Bathymetric Maps and Miscellaneous Archived Publication Inventory	8.00
Global Annual Composite of Nighttime Lights in Monthly Increments From One Satellite	10,794.00
High Definition Geomagnetic Model	20,262.00
High Definition Geomagnetic Model—Real Time	26,204.00
Provision of Global Nighttime VIIRS day/night band data in geotiff format	55,727.00
Provision of Global Nighttime VIIRS day/night band data in HDF5 Format	27,888.00
Provision of regional data from the VIIRS instrument on a daily basis	14,306.00

* Reflects a product no longer offered.

[FR Doc. 2017–07759 Filed 4–17–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0189]

RIN 1625–AA08

Special Local Regulation; Lake Ferguson; Greenville, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation controlling movement of vessels for certain waters of Lake Ferguson, Greenville, MS. This rule is necessary to provide for the safety of life on navigable waters during a paddling event on April 22, 2017. This regulation prohibits entry by all vessels, mariners, and persons into the event area, an approximate 300-yard stretch of Lake Ferguson extending approximately 150-yards west from the Greenville boat launch. All vessels transiting Lake Ferguson west-northwest of the regulated area will be limited to slowest speed for safe navigation to minimize wake unless specifically authorized by the Captain of the Port Memphis or an on-scene representative.

DATES: This rule is effective from 8 a.m. until 4 p.m. on April 22, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0189 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Petty Officer Todd Manow, Waterways Management, Sector Lower Mississippi River, U.S. Coast Guard, telephone 901–521–4813, email *Todd.M.Manow@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
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior

notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Greater Greenville Development Foundation did not notify the Coast Guard that it will be sponsoring the ''Delta Dragon Boat Race'' on April 22, 2017 with sufficient time remaining to publish an NPRM. It is impracticable to publish an NPRM because we must establish this safety zone by April 22, 2017.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable.

III. Legal Authority and Need for a Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The COTP has determined that potential hazards posed to participants of a rowing regatta in Lake Ferguson would be a safety concern for anyone transiting this waterway in the vicinity of the Greenville boat launch in Greenville, Mississippi. The purpose of this rulemaking is to ensure the safety of event participants and other waterway users before, during, and after the scheduled event in the navigable waters of Lake Ferguson.

IV. Discussion of the Rule

This rule establishes a special local regulation, enforced from 8 a.m. until 4 p.m. on April 22, 2017. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass the following in Lake Ferguson in the vicinity of Greenville, MS: starting from a point on shore at 33°24.83′ N., 091°03.95′ W., proceeding 150 yards west-northwest into the lake at 33°24.88′ N., 091°04.02′ W., then proceeding approximately 390 yards south-southwest to 33°24.71′ N., 091°04.15′ W., then proceeding 160 yards east-southeast to a point on shore at 33°24.67′ N., 091°04.07′ W., before returning north-northeast along the shoreline to the point of origin.

This regulation prohibits entry by all vessels, mariners, and persons into the event area, an approximate 300-yard stretch of Lake Ferguson extending approximately 150-yards west-northwest from the Greenville boat launch. All vessels transiting Lake Ferguson through the spectator zone, west-northwest of the regulated area to the state line, will be limited to slowest speed for safe navigation to minimize wake unless specifically authorized by the Captain of the Port Memphis or an on-scene representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') 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 including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

The Coast Guard's use of this special local regulation will be only eight hours in duration on a Saturday in April, and it is designed to minimize the impact on navigation. Moreover, vessels will be allowed to transit Lake Ferguson west-northwest of the event area at the slowest speed for safe navigation to minimize wake. Overall, the Coast Guard expects minimal impact to vessel movement from the enforcement of this special local regulation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of Lake Ferguson in the vicinity of Greenville, MS between 8 a.m. and 4 p.m. on April 22, 2017.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and

preemption requirements described in E.O. 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation lasting eight hours on a Saturday in April. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An 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 rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T08–0189 to read as follows:

§ 100.35 T08–0189 Special Local Regulation; Lake Ferguson, Greenville, MS.

(a) *Regulated area.* (1) A regulated area is established to encompass all waters of Lake Ferguson, in the vicinity of the Greenville Boat Launch, within an area starting from a point on shore at 33°24.83′ N., 091°03.95′ W., proceeding approximately 150 yards WNW into the lake at 33°24.88′ N., 091°04.02′ W., then proceeding approximately 390 yards SSW to 33°24.71′ N., 091°04.15′ W., then proceeding 160 yards ESE to a point on shore at 33°24.67′ N., 091°04.07′ W., before returning NNE along the shoreline to the point of origin.

(2) A spectator zone will be established in Lake Ferguson, west-northwest of the regulated area to the state line.

(b) *Effective period.* This section is effective and will be enforced from 8 a.m. until 4 p.m. on April 22, 2017.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.801 of this part, all vessels, mariners, and persons are prohibited from entering the event area, without permission of the Captain of the Port Memphis (COTP) or an on-scene representative. All vessel operators desiring to operate in the event area of this special local regulation must contact the COTP or an on-scene representative to request permission to do so. The COTP or may be contacted via VHF Channel 16 or by telephone at 1–866–777–2784. An on-scene representative may be a commissioned, warrant, or petty officer of the United States Coast Guard or a federal, state or local law enforcement officer.

(2) During enforcement, all Vessels transiting Lake Ferguson through the spectator zone will be limited to slowest speed for safe navigation to minimize wake unless specifically authorized by the COTP or an on-scene representative.

(d) *Informational broadcasts.* The COTP will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the dates and times of enforcement.

Dated: March 31, 2017.

T.J. Wendt,

Captain, U.S. Coast Guard, Captain of the Port, Memphis, Tennessee.

[FR Doc. 2017–07834 Filed 4–17–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0225]

Drawbridge Operation Regulation; Curtis Creek, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulation; modification.

SUMMARY: The Coast Guard has modified a temporary deviation from the operating schedule that governs the I695 Bridge, at mile 1.0, across Curtis Creek, Baltimore, MD. This modified deviation is necessary to remove, repair and replace the inner and outer loop locking bar and couplings. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This modified deviation is effective without actual notice from April 18, 2017 through 7 p.m. on May 5, 2017. For the purposes of enforcement, actual notice will be used from 6:00 a.m. on April 10, 2017, until April 18, 2017.

ADDRESSES: The docket for this deviation, [USCG–2017–0225] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Martin Bridges, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6422, email *Martin.A.Bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: On March 27, 2017, the Coast Guard published a temporary deviation entitled ''Drawbridge Operation Regulation: Curtis Creek, Baltimore, MD'' in the

Federal Register (82 FR 15137). Under that temporary deviation, the bridge will remain in the closed-to-navigation position from 6 a.m. on April 10, 2017, through 7 p.m. on April 15, 2017. The Maryland Transportation Authority, who owns and operates the I695 Bridge across Curtis Creek, mile 1.0, at Baltimore, MD, has requested a modified temporary deviation from the current operating regulation set out in 33 CFR 117.557, to remove, repair, and replace the inner and outer loop locking bar and couplings. This modified temporary deviation serves to replace the previous temporary deviation in the **Federal Register** (82 FR 15137), immediately upon its publication into the **Federal Register**.

Under this modified temporary deviation, the bridge will remain in the closed-to-navigation position from 6 a.m. to 7 p.m., from April 10, 2017, through April 17, 2017, and from May 1, 2017, through May 5, 2017. The bridge will open on signal if at least 24 hours notice is given from 7 p.m. to 6 a.m., from April 10, 2017, through April 17, 2017, and from May 1, 2017, through May 5, 2017. At all other times the bridge will operate per 33 CFR 117.557. The drawbridge has two spans, each with double-leaf bascule draws, and both spans have a vertical clearance in the closed-to-navigation position of 58 feet above mean high water.

Curtis Creek is used by military vessels, recreational vessels, tug and barge traffic, fishing vessels, and small commercial vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge spans will not be able to open in case of an emergency and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local Notice and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: April 12, 2017.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2017–07765 Filed 4–17–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0066]

RIN 1625–AA00

Safety Zone; 2017 Key West Paddle Classic, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone on the waters surrounding Key West, Florida, during the 2017 Key West Paddle Classic, a paddle board race event. The safety zone is necessary to ensure the safety of participant vessels, spectators, and the general public during the event. This regulation prohibits persons and non-participant vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Key West or a designated representative.

DATES: This rule is effective from 7:30 a.m. until 3 p.m. on April 29, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2017–0066 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Scott Ledee, Waterways Management Division Chief, Sector Key West, FL, U.S. Coast Guard; telephone (305) 292–8768, email *SKWWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The event is scheduled to take place on April 29th and the safety zone must be in effect on that date in order to serve its purpose of ensuring the safety of the public from hazards associated with paddle events. For those reasons, it would be impracticable and contrary to the public interest to publish an NPRM.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. The purpose of the rule is to ensure the safety of the event participants, the general public, vessels and the navigable waters surrounding Key West, Florida, during the 2017 Key West Paddle Classic event.

IV. Discussion of the Rule

This rule establishes a safety zone on certain navigable waters surrounding Key West, Florida, during the 2017 Key West Paddle Classic event. The moving safety zone encompasses all waters within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of safety vessels. The event course begins at Higgs Beach in Key West, Florida, moves west to the area offshore of Fort Zach State Park, north through Key West Harbor, east through Fleming Key Cut, south through Cow Key Channel, and west returning back to Higgs Beach. The event is scheduled to take place from 7:30 a.m. to 3 p.m. on April 29, 2017. Approximately 200 paddle boarders and six safety vessels are anticipated to

participate in the event. No person or non-participant vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP Key West or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and/or by on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs''' (February 2, 2017).

The economic impact of this rule is not significant for the following reasons: (1) Although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP Key West or a designated representative, they may operate in the surrounding area during the enforcement period; (2) Persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Key West or a designated representative; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

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'' comprised of small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a

significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable water surrounding Key West, Florida, during a paddle event lasting seven and one-half hours. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T07–0066 to read as follows:

§ 165.T07–0066 Safety Zone; 2017 Key West Paddle Classic, Key West, FL.

(a) *Location.* The following regulated area is a moving safety zone: All waters extending 100 yards to either side of the race participants and safety vessels; extending 50 yards in front of the lead safety vessel preceding the first race participants; and extending 50 yards behind the safety vessel trailing the last race participants. The event course begins at Higgs Beach in Key West, Florida, moves west to the area offshore of Fort Zach State Park, north through Key West Harbor, east through Fleming Key Cut, south through Cow Key Channel, and west returning back to Higgs Beach.

(b) *Definition.* As used in this section, the term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Key West in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Key West by telephone at (305) 292–8772, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM channel 16, and/or by on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced from 7:30 a.m. until 3 p.m. on April 29, 2017.

Dated: April 13, 2017.

J.A. Janszen,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2017–07822 Filed 4–17–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2016–0279; FRL–9957–23]

Bacillus Thuringiensis (mCry51Aa2) Protein in or on Cotton; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the Bacillus thuringiensis mCry51Aa2 protein in or on the food and feed commodities of cotton; cotton undelinted seed; cotton, gin byproducts; cotton, forage; cotton, hay; cotton, hulls; cotton, meal; and cotton, refined oil, when used as a plant-incorporated protectant (PIP) in accordance with the terms of Experimental Use Permit (EUP) No. 524–108. Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of mCry51Aa2 protein. The temporary tolerance exemption expires on February 28, 2019.

DATES: This regulation is effective April 18, 2017. Objections and requests for hearings must be received on or before June 19, 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 docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0279, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@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 40 CFR part 174 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0279 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 June 19, 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 number EPA–HQ–OPP–2016–0279, 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. Background and Statutory Findings

In the **Federal Register** of June 22, 2016 (81 FR 40594) (FRL–9947–32), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6G8453) by Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. The petition requested that 40 CFR part 174 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of the plant-incorporated protein (PIP) *Bacillus thuringiensis* (mCry51Aa2.834_16 (mCry51Aa2) protein in or on cotton. That document referenced a summary of the petition prepared by the petitioner Monsanto Company, which is available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit VII.C.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(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. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require 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. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that 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 performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information 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.

Bacillus thuringiensis (Bt) Cry (or crystalline) proteins are naturally produced. These insecticidal proteins are protoxins, which must be activated by alkaline conditions in the insect gut, so they are not toxic until ingested by an insect. When activated, specific binding sites found only in susceptible host insects are involved in binding *Bt* protein toxins, followed by pore formation into the insect hemolymph, leakage and, in general, decreased vitality of the insect including reduced feeding, eventually causing mortality. Even among insects, specific *Bt* proteins are highly specific and so selection of specific proteins to target pests is possible often with little or no nontarget effects to humans or even to other insects.

Bt proteins are also ubiquitous in soil and water and are found on food products which may be consumed with little processing. No adverse effects are expected or have been reported from exposure to *Bt* Cry proteins. Further, the use of *Bt* insecticidal proteins in bacterial and plant-incorporated formulations over time has been widely shown to be safe and nontoxic except to a limited range of target pests.

Minor alterations to the native (or naturally produced) Cry51Aa2 protein were made to make the protein Cry51Aa2.834_16 (hereafter referred to as modified Cry51Aa2 or mCry51Aa2) more active and specific to the target insect pests Lygus bugs and Thrips, when the protein is expressed in cotton plant tissues.

Molecular analysis of mCry51Aa2 showed that it has a protein sequence that is 98% similar to Cry51Aa1 protoxin and 96% similar to the native Cry51Aa2 protoxin. Other sequence alignments, ranging from 27 to 96%,

were to *Bacillus* proteins. Comparisons using the Basic Local Alignment Search Tool—protein query (BLASTp) database found 16 significant alignments, and all except the uncharacterized *Jatropha curcas* protein are from genus *Bacillus.* However, only three have identity >35% similarity and these are related insecticidal *Bacillus thuringiensis* Cry proteins/protoxins. Comparison of mCry51Aa2 to the native Cry51Aa2 using the FASTA database shows three amino acids were deleted, and there are seven substitutions to the original 309 amino acids, resulting in a 306 amino acid protoxin. There were no sequences with any significant similarity (≤35%) to known toxins other than the insecticidal protoxins from *Bacillus thuringiensis.*

An acute oral toxicity test conducted with mice at the highest practicable dose of dose of 1332 mg of mCry51Aa2/Kg body weight was conducted in mice and showed no clinical signs of toxicity, no abnormalities on necropsy 14 days after treatment, and no statistically significant weight fluctuation. The No observed adverse effect level (NOAEL) was determined to be >1332 milligram (mg) of mCry51Aa2 per kilogram (kg) bodyweight.

Rapid digestibility by pepsin was demonstrated (93.7% reduction within two minutes, and no detects at 60 minutes). Based on this assay it is likely that mCry51Aa2 would be completely digested in the human stomach.

A thorough analysis of mCry51Aa2 shows it is not related to any other known allergens. Molecular analysis showed there were no significant full-length allergen sequence matches, and none showed significant similarity using a sliding 80 amino acid search or an exact 8 amino acid match.

Based on the results of these studies, no toxicity or other adverse effects from dietary exposure to mCry51Aa2 are expected.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide residue. These considerations include dietary exposure under the tolerance exemption in effect for the *Bt* mCry51Aa2 protein residue, and exposure from non-occupational sources. Oral exposure may occur at very low levels from ingestion of food and feed commodities of cotton. With respect to drinking water, since the PIP is integrated into the plant genome and based upon EPA's human health and environmental assessments for *Bt* mCry51Aa2 protein (Refs. 1 and 2), the Agency expects residues in drinking water to be extremely low or non-existent.

Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces exposure by these routes to negligible. Exposure to infants and children via residential or lawn use is also not expected because the use is limited to agricultural production of cotton with the *Bt* mCry51Aa2 protein PIP.

V. 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 mCry51Aa2 protein to share a common mechanism of toxicity with any other substances, and mCry51Aa2 protein does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that mCry51Aa2 protein 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.*

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of exposure (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 that a different margin of exposure (safety) will be safe for infants and children. This additional margin of exposure (safety) is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA 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.

Based on the information discussed in Unit III., EPA concludes that there are no threshold effects of concern to infants, children, or adults from exposure to the *Bt* mCry51Aa2 protein. As a result, EPA concludes that no additional margin of exposure (safety) is necessary to protect infants and children and that not adding any additional margin of exposure (safety) will be safe for infants and children.

Therefore, based on the discussion in Units III. and IV. and the supporting documentation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of the *Bt* mCry51Aa2 protein in cotton products, when it is used as a plant-incorporated protectant. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information.

VII. Other Considerations

A. Analytical Enforcement Methodology

A standard operating procedure for an enzyme-linked Immunosorbent assay (ELISA) for the detection and quantification of the *Bt* mCry51Aa2 protein in cotton tissue has been submitted.

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 the *Bt* protein mCry51Aa2 protein.

C. Response to Comments

In response to the Notice of Filing (81 FR 40594), one comment was received and posted August 05, 2016. It urged the Agency deny the request for ''*Bt* Cry51Aa2'' because ''the release of more protein on earth is harmful because our nature exists with a certain set of standards.'' The commenter did not provide any more information on the set of standards governing our nature. In response to this comment, the Agency notes that protein is an important component of the diet of humans and animals and that Monsanto Company has submitted information to address the potential for the mCry51Aa protein to be similar to a known allergen or toxin utilizing amino acid similarity analysis. There is no indication from the information provided that the mCry51Aa protein would behave differently from any other dietary protein.

One additional comment about human health effects was received not in response to the Notice of Filing, but in response to the Notice of Receipt for this Experimental Use Permit (81 FR 48793; see docket EPA–HQ–OPP–2016–0282). Because it raised a concern about human health effects, the EPA is responding to it in this document. The comment stated that that . . . numerous studies show toxicity of *Bt* products including GM *Bt* crops to other non-target including . . . rats as well as allergenic and respiratory problems in humans . . .'' While not all of the numerical citations were provided, it was possible to retrieve several. Some articles (''Ban GMOs Now'' and ''New GMO Studies Demonstrate 'Substantial Non-Equivalance'') were not from peer-reviewed journals and are of questionable validity for the issue of mCry51Aa safety. There was a reference to an article about the presence of *B*t toxins in the blood of non-pregnant and pregnant females as well as in fetal cord blood. This article by Aris & Leblanc (Repro Tox. 31:528–533, 2011) has some important design limitations which question the implications made in the paper about blood levels of Cry1Ab protein. Most importantly, there were no identified effects in the population sampled that indicates any health concerns related to the presence of the Cry1Ab protein in blood.

Overall there is no substantive information in either of these comments to inform the risk assessment for mCry51Aa2.

VIII. Conclusions

The Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of mCry51Aa2 protein in or on cotton. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed previously no toxicity to mammals has been observed, nor is there any indication of allergenicity potential for the plant-incorporated protectant, and there is a long history of human exposure to Bacillus thuringiensis bacteria and toxins through naturally occurring residues and residues from use as a pesticide in agricultural and residential settings and in other plant incorporated protectants. Therefore, a temporary exemption is established for residues of the PIP *Bacillus thuringiensis* mCry51Aa2 protein on the food and feed commodities derived from cotton containing the PIP.

IX. References

1. U.S. EPA. 2016a. MON 88702 Cotton Expressing *B. thuringiensis* mcry51Aa2 Protein Stacked with the Vip3Aa19, Cry2Ab2 and Cry1Ac Proteins Memorandum from J. Gagliardi, Ph.D. through J. Kough, Ph.D. to A. Sibold, dated September 12, 2016.
2. U.S. EPA. 2016b. Environmental Risk Assessment for a FIFRA Section 5 Experimental Use Permit for MON 88702 Alone and in Combination with Other Registered Plant Incorporated Protectants in Cotton. Memorandum from S. Borges, Senior Scientist to A. Sibold, Regulatory Action Leader, dated October 19, 2016.
3. U.S. EPA. 2016c. Review of Public Comments on Cry51Aa Notice of Filing Experimental Use Permit and Associated Temporary Tolerance (6G8453). November 2, 2016.

X. Statutory and Executive Order Reviews

This action establishes a tolerance 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).

XI. 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 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 10, 2017.

Robert McNally,

Division Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 174—AMENDED

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 174.536 to subpart W to read as follows:

§ 174.536 Bacillus thuringiensis mCry51Aa2 protein in cotton; temporary exemption from the requirement of a tolerance.

Residues of the protein mCry51Aa2 in or on the food and feed commodities of cotton: Cotton, undelinted seed; cotton, gin byproducts; cotton, forage; cotton, hay; cotton, hulls; cotton, meal; and cotton, refined oil are temporarily exempt from the requirement of a tolerance when used as a plant-incorporated protectant in cotton plants in accordance with the terms of Experimental Use Permit No. 524–EUP–108. This temporary exemption from the requirement of a tolerance expires on February 28, 2019.

[FR Doc. 2017–07804 Filed 4–17–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0171; FRL–9959–25]

Pyroxasulfone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyroxasulfone in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) and K–I Chemical requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 18, 2017. Objections and requests for hearings must be received on or before June 19, 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 docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0171, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0171 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 June 19, 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 number EPA–HQ–OPP–2016–0171, 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 Tolerances

In the **Federal Register** of May 19, 2016 (81 FR 31581) (FRL–9946–02), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C.

346a(d)(3), announcing the filing of a pesticide petition (PP 6E8454) by IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of pyroxasulfone (3-[[[5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methyl]sulfonyl]-4,5-dihydro-5,5-dimethylisoxazole) and its metabolites (5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-carboxylic acid (M–3); 5-(difluoromethoxy)-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methanesulfonic acid (M–25); 3-[1-carboxy-2-(5,5-dimethyl-4,5-dihydroisoxazol-3-ylthio)ethylamino]-3-oxopropanoic acid (M–28); and 5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methanesulfonic acid (M–1)) calculated as the stoichiometric equivalent of pyroxasulfone in or on the raw agricultural commodity sunflower subgroup 20B at 0.2 parts per million. That document referenced a summary of the petition prepared by K–I Chemical U.S.A. Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* A comment supporting IR–4's petition requesting this tolerance was received in response to the notice of filing.

In the **Federal Register** of December 20, 2016 (81 FR 92758) (FRL–9956–04), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F8417) by K–I Chemical USA. Inc., 11 Martine Ave., Suite 970, White Plains, NY 10606. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide, pyroxasulfone (3-[(5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl) pyrazole-4-ylmethylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole) and its metabolites in or on dried shelled peas and beans (crop subgroup 6C) at 0.15 ppm, pea hay at 0.40 ppm, pea vines at 0.20 ppm, cowpea hay at 0.07 ppm, cowpea forage at 3.0 ppm, flax at 0.07 ppm, peanut at 0.20 ppm, peanut hay at 3.0 ppm, peanut meal at 0.40 ppm, and vegetable, foliage of legume, except soybean, subgroup 7A at 3.0 ppm. That document referenced a summary of the petition prepared by K–I Chemical U.S.A. Inc., the registrant, which is available in docket number EPA–HQ–OPP–2015–0787, *http://www.regulations.gov.*

The December 20, 2016 notice of filing supersedes a notice of filing published in the **Federal Register** of June 22, 2016 (81 FR 40594) (FRL–9947–32), which was based on an earlier version of the same petition (5F8417). Following that June 2016 publication, K–1 amended its petition to include additional crops and adjust the tolerance levels requested. The December 20, 2016 document provided notice of that updated petition. Although no comments were received in response to the December 20, 2016 notice of filing, one comment was received in response to the June 22, 2016 notice. EPA is carrying that earlier comment forward as a comment on the petition noticed in December 2016 and provides a response to that comment in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the levels at which some of the tolerances are being established and also modified some of the crop definitions. The reasons for these changes are explained in Unit IV.D.

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

Subchronic and chronic toxicity testing of pyroxasulfone in mice, rats and dogs produced a variety of adverse effects in several target organs, but the most sensitive effect is neurotoxicity in dogs. Effects seen in animal studies ranged from cardiac toxicity (increased cardiomyopathy in mice and rats), liver toxicity (centrilobular hepatocellular hypertrophy, histopathological and/or clinical pathological indicators), neurotoxicity characterized by axonal/myelin degeneration in the sciatic nerve (dog, mouse and rat) and spinal cord sections (dog), skeletal muscle myopathy, kidney toxicity (increased incidence of chronic progressive nephropathy in dogs and retrograde nephropathy in mice), urinary bladder mucosal hyperplasia, inflammation, and urinary bladder transitional cell papillomas (rats). Decreased body weight and enzyme changes were noted in some studies. Toxic adverse effects (impaired hind limb function, ataxia, hind limb twitching and tremors; increased creatine kinase, aspartate aminotransferase; axonal/myelin degeneration of the sciatic nerve and spinal cord sections) in dogs occurred at ≥10 mg/kg/day doses while in the mouse toxic adverse effects (degeneration of sciatic and trigeminal nerve axons and their associated myelin sheaths and chronic progressive nephropathy, renal tubular adenomas) occurred at higher doses (131 mg/kg/day and above).

Comparing effects by route of administration, pyroxasulfone was moderately toxic to rats following a 4-week dermal exposure producing local inflammation and systemic effects of minimal to mild cardiac myofiber degeneration at the limit dose of 1,000 mg/kg/day with a NOAEL of 100 mg/kg/day. No adverse effects were noted in an inhalation study following exposure for 28 days at 200 mg/m^3/day (equivalent to 52.2 mg/kg/day oral dose), the highest dose tested of an aerosol dust.

In cancer studies in mice and rats, renal tubular adenomas were observed in male mice at a dietary dose of 0.6 and 255 mg/kg/day (but not at an intermediate dose of 18 mg/kg/day) and urinary bladder transitional cell papillomas were observed in male rats at 42 and 84 mg/kg/day. Based on available information, the Agency concluded that the kidney adenomas in male mice were not treatment-related.

The Agency considered the transitional cell bladder tumors in male rats to be treatment-related based on statistically significant trends for urinary bladder transitional cell papillomas and combined papillomas and carcinomas, the occurrence of preneoplastic lesions at 42 and 84 mg/kg/day and the rare occurrence of bladder transitional cell tumors. The Agency concluded that the mode of action for bladder tumors has been adequately established based on submitted data that support both a dose-response and temporal concordance of the key events and bladder tumors. The available data indicate that the formation of urinary bladder calculi is the prerequisite for subsequent hyperplasia and neoplasia and that tumors do not develop at doses too low to produce calculi. The Agency has determined that the quantification of risk using a non-linear approach (*i.e.,* RfD) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to pyroxasulfone. There is a clear threshold of 1,000 ppm (42.55 mg/kg/day) for tumorigenesis. A point of departure (POD) of 50 ppm (2.0 mg/kg/day) is not expected to result in urinary bladder calculi formation which is a prerequisite for subsequent hyperplasia and neoplasia.

Pyroxasulfone did not exhibit developmental toxicity in the rat developmental toxicity study at the limit dose of 1,000 mg/kg/day and it exhibited slight developmental toxicity in rabbits (reduced fetal weight and resorptions) at the limit dose of 1,000 mg/kg/day. However, developmental effects were noted in post-natal day (PND) 21 offspring at 300 mg/kg/day in the rat developmental neurotoxicity (DNT) study characterized as decreased brain weight and morphometric changes. Developmental effects in the rabbit developmental study and DNT study occurred in the absence of maternal toxicity, indicating potential increased quantitative susceptibility of offspring. In a reproductive toxicity in rats reduced pup weight and body weight gains during lactation occurred at similar doses causing pronounced maternal toxicity (reduced body weight, body weight gain and food consumption and increased kidney weight, cardiomyopathy and urinary bladder mucosal hyperplasia with inflammation).

Pyroxasulfone did not produce immunotoxic effects in mice following dietary feeding for 28 days up to 4,000 ppm (633/791 mg/kg/day, M/F) or in rats at dietary concentrations of 7,500 ppm (529/570 mg/kg/day in M/F).

Specific information on the studies received and the nature of the adverse effects caused by pyroxasulfone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document title ''*Pyroxasulfone Human Health Risk Assessment for the Section 3 New Uses of Pyroxasulfone on Crop Subgroup 6C, Sunflower Subgroup 20B, Flax, and Peanut*'' on page 44 in docket ID number EPA–HQ–OPP–2016–0171.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for pyroxasulfone used for human risk assessment is shown in Table 1 of this unit.

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 100 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 1.0 mg/kg/day. aPAD = 1.0 mg/kg/day	Developmental neurotoxicity study (DNT) in rats. The LOAEL of 300 mg/kg/day is based on decreased brain weight in both sexes, reduced thickness of the hippocampus, corpus callosum and cerebellum in PND 21 female offspring.
Chronic dietary (All populations)	NOAEL= 2 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.02 mg/kg/day. cPAD = 0.02 mg/kg/day	One- year chronic dog study. The LOAEL of 10 mg/kg/day is based on impaired hind limb function, ataxia, hind limb twitching and tremors; clinical pathology: Increased creatine kinase, aspartate aminotransferase; axonal/myelin degeneration of the sciatic nerve and spinal cord sections.
Cancer (Oral, dermal, inhalation)	''Not Likely to be Carcinogenic to Humans'' at doses that do not cause crystals with subsequent calculi formation resulting in cellular damage of the urinary tract. Risk is quantified using a non-linear (*i.e.,* RfD) approach.		

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 pyroxasulfone, EPA considered exposure under the petitioned-for tolerances as well as all existing pyroxasulfone tolerances in 40 CFR 180.659. EPA assessed dietary exposures from pyroxasulfone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for pyroxasulfone. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture's (USDA) 2003–2008 National Health and Nutrition Survey/What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and tolerance level residues adjusted for metabolites which are not in the tolerance expression.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from USDA's 2003–2008 NHANES/WWEIA. As to residue levels in food, EPA assumed 100 PCT and tolerance level residues adjusted for metabolites which are not in the tolerance expression.

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 pyroxasulfone. 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 or PCT information in the dietary assessment for pyroxasulfone. Tolerance level residues and 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 pyroxasulfone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyroxasulfone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of pyroxasulfone for acute exposures are estimated to be 16.7 parts per billion (ppb) for surface water and 210 ppb for ground water. EDWCs of pyroxasulfone for chronic exposures for non-cancer assessments are estimated to be 4.5 ppb for surface water and 174 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 210 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration value of 174 ppb was used to assess the contribution to drinking water.

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).

Pyroxasulfone is not registered for any specific use patterns that would result in residential exposure.

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 pyroxasulfone to share a common mechanism of toxicity with any other substances, and pyroxasulfone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyroxasulfone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Pyroxasulfone did not exhibit developmental toxicity in the rat guideline study at the limit dose of 1,000 mg/kg/day and it exhibited slight developmental toxicity in rabbits (reduced fetal weight and resorptions) at the limit dose of 1,000 mg/kg/day. However, developmental effects were noted in PND 21 offspring at 300 mg/kg/day in the rat developmental neurotoxicity (DNT) study characterized as decreased brain weight and morphometric changes. Developmental effects in the rabbit developmental study and DNT study occurred in the absence of maternal toxicity, indicating potential increased quantitative susceptibility of offspring. In a rat reproductive toxicity study, reduced pup weight and body weight gains during lactation occurred at similar doses causing pronounced maternal toxicity (reduced body weight, body weight gain and food consumption and increased kidney weight, cardiomyopathy and urinary bladder mucosal hyperplasia with inflammation).

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 pyroxasulfone is complete.

ii. Available data indicates that pyroxasulfone produces neurotoxic effects in rats. The toxicity database includes specific acute and subchronic neurotoxicity tests, as well as a developmental neurotoxicity study (DNT). Although the DNT indicated offspring are more sensitive to neurotoxic effects of pyroxasulfone, the dose-response is well characterized for neurotoxicity and a NOAEL is

identified; therefore, there is no residual uncertainty with regard to neurotoxic effects for which a 10X must be retained.

iii. As discussed in Unit III.D.2., there is evidence of increased quantitative susceptibility of fetuses and offspring following *in utero* or post-natal exposure to pyroxasulfone (based on a DNT study in rats and a developmental study in rabbits). In rabbits, developmental toxicity was only seen at the limit dose of 1000 mg/kg/day as reduced fetal weight and increased fetal resorptions with a NOAEL of 500 mg/kg/day for these effects, compared to no maternal toxicity at these doses. In a DNT study in rats, offspring toxicity was seen at 300 mg/kg/day compared to no maternal toxicity at 900 mg/kg/day. Notwithstanding, the Agency concludes that there is no residual uncertainty concerning these effects. The available studies show clear NOAELs and LOAELs for these effects, which are occurring only at doses much higher than the endpoints on which the Agency is regulating.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to pyroxasulfone in drinking water. These assessments will not underestimate the exposure and risks posed by pyroxasulfone.

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.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to pyroxasulfone will occupy 3.7% of the aPAD for all infants less than 1-year-old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pyroxasulfone from food and water will utilize 49% of the cPAD for all infants less than 1-year-old, the population group receiving the greatest exposure. There are no residential uses for pyroxasulfone.

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

Short- and intermediate-term adverse effects were identified; however, pyroxasulfone is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for pyroxasulfone.

4. *Aggregate cancer risk for U.S. population.* As explained in Unit III.A., the Agency has determined that the quantification of risk using a non-linear (*i.e.,* RfD) approach will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to pyroxasulfone. Therefore, based on the results of the chronic risk assessment discussed in Unit III.E.2., pyroxasulfone is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography/triple quadrupole mass spectrometry (LC/MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for residues of pyroxasulfone in or on any of the commodities in this document.

C. Response to Comments

One comment was received in response to the June 22, 2016 Notice of Filing (81 FR 40594) (FRL–9947–32). The comment stated in part that most Americans ''don't need or want more toxic chemicals'' and that EPA should deny this submission. The Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. The citizen's comment does not provide any information upon which the Agency could base a decision deny the petition.

D. Revisions to Petitioned-For Tolerances

The sunflower subgroup 20B tolerance is being established at 0.30 ppm instead of the proposed level of 0.2 ppm. This is because the petitioner did not convert the metabolites to parent equivalents and when those total residues are put into the tolerance calculator the correct value is 0.30 ppm. Also, based on the Agency's review of the residue data, the tolerances for peanut and peanut hay are being established at 0.30 ppm and 4.0 ppm, respectively. In addition, separate tolerances are not being established on field pea hay and vines and cowpea hay

and forage because they will be covered by the tolerance being established on ''vegetable, foliage of legume, except soybean, subgroup 7A.''

V. Conclusion

Therefore, tolerances are established for residues of pyroxasulfone, including its metabolites and degradates, in or on: Flax, seed at 0.07 ppm; pea and bean, dried shelled, except soybean, subgroup 6C at 0.15 ppm; peanut at 0.30 ppm; peanut, hay at 4.0 ppm; peanut, meal at 0.40 ppm; sunflower subgroup 20B at 0.30 ppm; and vegetable, foliage of legume, except soybean, subgroup 7A at 3.0 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 2017,

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 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 § 180.659, add paragraph (a)(5) to read as follows:

§ 180.659 Pyroxasulfone; tolerances for residues.

(a) * * *

(5) Tolerances are established for residues of the herbicide pyroxasulfone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of pyroxasulfone (3-[(5-difluoromethoxy-1-methyl-3-(trifluoromethyl)pyrazol-4-ylmethylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole), and its metabolites, M-1 (5-difluoromethoxy-1-methyl-3-trifluoromethyl-1H-pyrazol-4-yl) methanesulfonic acid), M-3 (5-difluoromethoxy-1-methyl-3-trifluoromethyl-1H-pyrazol-4-carboxylic acid), M-25 (5-difluoromethoxy-3-trifluoromethyl-1H-pyrazol-4-yl)methanesulfonic acid) and M-28 (3-[1-carboxy-2-(5,5-dimethyl-4,5-dihydroisoxazol-3-ylthio)ethylamino]-3-oxopropanoic acid) calculated as the stoichiometric equivalent of pyroxasulfone, in or on the following commodities:

Commodity	Parts per million
Flax, seed	0.07
Pea and bean, dried shelled, except soybean, subgroup 6C	0.15
Peanut	0.30
Peanut, hay	4.0
Peanut, meal	0.40
Sunflower subgroup 20B	0.30
Vegetable, foliage of legume, except soybean, subgroup 7A	3.0

* * * * *

[FR Doc. 2017–07819 Filed 4–17–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0153; FRL–9953–96]

Pyriofenone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyriofenone in or on the caneberry subgroup (crop subgroup 13–07A), the bushberry subgroup (crop subgroup 13–07B), the small fruit vine climbing subgroup (crop subgroup 13–07D), the low growing berry subgroup except cranberry (crop subgroup 13–07G) and cucurbit vegetables (crop group 9). ISK Biosciences Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 18, 2017. Objections and requests for hearings must be received on or before June 19, 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 docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0153, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW. Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0153 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 June 19, 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 number EPA–HQ–OPP–2014–0153, 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 May 23, 2014 (79 FR 29729) (FRL–9910–29), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F8227) by ISK Biosciences Corporation, 7470 Auburn Road, Suite A Concord, OH 44077. The petition requested that 40 CFR part 180 be amended by proposing tolerances for residues of the fungicide, pyriofenone, in or on, the caneberry subgroup (crop subgroup 13–07A) at 0.90 ppm, the bushberry subgroup (crop subgroup 13–07B) at 1.5 ppm, the small fruit vine climbing subgroup (crop subgroup 13–07D) at 1.5 ppm, the low growing berry subgroup except cranberry (crop subgroup 13–07G) at 0.50 ppm, and cucurbit vegetables (crop group 9) at 0.30 ppm. That document referenced a summary of the petition prepared by ISK Biosciences Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

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 pyriofenone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with pyriofenone 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. The liver (dog, rat, and mouse), kidney (rat and mouse), and cecum (rat) were the primary organs affected by pyriofenone in toxicity

studies. Symptoms of liver toxicity observed in the studies were increased weight, dark color, histological abnormalities (liver pigment deposition, microgranuloma, fatty change, necrosis, and focal hepatic congestion), and increases in hepatic enzymes (alkaline phosphatase, γ-glutamyltranferase, and triglycerides) in serum. Indications of kidney toxicity resulting from pyriofenone exposure included increased weight, coarse surface, histological abnormalities (chronic nephropathy, cortical tubular basophilia, cortical scaring, and cortical cysts), increases in ketones in urine, and perigenital staining. Effects of pyriofenone exposure on the cecum included increased weight; and enlargement, distension, and inflammation. Tests were not conducted to determine toxicity through the inhalation route of exposure, because these data were waived. There is no evidence of dermal toxicity at the limit dose.

Exposure to pyriofenone did not result in any developmental effects at the limit dose in rats, but abortions were noted in rabbits at 300 mg/kg/day. The rabbit abortions were associated with decreased maternal body weight gain and food consumption. There were no effects on reproduction observed at the highest dose tested (334 mg/kg/day), and no quantitative or qualitative sensitivity was noted in offspring. There was no evidence of genotoxicity nor an increase in the incidence of tumors. Based on the results of the immunotoxicity study and other studies in the toxicity database, there was no evidence that pyriofenone directly targets the immune system.

Specific information on the studies received and the nature of the adverse effects caused by pyriofenone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the documents ''Pyriofenone. Human Health Risk Assessment for the Section 3 Registration on: Cucurbit Vegetable (crop group 9) and berry and small fruit, crop group 13–07 (except large shrub/tree berry subgroup 13–07C)'' and ''Pyriofenone. Revision to Human Health Risk Assessment for the Section 3 Registration on: Cucurbit Vegetable (Crop Group 9) and Berry and Small Fruit, Crop Group 13–07, (Except Large Shrub/Tree Berry Subgroup 13–07C)'' in docket ID number EPA–HQ–OPP–2014–0153.

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 pyriofenone used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PYRIOFENONE 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)	An endpoint of concern attributable to a single dose was not identified. An acute RfD was not established.		
Chronic dietary (All populations)	NOAEL = 9.1 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = cPAD = 0.091 mg/kg/day	Carcinogenicity in rat. LOAEL = 150 mg/kg/day based on chronic nephropathy in females.
Incidental oral short-term (1 to 30 days)	NOAEL = 61 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100 ...	Subchronic oral toxicity in rat. LOAEL = 150 mg/kg/day based on increased cecum weight in males.
Dermal Short-and Intermediate-Term (1–30 days; 1–6 months).	No quantitative dermal assessment needed. No dermal toxicity at limit dose. No increased quantitative or qualitative susceptibility noted in fetus or offspring. Developmental effect (abortions) in rats at 100 mg/kg/day. DAF = 6%. Adjusted value exceeds limit dose. No neurotoxicity observed in ACN and SCN at the limit dose.		
Inhalation short-term and intermediate-term (1 to 30 days; 1–6 months).	NOAEL = 61 mg/kg/day (inhalation absorption rate = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100 ...	Subchronic oral toxicity in rat. LOAEL = 150 mg/kg//day based on increased cecum weight in males.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PYRIOFENONE 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
Cancer (Oral, dermal, inhalation)	Not likely to be carcinogenic to humans.		

ACN = Acute Neurotoxicity Battery. DAF = Dermal Absorption Factor. 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. SCN = Subchronic Neurotoxicity Battery. 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 pyriofenone, EPA considered exposure under the petitioned-for tolerances as well as all existing pyriofenone tolerances in 40 CFR 180.660. EPA assessed dietary exposures from pyriofenone 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 pyriofenone; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA assumed pyriofenone residues are present in all commodities at tolerance levels and that 100% of primary crops are treated. All populations were evaluated for chronic dietary exposure and risk from food and drinking water. No risks of concern were identified in the chronic dietary exposure analysis.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that pyriofenone does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Tolerance level residues and 100% crop treated were assumed for all food commodities for pyriofenone.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for pyriofenone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyriofenone. 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.*

Based on the Tier 1 Cranberry Model for surface water and Pesticide Root Zone Model Ground Water (PRZM GW) for ground water, the estimated drinking water concentrations (EDWCs) of pyriofenone for acute exposures are estimated to be 20.9 parts per billion (ppb) for surface water and 4.3 ppb for ground water. The chronic exposures for non-cancer assessments are estimated to be 2.7 ppb for surface water and 3.9 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. Because no acute dietary endpoint was identified, no acute dietary assessment was conducted. For the chronic dietary risk assessment, the water concentration of value 3.9 ppb was used to assess the contribution to drinking water.

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). Pyriofenone is not registered for any specific use patterns that would result in residential exposure. Therefore a residential exposure assessment is not required.

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 pyriofenone to share a common mechanism of toxicity with any other substances, and pyriofenone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyriofenone 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.* Exposure to pyriofenone did not result in any developmental effects at the limit dose in rats, but abortions were noted in rabbits at 300 mg/kg/day. EPA is regulating pyriofenone at doses that are protective of this effect. The abortions were associated with decreased maternal body weight gain and food consumption. There were no reproductive effects observed in rats at the highest tested dose (334 mg/kg/day), nor was any quantitative or qualitative sensitivity noted in offspring.

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 pyriofenone is complete.

ii. There is no indication that pyriofenone 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 pyriofenone results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% crop treated and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to pyriofenone in drinking water. These assessments will not underestimate the exposure and risks posed by pyriofenone.

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, pyriofenone 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 pyriofenone from food and water will utilize 7.2% of the cPAD for children 1 to 2 years old the population group receiving the greatest exposure. There are no residential uses for pyriofenone; therefore, the chronic aggregate risk is limited to the chronic dietary risk and is not of concern

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). There are no residential uses for pyriofenone; therefore, short-term aggregate risks are addressed by the chronic aggregate risk estimates and are 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). There are no residential uses for pyriofenone; therefore, intermediate-term aggregate risks are addressed by the chronic aggregate risk estimates and are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, pyriofenone is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

The petitioner submitted a liquid chromatography method with tandem mass-spectrometry detection (LC–MS/MS) analytical method, ISK Method 0341/074208, for analysis of residues of pyriofenone in/on plant commodities. This method was independently validated to a limit of quantitation of 0.01 ppm in grapes, wheat grain, and wheat straw. To support the new registration actions for pyriofenone, a radiovalidation study was submitted to determine the extraction efficiency of the pyriofenone enforcement method. Radiovalidation testing of Analytical Method ISK 0341/074208 demonstrated an extraction efficiency of approximately 50–60% for pyriofenone residues present in plant samples aged 5½ years.

Adequate enforcement methodology (liquid chromatography method with tandem mass spectrometric detection (LC–MS/MS)) is available to enforce the tolerance expression.

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 MRLs for pyriofenone.

C. Response to Comments

One comment was received from a private citizen objecting to establishment of tolerances. The commenter feels that establishment of these tolerances would add to the pesticide body load that is already carried by the human population. In addition, the commenter also indicates that the pesticide body load will increase the exposure to carcinogens and increase the prevalence of cancer.

Agency response: The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute.

When new or amended tolerances are requested for the presence of the residues of a pesticide and its toxicologically significant metabolite(s) in food or feed, the Agency, as is required by Section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), estimates the risk of the potential exposure to these residues by performing an aggregate risk assessment. Such a risk assessment integrates the individual assessments that are conducted for food, drinking water, and residential exposures, and also assesses cancer risk. Additionally, the Agency, as is further required by Section 408 of the FFDCA, considers available information concerning what are termed the cumulative toxicological effects of the residues of that pesticide and of other substances having a common mechanism of toxicity with it. For pyriofenone, the Agency has concluded after this assessment that the pesticide is not carcinogenic, and that there is a reasonable certainty that no harm will result from exposure to residues of this pesticide.

V. Conclusion

Therefore, tolerances are established for residues of pyriofenone, in or on, the

caneberry subgroup (crop subgroup 13–07A) at 0.90 ppm, the bushberry subgroup (crop subgroup 13–07B) at 1.5 ppm, the small fruit vine climbing subgroup (crop subgroup 13–07D) at 1.5 ppm, the low growing berry subgroup except cranberry (crop subgroup 13–07G) at 0.50 ppm, and cucurbit vegetables (crop group 9) at 0.30 ppm. Also, the Agency is removing two individual tolerances from the table at 40 CFR 180.660(a) that were not identified in the petition to eliminate redundancies upon the establishment of the recommended crop group and subgroup tolerances: grape at 0.3 ppm, grape, raisin at 0.5 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 2017.

Richard P. Keigwin, Jr.,

Acting Director, Office of Pesticide Program.

Therefore, 40 CFR part 180 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 § 180.660, revise the table in paragraph (a) to read as follows:

§ 180.660 Pyriofenone; tolerance for residues.

(a) * * *

Commodity	Parts per million
Berry, low growing, subgroup 13–07G (except cranberry) ...	0.50
Bushberry subgroup 13–07B	1.5
Caneberry subgroup 13–07A ...	0.90
Fruit, small vine climbing subgroup 13–07D	1.5
Vegetables, cucurbit, crop group 9	0.30

* * * * *

[FR Doc. 2017–07818 Filed 4–17–17; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket Nos. 03–185, 15–137; GN Docket No. 12–268; FCC 17–29]

Channel Sharing Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order, the Federal Communications Commission (Commission) adopted rules to allow full power and Class A stations with auction-related channel sharing agreements (CSAs) to become sharees outside of the incentive auction context so that they can continue to operate if their auction-related CSAs expire or otherwise terminate. The Commission also adopted rules to allow all low power television and TV translator stations (secondary stations) to share a channel with another secondary station or with a full power or Class A station. This action will assist secondary stations that are displaced by the incentive auction and the repacking process to continue to operate in the post-auction television bands. The rules adopted in this *R&O* will enhance the benefits of channel sharing for broadcasters without imposing significant burdens on multichannel video programming distributors (MVPDs).

DATES: These rules are effective May 18, 2017 except for §§ 73.3800, 73.6028, and 74.799(h), which contain new or modified information collection requirements that require approval by the OMB under the Paperwork Reduction Act and will become effective after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, *Shaun.Maher@fcc.gov* of the Media Bureau, Video Division, (202) 418–2324. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*R&O*), MB Docket Nos. 03–185, 15–137; GN Docket No. 12–268; FCC 17–29, adopted on March 23, 2017 and released March 24, 2017. The full text is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

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, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate **Federal Register** Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, *see* 44 U.S.C. 3507. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act: The Commission will send a copy of this *R&O* to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. In this *R&O,* the Commission adopted rules to allow full power and Class A stations with auction-related channel sharing agreements (CSAs) to become sharees outside of the incentive auction context so that they can continue to operate if their auction-related CSAs expire or otherwise terminate. The Commission also adopted rules to allow all low power television and TV translator stations (secondary stations) to share a channel with another secondary station or with a full power or Class A station. This action will assist secondary stations that are displaced by the incentive auction and the repacking process to continue to operate in the post-auction television bands. The rules adopted in this *R&O* will enhance the benefits of channel sharing for broadcasters without imposing significant burdens on multichannel video programming distributors (MVPDs).

Extending Channel Sharing Outside the Incentive Auction

2. In the *R&O,* the Commission expand its channel sharing rules to allow full power stations with auction-related CSAs to become sharees outside of the auction context. The Commission also permitted all secondary stations to be sharee stations outside the auction context. The Commission concluded that specific provisions of Title III of the Communications Act of 1934, as amended (Act) provide ample authority to adopt rules to expand channel sharing outside the auction context. Section 303(g) authorizes the Commission to ''generally encourage the larger and more effective use of radio in the public interest.'' Consistent with that provision, channel sharing promotes efficient use of spectrum by allowing two or more television stations to share a single 6 MHz channel. Section 307(b) directs the Commission to make ''distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.'' Pursuant to its mandate under section 307(b), the Commission disfavors loss of broadcast service. Consistent with this provision, adopting channel sharing rules will help prevent loss of service by ensuring that stations that enter into CSAs in connection with the auction may continue broadcasting if and when their auction-related CSAs terminate or otherwise expire. In addition, authorizing additional types of channel sharing for secondary stations, including with primary stations, will increase the opportunities for displaced secondary stations to continue broadcasting after the incentive auction and the repacking. Section 316 gives the Commission the authority to modify licenses, including by rulemaking, if it finds that will serve the public interest. Consistent with this provision, we find that adopting channel sharing rules will serve the public interest by promoting the efficient use of spectrum and facilitating the continued availability of broadcast television stations.

3. Full Power Stations. The Commission permitted full power stations with auction-related CSAs to become sharees outside of the auction context. This action will ensure that full power stations with auction-related CSAs are able to enter into new CSAs outside the auction context once their auction-related CSAs expire or otherwise terminate and, therefore, are able to continue to channel share and provide service to the public. Permitting channel sharing outside the auction for full power stations with auction-related CSAs is a logical extension of the Commission's prior decision to adopt more flexible auction-related channel sharing rules and to permit term-limited CSAs.

4. The Commission will not allow full power stations without auction-related CSAs to become sharees following the auction. There is little evidence of demand at this time for other full power stations to become sharees. The Commission believes it is unlikely that a full power station that chose not to bid to channel share in the auction, when it was eligible to be compensated for the spectrum it relinquished, would elect to channel share outside the auction context and to relinquish spectrum without compensation. The Commission also believes it is unlikely that a full power station that submitted an unsuccessful channel sharing bid in the auction would seek to relinquish its spectrum outside the auction context without compensation in order to channel share rather than choosing another option, such as selling its station.

5. In addition, by declining to allow full power stations without auction-related CSAs to become sharees outside the auction context, the Commission addresses concerns that full power channel sharing outside the auction context could increase the number of full power stations MVPDs are required to carry. First, absent this limitation, channel sharing could allow unbuilt full power stations to become sharee stations, thereby providing these stations with a shortcut to obtaining carriage and artificially increasing the number of stations MVPDs are required to carry. Second, absent this limitation, if a full power station vacates its channel post-auction to share another station's channel, the vacated channel could be made available for licensing to a new full power station, thereby providing both the original station (now transmitting on a shared channel) and the new station with must-carry rights. Thus, by limiting full power sharees outside of the auction context to only those with an auction-related CSA, the

Commission avoids an increase in the number of full power stations MVPDs are required to carry under the must-carry regime.

6. Secondary Stations. The Commission permitted all secondary stations to be sharee stations outside the auction context. As the Commission has previously explained, channel sharing outside of the auction context has the potential to increase the opportunities for displaced secondary stations to survive the impending spectrum repack and continue providing programming to the public. Channel sharing also has the potential to reduce construction and operating costs for resource-constrained secondary stations, including small, minority-owned, and niche stations. Primary-secondary sharing will allow secondary stations to expand their coverage areas by sharing with full power sharer stations and provide them with increased interference protection. This type of ''quasi'' interference protection may serve to promote channel sharing as an attractive option to secondary stations that are seeking a method to avoid displacement of their facilities by primary users.

7. The Commission's decision to allow all secondary stations to become sharee stations encompasses unbuilt secondary stations. This approach will assist permittees of secondary stations who prefer to commence service via channel sharing by allowing them to enter into a CSA without first constructing a stand-alone station. Because sharee stations must use the same transmission facility as the sharer, an unbuilt sharee will be able to either divide initial construction costs with the sharer or avoid such costs entirely. In addition, by sharing ongoing costs like electricity and maintenance with the sharer station, the unbuilt secondary permittee can free up resources that can be devoted to improving programming services.

8. The Commission concludes that its action will not unduly burden cable operators. As an initial matter, as discussed below, the Commission interpret the must-carry provisions of the Act to deny carriage rights to secondary sharee stations that are not exercising must carry rights on their existing channel on the date of release of the incentive auction Closing and Reassignment PN. Thus, although the Commission allowed all secondary stations to become sharee stations outside the auction context, it ensured that stations cannot use sharing as a shortcut to obtaining cable carriage rights. Moreover, unlike full power commercial stations, which are entitled to assert mandatory carriage rights on cable systems throughout their DMA, secondary stations qualify for must-carry on cable systems only under very limited circumstances set forth in section 614 of the Act. The strict requirements for carriage set forth in the Act will continue to apply to secondary stations.

9. Sharer Stations. The Commission allowed all full power and secondary stations to be sharer stations outside of the auction context, including full power stations that are not a party to an auction-related CSA. In a channel sharing relationship outside the auction context, the sharee station relinquishes its licensed frequencies without compensation and compensates the sharer station for sharing its licensed frequency with the sharee. Although the Commission concluded that full power stations that are not a party to an auction-related CSA will likely have no incentive to enter into such an arrangement, the same is not true for potential sharers, who stand to benefit financially through payments from sharee stations. In addition, the ability of such stations to become sharers also benefits other stations by increasing the number of potential sharers. Allowing all stations to be sharers outside the auction context will not increase carriage burdens for MVPDs. Because a sharer station necessarily will have already constructed and licensed its facilities, there is no concern that such stations might use sharing as a shortcut to obtaining MVPD carriage. In addition, because sharer stations do not relinquish spectrum usage rights, allowing all stations to be sharers does not present concerns with vacated channels being licensed to new stations that could increase the number of stations MVPDs are required to carry.

Carriage Rights Outside the Auction Context

10. The Commission interpreted the Act as providing full power stations with auction-related CSAs that subsequently become sharees outside of the auction context, as well as their sharer station hosts, with the same carriage rights at their shared location that they would have if they were not channel sharing. It also interpretted the Act as providing secondary sharee stations, as well as their sharer station hosts, with the same carriage rights at their shared location that they would have if they were not channel sharing, provided the sharee station is exercising must carry rights on its existing channel on the date of release of the Closing and Reassignment PN. The Commission found that its interpretation will effectuate the statutory purposes underlying the must-carry regime without burdening more speech than necessary to further those interests.

11. The Commission concluded that the language of the must-carry provisions is ambiguous with respect to the issue of carriage rights in the context of channel sharing. The language of these provisions does not expressly preclude channel sharing stations from retaining must-carry rights at their shared location, nor does it compel a particular result. For example, in the case of a full power commercial station asserting mandatory cable carriage rights, both before and after the CSA, the station will be a ''full power television broadcast station . . . licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.'' Accordingly, the Commission chose a reasonable interpretation of the statutory text that best effectuates the statutory purpose underlying the must-carry regime.

12. The Commission disagreed with the National Cable and Telecommunications Association's (NCTA) claim that the must-carry provisions cannot be read to extend carriage rights to channel sharing stations. The Commission did not agree that the definition of ''a local commercial television station'' is inextricably tied to its assignment to a 6 MHz channel and that, therefore, mandatory carriage obligations extend to only one programming stream per 6 MHz channel. NCTA cited to Section 534 of the Act, which defines a ''local commercial television station'' as any commercial full power station ''licensed and operating on a channel regularly assigned to its community by the Commission. . . .'' NCTA noted that our rules currently define a ''channel'' as 6 MHz wide. Sections 614, 615, and 338, however, accord carriage rights to licensees without regard to whether they occupy a full 6 MHz channel or share a channel with another licensee. The Commission concluded that nothing in the Act requires a station to occupy an entire 6 MHz channel in order to be eligible for must-carry rights; rather, the station must simply be a licensee eligible for carriage under the applicable provision of the Act. In this proceeding, the Commission revised its rules to permit digital stations to share a 6 MHz channel and will require that channel sharing stations be separately licensed and authorized to operate on that channel. Under the rules adopted in this *R&O,* therefore, both the sharer and sharee will be ''licensed and operating

on a channel'' that is ''regularly assigned to its community'' by the Commission.

13. The Commission also disagreed with NCTA that the Act's ''primary video'' restriction fails to preserve the carriage rights of stations that enter into channel sharing arrangements outside the context of the auction. NCTA asserted that the must-carry provisions of the Act require cable operators to carry only one primary video signal per television ''channel.'' In this regard, NCTA cited to Section 614 of the Act, which requires cable operators to carry only the ''primary video'' of ''each of the local commercial television stations'' carried on the cable system. NCTA argued that a broadcaster that gives up its spectrum to transmit television programming using a portion of another broadcaster's 6 MHz channel has no greater carriage rights than those of the other broadcaster's multicast streams or the streams provided by a lessee of the broadcaster's multicast capacity. However, the Commission concluded that the language of the primary video provision of the Act did not support NCTA's view. Section 614(b)(3)(A) requires a cable operator to carry the primary video ''of each of the local commercial television stations carried on the cable system.'' The statute, therefore, imposed a requirement to carry one primary video stream per station, not one primary video stream per channel.

14. The Commission also disagreed with NCTA's claim that Congress specifically addressed the carriage rights of auction-related channel sharing stations in the Spectrum Act because, absent this provision, the must-carry provisions of the Act would not afford such rights. Rather, in light of the ambiguity in the statutory language of the Act with respect to the carriage rights of channel sharing stations, the Commission concluded that Congress added this provision to provide certainty to potential reverse auction bidders. Moreover, the Spectrum Act did not simply clarify carriage rights under the Act, it also limited the carriage rights of sharee stations in connection with the incentive auction to those that possessed such rights on November 30, 2010.

15. Full Power Stations. The Commission interpreted the Act as providing full power stations with auction-related CSAs that become sharees outside of the auction context, as well as their sharer station hosts, with the same carriage rights at their shared location that they would have if they were not channel sharing. The Commission will continue to apply the November 30, 2010 date for possession of carriage rights to auction-related full power sharee stations entering into a second-generation CSA. The Spectrum Act limits the carriage rights of sharee stations in connection with the incentive auction to those that possessed such rights on November 30, 2010. If the Commission did not extend this date to second-generation CSAs, auction-related full power sharees that did not possess carriage rights as of November 30, 2010 could enter into a short-term auction-related CSA, during which time they would not possess carriage rights, and subsequently enter into a second-generation CSA with carriage rights at the shared location. The Commission concluded that extending the November 30, 2010 date for possession of carriage rights to an auction-related full power sharee entering into a second-generation CSA avoids undermining the statutory objective of Section 1452(a)(4). Because Section 1452(a)(4) does not apply to auction-related sharer stations, however, the Commission declined to apply this date restriction to auction-related sharer stations that become prospective sharee stations outside of the auction context.

16. The Commission found that its interpretation will effectuate the statutory purposes underlying the must-carry regime without burdening more speech than necessary to further those interests. This interpretation ensures that full power stations with auction-related CSAs can continue to share outside the auction context once their auction-related CSAs expire or otherwise terminate while retaining their carriage rights. Full power stations with auction-related CSAs already possess carriage rights and will continue to possess such rights during the terms of their auction-related CSAs pursuant to Section 1452(a)(4). Continuing carriage rights during the terms of second-generation CSAs maintains these rights. If MVPDs stopped carrying the signals of full power stations with auction-related CSAs during second-generation CSAs, these broadcasters would stand to lose a significant audience and associated advertising revenues, thus jeopardizing their continued health and viability. In addition, absent mandatory carriage during the terms of second-generation CSAs, winning channel sharing bidders that indicated on their reverse auction application a present intent to enter into an auction-related CSA after the conclusion of the incentive auction might elect not to channel share post-auction and to instead relinquish their license. Thus, continued carriage of full power stations with auction-related CSAs serves the important governmental interests of preserving the benefits of free, over-the-air broadcast television and their contribution to source diversity.

17. The Commission found that its interpretation will not burden more speech than necessary. First, because full power stations that are parties to auction-related CSAs have already built and licensed their stations on a non-shared channel, our action does not provide unbuilt full power stations with a shortcut to obtaining carriage rights, which would increase the number of stations MVPDs are required to carry. Second, its decision declining to allow full power stations without auction-related CSAs to become sharees outside the auction context mitigates NCTA's concern regarding the potential increase in MVPD carriage obligations that could result from licensing new stations on channels vacated as a result of new post-auction sharing arrangements. Because the Commission permits only full power stations that are already parties to an auction-related CSA to become sharees outside of the auction context, there will be no full power channels vacated after the auction by full power stations electing to become channel sharees. Third, the Commission precluded full power stations with auction-related CSAs that become sharees outside of the auction context from changing their community of license absent an amendment to the DTV Table. These actions will further mitigate the impact of channel sharing on MVPD carriage burdens.

18. Secondary Stations. The Commission interpreted the Act as providing secondary sharee stations, as well as their sharer station hosts, with the same carriage rights at their shared location that they would have if they were not channel sharing, provided the sharee station is exercising must carry rights on its existing channel on the date of release of the Closing and Reassignment PN.

19. The Commission found that its interpretation will effectuate the statutory purposes underlying the must-carry regime without burdening more speech than necessary to further those interests. Sharing could prove beneficial for secondary stations by mitigating the impact of the incentive auction and repacking process on displaced stations. If cable operators did not carry the signals of secondary sharee stations and their sharer hosts that otherwise qualify for carriage under Section 614(h)(2), these broadcasters would stand to lose a significant audience and associated advertising revenues, thus jeopardizing

their continued health and viability. Carriage of secondary sharees and their sharer hosts that otherwise qualify for carriage under Section 614(h)(2) serves the important governmental interests of preserving the benefits of free, over-the-air broadcast television and their contribution to source diversity. The Commission interpreted the Act in a manner that will minimize the possibility of a net increase in carriage burdens.

20. Although the Commission allowed all secondary stations to become sharee stations outside the auction context, it did not permit secondary stations to enter into channel sharing arrangements solely as a means to newly obtain must-carry rights. The Commission found that it would not serve the purpose of mitigating the impact of the auction and repacking process on displaced LPTV stations to permit stations to qualify for carriage, when they previously were unable to do so under the Act, simply because they have decided to channel share. In order for a secondary sharee station to be eligible for carriage rights at the shared location under the Commission's interpretation, it must qualify for, and be exercising, must carry rights on its existing channel on the date of release of the Closing and Reassignment PN. The Commission chose this date to consider whether a secondary station is exercising must-carry rights because the Media Bureau has previously notified secondary stations that they must be in operation by this date in order to be eligible for the special post-auction displacement window.

21. The Commission concluded that affording secondary sharees with the same carriage rights at their shared location that they would have if they were not channel sharing, provided the sharee station is exercising must carry rights on its existing channel as of the date of release of the Closing and Reassignment PN, will not burden more speech than necessary. Even if a secondary station is exercising carriage rights on its existing channel as of this date, it must still independently satisfy the statutory requirements for carriage at the shared location in order to have carriage rights once it begins channel sharing. As noted above, secondary stations qualify for must-carry on cable systems only under very limited circumstances set forth in the Act. Even assuming that a channel vacated by a secondary sharee is made available for licensing to a new secondary station, the strict statutory requirements for carriage make the likelihood that the new secondary station would qualify for carriage very low. For the same reason, it is unlikely that a secondary sharee station would qualify for carriage at a shared location. The probability that the sharee would qualify for carriage is reduced even further by two additional factors. First, the Commission limited the distance of secondary sharee station moves resulting from channel sharing. Second, a secondary station sharing the channel of a full power station would not be eligible for mandatory carriage under Section 614(h)(2)(F) of the Act, which the Commission has previously interpreted to mean that ''if a full power station is located in the same county or political subdivision (of a State) as an otherwise 'qualified' low power station, the low power station will not be eligible for must-carry status.'' Channel sharing stations necessarily share the same transmission facility and, thus, are necessarily ''located in the same county or political subdivision (of a State).'' Thus, consistent with the Commission's previous interpretation of this statutory provision, when a secondary station shares with a full power station, the secondary station will not qualify for mandatory carriage because it will be located in the same county or political subdivision as a full power station.

22. Class A Stations. The Commission permitted all Class A stations to be sharee stations or sharer stations outside the auction context. For Class A stations that enter into CSAs for the first time outside the incentive auction context, the Commission interpreted the Act as providing such Class A sharee stations, as well as their sharer station hosts, with the same carriage rights at their shared location that they would have if they were not channel sharing provided the Class A sharee meets the same condition we impose above for secondary stations; that is, it is exercising must carry rights on the date of release of the Closing and Reassignment PN. As with secondary stations, this limitation ensures that these Class A stations do not qualify for carriage, when they previously were unable to do so under the Act, simply because they have decided to channel share. The Commission treated Class A stations participating in second-generation CSAs differently. For a Class A station that participated in an auction-related CSA, and that enters into a second-generation CSA once their auction-related CSA ends, the Commission interpreted the Act as providing the Class A sharee, and their sharer station host, with the same carriage rights at their shared location that they would have if they were not channel sharing provided the Class A sharee exercised carriage rights under its original, ''first-generation,'' auction-related CSA. The Commission treated Class A stations participating in second-generation CSAs differently to ensure that these Class A stations can continue to exercise their carriage rights in subsequent CSAs if they qualified for, and exercised, carriage rights in their first-generation CSA. This approach does not increase carriage burdens for MVPDs beyond those created by first-generation CSAs pursuant to the Spectrum Act.

23. Channel sharing outside the auction context has the potential to increase the opportunities for displaced Class A stations to survive the impending spectrum repack and continue providing programming to the public. With respect to cable carriage, however, Class A stations are treated identically to secondary stations under the Communications Act and thus qualify for must-carry on cable systems only under very limited circumstances set forth in the Act. Even assuming that a channel vacated by a Class A station is made available for licensing to a new low power station, the likelihood that the new low power station would qualify for carriage is low given the very limited circumstances under which a low power station qualifies for carriage under the Act. In addition, as with secondary stations, it is unlikely that a Class A sharee station would qualify for carriage at a shared location because of the very limited circumstances under which a Class A station qualifies for carriage under the Act, the Commission's decision to limit the distance of Class A sharee station moves resulting from channel sharing, and the fact that a Class A station sharing with a full power station would not be eligible for mandatory carriage under Section 614(h)(2)(F) of the Act.

Licensing and Operating Rules Applicable to Channel Sharing Outside the Auction Context

24. Licensing Rules for Primary-Primary and Primary-Secondary Channel Sharing—Voluntary and Flexible. Channel sharing between primary stations and between primary and secondary stations outside of the auction will be ''entirely voluntary.'' Stations can structure their CSAs in a manner that will allow a variety of different types of spectrum sharing to meet the individualized programming and economic needs of the parties involved. The Commission will, however, require each station involved in a CSA to operate in digital on the shared channel and to retain spectrum usage rights sufficient to ensure at least enough capacity to operate one standard

definition (SD) programming stream at all times. The Commission will not prescribe a fixed split of the capacity of the 6 MHz channel between the stations from a technological or licensing perspective. All channel sharing stations will be licensed for the entire capacity of the 6 MHz channel, and stations will be allowed to determine the manner in which that capacity will be divided among themselves subject only to the minimum capacity requirement.

25. The Commission will apply its existing framework for channel sharing licensing and operation to sharing between primary stations and between primary and secondary stations. Under this framework, each sharing station will continue to be licensed separately, each will have its own call sign, and each licensee will be independently subject to all of the Commission's obligations, rules, and policies. The Commission retains the right to enforce any violation of these requirements against one or both parties to the CSA. As is always the case, the Commission would take into account all relevant facts and circumstances in any enforcement action, including the relevant contractual obligations of the parties involved.

26. Similar to its approach for auction-related and secondary-secondary CSAs, the Commission will permit term-limited CSAs outside the auction context for primary-primary and primary-secondary sharing. The Commission declined to establish a minimum term for non-auction-related CSAs. While some commenters supported requiring a three-year minimum term for CSAs outside the auction context, the Commission was not persuaded at this point that this step is necessary to protect viewers and MVPDs from unnecessary disruption or costs.

27. Licensing Procedures. The Commission adopted a two-step process for reviewing and licensing channel sharing arrangements that fit within the categories authorized in this *R&O.* For the first step, if no technical changes are necessary for sharing, a channel sharee station will file the appropriate schedule to FCC Form 2100 for a digital construction permit specifying the same technical facilities as the sharer station (Schedule A, C or E), include a copy of the channel sharing agreement (CSA) as an exhibit, and cross reference the other sharing station(s). In this case, the sharer station does not need to take action at this point. If the CSA requires technical changes to the sharer station's facilities, each sharing station will file the appropriate schedule to FCC Form 2100 to apply for a digital construction permit specifying identical technical facilities for the shared channel, along with the CSA.

28. The Commission will treat modification applications filed to implement the additional channel sharing arrangements as minor change applications, subject to certain exceptions. Although a channel sharing arrangement results in a sharee station changing channels, which is a major change under our rules, the Commission concludes that treating channel changes as minor when done in connection with channel sharing is appropriate because the sharee will be assuming the authorized technical facilities of the sharer station, meaning that compliance with our interference and other technical rules would have been addressed in licensing the sharer station. In the case of a full power sharee station, the Commission will consider any loss in service resulting from the proposed sharing arrangement at the construction permit stage in determining whether to grant the permit. The Commission noted that, with channel sharing, service loss in one area (*i.e.,* a portion of the area previously served by the sharee) might result in a gain in service to a different area (*i.e.,* that served by the sharer). Moreover, absent the proposed sharing arrangement, a full power sharee station might not be able to continue to provide service, such as in the case of the expiration or termination of its current CSA. The Media Bureau will consider these and other factors in determining whether a sharing arrangement proposed by a full power sharee station is consistent with section 307(b) and serves the public interest.

29. In addition, while a full power television station seeking to change its channel normally must first submit a petition to amend the DTV Table of Allotments (Table), the Commission will not apply this process to full power sharee stations. Rather, after the full power sharee station's construction permit is granted, the Bureau will amend the Table on its own motion to reflect the change in the channel allotted to the sharee station's community.

30. The Commission will begin accepting non-auction-related channel sharing applications on a date after the completion of the incentive auction specified by the Media Bureau. With respect to a full power or Class A station sharing with a secondary station, if the sharee is a secondary station that is displaced as a result of the incentive auction or repacking process, it will not have to wait for the post-incentive auction displacement window to file its displacement application to propose sharing the sharer station's facilities. Rather, beginning on the specified date, the secondary sharee station may file an application for a construction permit for the same technical facilities of the primary station and include a copy of the CSA as an exhibit. If the secondary station is the sharer and that station is displaced as a result of the incentive auction or repacking process, then, the secondary sharer would file during the post-incentive auction displacement window if it is eligible. If none of the parties to a non-auction-related CSA is a station that was displaced as a result of the incentive auction or repacking process, then the sharee station(s) may file channel sharing application(s) beginning on the date after the completion of the incentive auction specified by the Media Bureau.

31. As a second step, after the sharing stations have obtained the necessary construction permits, implemented their shared facility, and initiated shared operations, the sharee station(s) will notify the Commission that the station has terminated operation on its former channel. At the same time, all sharing stations will file the appropriate schedule to Form 2100 for a license in order to complete the licensing process (Schedule B, D or F). Parties to channel sharing arrangements outside of the auction context will have three years to implement their arrangements.

32. Service and Technical Rules, Including Interference Protection—Primary-Primary Sharing. A Class A sharee that opts to share a full power sharer's channel outside of the auction will be permitted to operate with the technical facilities of the full power station authorized under Part 73 of the rules. Conversely, a full power sharee sharing a Class A sharer's channel will be required to operate at the Class A station's lower Part 74 power level. As with channel sharing between full power and Class A stations in the incentive auction context, the channel of a full power sharer sharing with a Class A sharee will remain in the DTV Table. In the case of a full power sharee that chooses to share the ''non-tabled'' channel of a Class A station, the Commission will amend the DTV Table to reflect the change in the channel allotted to the full power sharee station's community.

33. A full power sharee station sharing a channel with a Class A sharer station will continue to be obligated to comply with the programming and other operational obligations of a Part 73 licensee. A Class A sharee station sharing a channel with a full power

sharer station will continue to be obligated to comply with the programming and other operational obligations of a Class A licensee, including airing a minimum of 18 hours a day and an average of at least three hours per week of locally produced programming each quarter, as required by § 73.6001 of the rules.

34. Primary-Secondary Sharing. A secondary LPTV or TV translator station that shares the channel of a full power television station will be permitted to operate with the technical facilities of the full power station, including at the higher power limit specified in Part 73 of the rules. The channel of a full power sharer station sharing with a secondary LPTV or TV translator sharee station will remain in the DTV Table. LPTV and TV translators that share the channel of a Class A station will continue to be limited to operation at the lower power specified for LPTV, TV translator, and Class A stations in Part 74 of our rules. An LPTV or TV translator station that shares a full power or Class A station's channel will obtain ''quasi'' primary interference protection for the duration of the channel sharing arrangement by virtue of the fact that the full power or Class A station is a primary licensee. Although the secondary station will continue to be licensed with secondary interference protection status, the host full power or Class A television station's primary status protects it from interference or displacement, and this protection will necessarily carry over to any station that is sharing its channel.

35. A full power sharee that shares a secondary station's channel will have to operate with the lower power limits specified in Part 74 of the rules for LPTV and TV translator stations. When a full power sharee shares the ''non-tabled'' channel of a LPTV or TV translator station, we will amend the DTV Table to reflect the change in the channel allotted to the sharee station's community. A full power or Class A sharee sharing a channel with a secondary station sharer will be subject to displacement because it will be sharing a channel with secondary interference protection rights.

36. A full power sharee station sharing a channel with a secondary sharer station will continue to be obligated to comply with the programming and other operational obligations of a Part 73 licensee. Similarly, a Class A sharee station sharing a channel with a secondary sharer station will continue to be obligated to comply with the programming and other operational obligations applicable to Class A licensees. A secondary sharee station sharing a channel with a full power or Class A sharer station will continue to be subject to the programming and other operational obligations applicable to LPTV or translator stations and will not be subject to such obligations applicable to full power or Class A stations.

37. The Commission declined to adopt Roy Mayhugh's suggestions to formally relicense LPTV stations as full power stations if the LPTV station shares its channel with a full power station, or to allow a full power station sharing on a secondary station's channel to retain its primary interference protection. This would result in the formal creation of a new class of primary stations. The Commission did not believe it is appropriate to use this proceeding to make such extensive changes to our licensing or technical rules. The Commission also declined to adopt ICN's proposal that primary stations be given priority access to the best remaining repacked channels in a market if they agree to share with a secondary station and grant access to at least one-third of their bandwidth. This proposal would have required adding constraints on the reverse auction and repacking processes that have long since been established and were utilized in the incentive auction. In addition, the Commission rejected Media General's suggestion that it exempt stations that enter into CSAs outside the auction context from the Commission's multiple ownership rules to provide an incentive for stations to enter into a non-auction-related CSA. Media General presented no legal or policy basis on which we should alter our multiple ownership restrictions and thereby reduce ownership and program diversity to promote CSAs outside the auction context.

38. Reserved-Channel NCE Sharing Stations. A reserved-channel full power NCE licensee, whether it proposes to share a non-reserved channel or agrees to share its reserved channel with a commercial sharee station, will retain its NCE status and must continue to comply with the rules applicable to NCE licensees. In either case, the NCE full power station's portion of the shared channel will be reserved for NCE-only use.

39. Station Relocations to Implement Channel Sharing. The Commission will preclude full power stations seeking to channel share as sharee stations outside of the incentive auction from changing their community of license absent an amendment to the DTV Table. Absent such amendment, we will limit these stations to a CSA with a sharer from whose transmitter site the sharee will continue to meet the community of license signal requirement over its current community of license. This approach differs from the one the Commission took with respect to channel sharing in the auction context, where the Commission sought to facilitate broadcaster participation in the auction and to avoid any detrimental impact on the speed and certainty of the auction. Because those considerations do not apply outside the auction context, the Commission disagreed with EBOC that it should provide the same relocation flexibility to channel sharees outside the auction. Precluding full power sharee stations from changing their communities of license absent an amendment to the DTV Table advances the Commission's interest in the provision of service to local communities. While our goal is to accommodate channel sharing, the Commission also seeks to ensure that stations continue to provide service to their communities of license and to avoid situations in which stations abandon their communities in order to relocate to more populated markets. In addition, this approach will help to avoid viewer disruption and any potential impact on MVPDs that might result from community of license changes.

40. The Commission will apply the existing 30-mile and contour overlap restrictions that apply to Class A moves to Class A sharee stations that propose to move as a result of a sharing arrangement. Specifically, if requested in conjunction with a digital displacement application, a station relocation resulting from a proposed CSA, in order to be considered a minor change, may not be greater than 30 miles from the reference coordinates of the relocating station's community of license. In all other cases, a station relocating as a result of a proposed CSA, in order to be considered a minor change: (i) Must maintain overlap between the protected contour of its existing and proposed facilities; and (ii) may not relocate more than 30 miles from the reference coordinates of the relocating station's antenna location. The Commission concluded that continued application of these restrictions was necessary to curtail abuse of the Commission's policies by stations seeking to relocate large distances in order to move to more populated markets under the cover of needing to implement a channel sharing arrangement. At the same time, it stated that it would consider waivers for secondary stations to allow channel sharing modifications that do not comply with these limits.

41. The Commission will consider waivers of the Part 74 modification restrictions based on the same criteria it adopted for channel sharing between secondary stations. A displaced LPTV or TV translator station (or auction ineligible Class A station displaced by the incentive auction or repacking) proposing to channel share with a station located more than 30 miles from the reference coordinates of the displaced station's community of license will have to show: (i) That there are no channels available that comply with section 74.787(a)(4) of the rules; and (ii) that the proposed sharer station is the station closest to the reference coordinates of the displaced station's community of license that is available for channel sharing. The Commission will apply a stricter standard for requests for waiver of our relocation rules with respect to non-displaced Class A, LPTV, and TV translator stations because the proposed modification would be voluntary. In such cases, it will consider a waiver if the station seeking to relocate demonstrates: (i) That there is no other channel sharing partner that operates with a location that would comply with the contour overlap and 30-mile restrictions on the station seeking the waiver; and (ii) the population in the relocating station's loss area is de minimis, and/or well-served, and/or would continue to receive the programming aired by the relocating station from another station.

42. For any CSA that involves licensing both a full power sharee and Class A, LPTV, or TV translator sharer, the Commission will combine the above outlined restriction on full power sharees changing their community of license with the limits on modifications to Class A, LPTV and TV translator station facilities outlined in the rules. Thus, a full power sharee station seeking to implement a CSA with a Class A, LPTV or TV translator station will not be permitted to change its community of license. A Class A, LPTV, or TV translator sharee station seeking to implement a CSA with a full power station will be subject to the 30-mile and contour overlap restrictions described above.

Channel Sharing Operating Rules

43. Channel Sharing Agreements. The Commission will require that all CSAs entered into pursuant to the rules we adopt herein include provisions outlining each licensee's rights and responsibilities in the following areas: (i) Access to facilities, including whether each licensee will have unrestricted access to the shared transmission facilities; (ii) allocation of bandwidth within the shared channel; (iii) operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; (iv) transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and (v) termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA. Channel sharing partners may craft provisions as they choose, based on marketplace negotiations, subject to pertinent statutory requirements and the Commission's rules and regulations. A station seeking approval to channel share must submit a copy of its CSA along with its application for a digital construction permit. The Commission will review the CSA to ensure compliance with our rules and policies. It will limit its review to confirming that the CSA contains the required provisions and that any terms beyond those related to sharing of bitstream and related technical facilities comport with our general rules and policies regarding license agreements. The Commission reserves the right to require modification of a CSA that does not comply with its rules or policies.

44. Termination, Assignment/Transfer, and Relinquishment of Channel Sharing Licenses. The Commission will allow rights under a CSA to be assigned or transferred, subject to the limits adopted in this *R&O,* the requirements of Section 310 of the Communications Act, the Commission's rules, and the requirement that the assignee or transferee comply with the applicable CSA. When a primary or secondary sharing station's license is terminated due to voluntary relinquishment, revocation, failure to renew, or any other circumstance, its spectrum usage rights (but not its license) may revert to the remaining sharing partner(s) if the partner(s) so agree and this provision is set forth in the CSA. In the event that only one station remains on the shared channel, that station may apply to change its license to non-shared status using FCC Form 2100—Schedule B (for a full power station), Schedule D (for an LPTV/translator station), or Schedule F (for a Class A station). If a full power station that is sharing with a Class A, LPTV, or TV translator station relinquishes its license, then the Class A, LPTV, or TV translator station would operate under the rules governing their particular service (Class A, LPTV, or TV translator). Similarly, if a Class A station that is sharing with a LPTV or TV translator station relinquishes its license, then the LPTV or TV translator station would operate under the rules governing their particular service. If the sharing partner is an NCE station operating on a reserved channel, its portion of the shared channel must continue to be reserved for NCE-only use. The Commission recognized the important public service mission of NCE stations, and it disfavors dereserving NCE-only channels. Thus, in the unlikely event that a reserved-channel NCE station that shares with a commercial station faces involuntary license termination, creating a risk of dereservation, the Commission will exercise its broad discretion to ensure that the public interest is served.

Reimbursement

45. The Commission will not require reimbursement of costs imposed on MVPDs as a result of CSAs entered into outside the context of the incentive auction, including costs resulting from second-generation CSAs of auction-related sharees. The current rules do not require reimbursement of MVPD costs in connection with channel changes or other changes that modify carriage obligations outside the auction context. Further, the reimbursement provisions of the Spectrum Act apply only to CSAs made in connection with winning channel sharing bids in the incentive auction. Accordingly, costs associated with channel sharing outside the auction will be borne by broadcasters and MVPDs in the same manner as they are for other channel moves. While the Commission has explained previously that channel sharing may impose some costs on MVPDs, there is no record evidence to suggest that the cost to MVPDs of accommodating channel sharing outside the auction context will impose an undue burden. The Commission retained the right to reconsider our decision in this regard should we receive future evidence to the contrary.

Notice to MVPDs

46. The Commission will require stations participating in CSAs outside the auction context to provide notice to those MVPDs that: (i) No longer will be required to carry the station because of the relocation of the station; (ii) currently carry and will continue to be obligated to carry a station that will change channels; or (iii) will become obligated to carry the station due to a channel sharing relocation. The notice must contain the following information: (i) Date and time of any channel

changes; (ii) the channel occupied by the station before and after implementation of the CSA; (iii) modification, if any, to antenna position, location, or power levels; (iv) stream identification information; and (v) engineering staff contact information. Stations may elect whether to provide notice via a letter notification or electronically, if pre-arranged with the relevant MVPD. The Commission will require that sharee stations provide notice at least 90 days prior to terminating operations on the sharee's channel and that both sharer and sharee stations provide notice at least 90 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operation change, the station(s) must send a further notice to affected MVPDs informing them of the new anticipated date(s). Finally, during the 90-day notice period, the parties to the CSA are expected to continue to coordinate the implementation of the CSA with each MVPD that they seek to carry their transmissions.

ATSC 3.0

47. The Commission stated that the conclusions it reached regarding channel sharing outside the context of the incentive auction, including our interpretation of the Communications Act's must-carry provisions with respect to channel sharing stations, apply to situations in which one station relinquishes a channel in order to channel share. They are not intended to prejudge issues regarding ''local simulcasting'' that are raised in the pending proceeding regarding the ATSC 3.0 broadcast transmission standard.

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), Initial Regulatory Flexibility Analyses (''IRFAs'') were incorporated in the *First Order on Reconsideration and Notice of Proposed Rulemaking* and *Third Report and Order and Fourth Notice of Proposed Rulemaking* (''NPRMs''). The Commission sought written public comment on the proposals in the NPRMs, including comment on the IRFAs. Because the Commission amended the rules in this *R&O,* it included this Final Regulatory Flexibility Analysis (''FRFA'') which conforms to the RFA.

Need for and Objectives of the Rules

The Report and Order adopts rules permitting full power stations with auction-related channel sharing agreements (CSAs) to become ''sharee'' stations outside the auction context. Our goal in this regard is to permit full power stations with auction-related CSAs to continue to share, and to find a new host station, once their auction-related CSAs expire or otherwise terminate. We also adopt rules to allow all secondary stations, including those that have not yet constructed facilities and are not operating at the time they enter into a CSA, to share a channel with another secondary station or with a full power or Class A station. This action will reduce construction and operating costs for resource-constrained secondary stations and assist those secondary stations that are displaced by the incentive auction and the repacking process to continue to operate in the post-auction television bands. We also permit all Class A stations to become sharee stations outside the auction context. In addition, we permit all stations, both primary and secondary, to be ''sharers'' outside the auction context. The rules we adopt in this Report and Order will enhance the benefits of channel sharing for broadcasters without imposing significant burdens on multichannel video programming distributors (MVPDs).

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No formal comments were filed on the IRFAs but some commenters raised issues concerning the impact of the various proposals in this proceeding on small entities. These comments were considered in the Report and Order and in the FRFA.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

No comments were filed on the IRFAs by the Small Business Administration.

Description and Estimate of the Number of Small Entities To Which the 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 following small entities, as well as an estimate of the number of such small entities, are discussed in the FRFA: Full power television stations; (2) Class A TV and LPTV stations; (3) Wired Telecommunications Carriers; (4) Cable Companies and Systems (Rate Regulation); (5) Cable System Operators (Telecom Act Standard); and (6) Direct Broadcast Satellite (DBS) Service.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The *R&O* adopted the adopted the following new reporting requirements. To implement channel sharing outside of the auction context, the Commission will follow a two-step process—stations will first file an application for construction permit and then an application for license. Stations terminating operations to share a channel will be required to submit a termination notice pursuant to the existing Commission rule. These existing forms and collections will be revised to accommodate these new channel-sharing related filings and to expand the burden estimates. In addition, channel sharing stations will be required to submit their channel sharing agreements (CSAs) with the Commission and be required to include certain provisions in their CSAs. In addition, if upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application to change its license to non-shared status. The existing collection concerning the execution and filing of CSAs will be revised. In addition, stations participating in CSAs outside the auction context are required to provide notice to those MVPDs that: (i) No longer will be required to carry the station because of the relocation of the station; (ii) currently carry and will continue to be obligated to carry a station that will change channels; or (iii) will become obligated to carry the station due to a channel sharing relocation. The existing collection concerning MVPD notification will be revised.

These new reporting requirements will not differently affect small entities.

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, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The rules adopted in the *R&O* will allow full power stations with auction-related CSAs to continue to share, and to find a new host station, once their auction-related CSAs expire or otherwise terminate, thereby allowing them to continue to provide service to the public. In addition, channel sharing can help resource-constrained Class A and secondary stations, including existing small, minority-owned, and niche stations, to reduce operating costs and provide them with additional net income to strengthen operations and improve programming services. The rules adopted in the *R&O* could also assist stations that are displaced by the incentive auction reorganization of spectrum by allowing these stations to channel share and thereby reduce the cost of having to build a new facility to replace the one that was displaced. Stations can share in the cost of building a shared channel facility and will experience cost savings by operating a shared transmission facility. In addition, channel sharing is voluntary and only those stations that determine that channel sharing will be advantageous will enter into this arrangement. At the same time, the sharing rules will not impose significant burdens on multichannel video programming distributors (MVPDs). For example, by limiting full power sharees outside of the auction context to only those with an auction-related CSA, the Commission avoided an increase in the number of full power stations MVPDs are required to carry under the must-carry regime.

The Commission's licensing and operating and MVPD notice rules for channel sharing outside of the auction context were designed to minimize impact on small entities. The rules provide a streamlined method for reviewing and licensing channel sharing for these stations as well as a streamlined method for resolving cases where a channel sharing station loses its license on the shared channel. These rules were designed to reduce the burden and cost on small entities.

Report to Congress

The Commission will send a copy of the *R&O,* including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *R&O,* including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Parts 73 and 74

Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Section 73.3572 is amended by revising paragraph (a)(3) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

* * * * *

(a) * * *

(3) Other changes will be considered minor including changes made to implement a channel sharing arrangement provided they comply with the other provisions of this section and provided, until October 1, 2000, proposed changes to the facilities of Class A TV, low power TV, TV translator and TV booster stations, other than a change in frequency, will be considered minor only if the change(s) will not increase the signal range of the Class A TV, low power TV or TV booster in any horizontal direction.

* * * * *

■ 3. Section 73.3800 is added to read as follows:

§ 73.3800 Full power television channel sharing outside the incentive auction.

(a) *Eligibility.* Subject to the provisions of this section, a full power television station with an auction-related Channel Sharing Agreement (CSA) may voluntarily seek Commission approval to relinquish its channel to share a single six megahertz channel with a full power, Class A, low power, or TV translator television station. An auction-related CSA is a CSA filed with and approved by the Commission pursuant to § 73.3700(b)(1)(vii).

(b) *Licensing of channel sharing stations.* (1) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign, and be separately subject to all applicable Commission obligations, rules, and policies.

(2) A full power television channel sharing station relinquishing its channel must file an application for a construction permit (FCC Form 2100), include a copy of the CSA as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the CSA may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to § 73.1750 and each sharing station must file an application for license (FCC Form 2100).

(c) *Channel sharing between full power television stations and Class A, Low power television, or TV translator stations.* (1) A full power television sharee station (defined as a station relinquishing a channel in order to share) that is a party to a CSA with a Class A sharer station (defined as the station hosting a sharee pursuant to a CSA) must comply with the rules governing power levels and interference applicable to Class A stations, and must comply in all other respects with the rules and policies applicable to full power television stations set forth in this part.

(2) A full power television sharee station that is a party to a CSA with a low power television or TV translator sharer station must comply with the rules of part 74 of this chapter governing power levels and interference applicable to low power television or TV translator stations, and must comply in all other respects with the rules and policies applicable to full power television stations set forth in this part.

(d) *Channel sharing between commercial and noncommercial educational television stations.* (1) A CSA may be executed between commercial and NCE broadcast television station licensees.

(2) The licensee of an NCE station operating on a reserved channel under § 73.621 that becomes a party to a CSA, either as a channel sharee station or as a channel sharer station, will retain its NCE status and must continue to comply with § 73.621.

(3) If the licensee of an NCE station operating on a reserved channel under § 73.621 becomes a party to a CSA, either as a channel sharee station or as a channel sharer station, the portion of the shared television channel on which the NCE station operates shall be reserved for NCE–only use.

(4) The licensee of an NCE station operating on a reserved channel under § 73.621 that becomes a party to a CSA

may assign or transfer its shared license only to an entity qualified under § 73.621 as an NCE television licensee.

(e) *Deadline for implementing CSAs.* CSAs submitted pursuant to this section must be implemented within three years of the grant of the channel sharing construction permit.

(f) *Channel sharing agreements (CSAs).* (1) CSAs submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

(i) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(ii) Allocation of bandwidth within the shared channel;

(iii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and

(iv) Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and

(v) Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.

(2) CSAs must include provisions:

(i) Affirming compliance with the channel sharing requirements in this section and all relevant Commission rules and policies; and

(ii) Requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition program stream at all times.

(g) *Termination and assignment/transfer of shared channel.* (1) Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (f)(1)(v) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application for license to change its status to non-shared.

(2) If the rights under a CSA are transferred or assigned, the assignee or the transferee must comply with the terms of the CSA in accordance with paragraph (f)(1)(iv) of this section. If the transferee or assignee and the licensees of the remaining channel sharing station or stations agree to amend the terms of the existing CSA, the agreement may be amended, subject to Commission approval.

(h) *Notice to MVPDs.* (1) Stations participating in channel sharing agreements must provide notice to MVPDs that:

(i) No longer will be required to carry the station because of the relocation of the station;

(ii) Currently carry and will continue to be obligated to carry a station that will change channels; or

(iii) Will become obligated to carry the station due to a channel sharing relocation.

(2) The notice required by this section must contain the following information:

(i) Date and time of any channel changes;

(ii) The channel occupied by the station before and after implementation of the CSA;

(iii) Modification, if any, to antenna position, location, or power levels;

(iv) Stream identification information; and

(v) Engineering staff contact information.

(3) Should any of the information in paragraph (h)(2) of this section change, an amended notification must be sent.

(4) Sharee stations must provide notice as required by this section at least 90 days prior to terminating operations on the sharee's channel. Sharer stations and sharee stations must provide notice as required by this section at least 90 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operations change, the stations must send a further notice to affected MVPDs informing them of the new anticipated date(s).

(5) Notifications provided to cable systems pursuant to this section must be either mailed to the system's official address of record provided in the cable system's most recent filing in the FCC's Cable Operations and Licensing System (COALS) Form 322, or emailed to the system if the system has provided an email address. For all other MVPDs, the letter must be addressed to the official corporate address registered with their State of incorporation.

■ 4. Section 73.6028 is added to subpart J to read as follows:

§ 73.6028 Class A television channel sharing outside the incentive auction.

(a) *Eligibility.* Subject to the provisions of this section, Class A television stations may voluntarily seek Commission approval to share a single six megahertz channel with other Class A, full power, low power, or TV translator television stations.

(b) *Licensing of channel sharing stations.* (1) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign, and be separately subject to all of the Commission's obligations, rules, and policies.

(2) A station relinquishing its channel must file an application for a construction permit, include a copy of the Channel Sharing Agreement (CSA) as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the CSA may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to § 73.1750 and each sharing station must file an application for license.

(c) *Channel sharing between Class A television stations and full power, low power television, and TV translator stations.* (1) A Class A television sharee station (defined as a station relinquishing a channel in order to share) that is a party to a CSA with a full power television sharer station (defined as the station hosting a sharee pursuant to a CSA) must comply with the rules of this part governing power levels and interference, and must comply in all other respects with the rules and policies applicable to Class A television stations, as set forth in §§ 73.6000 through 73.6027.

(2) A Class A television sharee station that is a party to a CSA with a low power television or TV translator sharer station must comply with the rules of part 74 of this chapter governing power levels and interference that are applicable to low power television or TV translator stations, and must comply in all other respects with the rules and policies applicable to Class A television stations, as set forth in §§ 73.6000 through 73.6027.

(d) *Deadline for implementing CSAs.* CSAs submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(e) *Channel sharing agreements (CSAs).* (1) CSAs submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

(i) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(ii) Allocation of bandwidth within the shared channel;

(iii) Operation, maintenance, repair, and modification of facilities, including

a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions;

(iv) Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and

(v) Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.

(2) CSAs must include provisions:

(i) Affirming compliance with the channel sharing requirements in this section and all relevant Commission rules and policies; and

(ii) Requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition program stream at all times.

(f) *Termination and assignment/transfer of shared channel.* (1) Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (e)(1)(v) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application for license to change its status to non-shared.

(2) If the rights under a CSA are transferred or assigned, the assignee or the transferee must comply with the terms of the CSA in accordance with paragraph (e)(1)(iv) of this section. If the transferee or assignee and the licensees of the remaining channel sharing station or stations agree to amend the terms of the existing CSA, the agreement may be amended, subject to Commission approval.

(g) *Notice to cable systems.* (1) Stations participating in channel sharing agreements must provide notice to cable systems that:

(i) No longer will be required to carry the station because of the relocation of the station;

(ii) Currently carry and will continue to be obligated to carry a station that will change channels; or

(iii) Will become obligated to carry the station due to a channel sharing relocation.

(2) The notice required by this section must contain the following information:

(i) Date and time of any channel changes;

(ii) The channel occupied by the station before and after implementation of the CSA;

(iii) Modification, if any, to antenna position, location, or power levels;

(iv) Stream identification information; and

(v) Engineering staff contact information.

(3) Should any of the information in paragraph (g)(2) of this section change, an amended notification must be sent.

(4) Sharee stations must provide notice as required by this section at least 90 days prior to terminating operations on the sharee's channel. Sharer stations and sharee stations must provide notice as required by this section at least 90 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operations change, the stations must send a further notice to affected cable systems informing them of the new anticipated date(s).

(5) Notifications provided to cable systems pursuant to this section must be either mailed to the system's official address of record provided in the cable system's most recent filing in the FCC's Cable Operations and Licensing System (COALS) Form 322, or emailed to the system if the system has provided an email address.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 5. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 336 and 554.

■ 6. Section 74.800 is redesignated as § 74.799, and amended by revising paragraph (a)(1) and adding paragraphs (g) and (h) to read as follows:

§ 74.799 Low power television and TV translator channel sharing.

(a) * * *

(1) Subject to the provisions of this section, low power television and TV translator stations may voluntarily seek Commission approval to share a single six megahertz channel with other low power television and TV translator stations, Class A television stations, and full power television stations.

* * * * *

(g) *Channel sharing between low power television or TV translator stations and Class A television stations or full power television stations.* (1) A low power television or TV translator sharee station (defined as a station relinquishing a channel in order to share) that is a party to a CSA with a full power television sharer station (defined as the station hosting a sharee pursuant to a CSA) must comply with the rules of part 73 of this chapter governing power levels and interference, and must comply in all other respects with the rules and policies applicable to low power television or TV translator stations set forth in this part.

(2) A low power television or TV translator sharee station that is a party to a CSA with a Class A television sharer station must comply with the rules governing power levels and interference that are applicable to Class A television stations, and must comply in all other respects with the rules and policies applicable to low power television or TV translator stations set forth in this part.

(h) *Notice to cable systems.* (1) Stations participating in channel sharing agreements must provide notice to cable systems that:

(i) No longer will be required to carry the station because of the relocation of the station;

(ii) Currently carry and will continue to be obligated to carry a station that will change channels; or

(iii) Will become obligated to carry the station due to a channel sharing relocation.

(2) The notice required by this section must contain the following information:

(i) Date and time of any channel changes;

(ii) The channel occupied by the station before and after implementation of the CSA;

(iii) Modification, if any, to antenna position, location, or power levels;

(iv) Stream identification information; and

(v) Engineering staff contact information.

(3) Should any of the information in paragraph (h)(2) of this section change, an amended notification must be sent.

(4) Sharee stations must provide notice as required by this section at least 90 days prior to terminating operations on the sharee's channel. Sharer stations and sharee stations must provide notice as required by this section at least 90 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operations change, the stations must send a further notice to affected cable systems informing them of the new anticipated date(s).

(5) Notifications provided to cable systems pursuant to this section must be either mailed to the system's official address of record provided in the cable system's most recent filing in the FCC's Cable Operations and Licensing System (COALS) Form 322, or emailed to the

system if the system has provided an email address.

[FR Doc. 2017–07171 Filed 4–17–17; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 160920866–7161–02]

RIN 0648–XF368

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hours, Alaska local time April 13, 2017, through 1200 hours, A.l.t., May 15, 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 second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 256 metric tons as established by the final 2017 and 2018 harvest specifications for groundfish of the GOA (82 FR 12032, February 27, 2017), for the period 1200 hours, A.l.t., April 1, 2017, through 1200 hours, A.l.t., July 1, 2017.

In accordance with § 679.21(d)(6)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder.

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 the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 12, 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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 13, 2017.

Karen H. Abrams,

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

[FR Doc. 2017–07802 Filed 4–13–17; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 73
Tuesday, April 18, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG84

Small Business Size Standards; Adoption of 2017 North American Industry Classification System for Size Standards

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its small business size regulations to incorporate the U.S. Office of Management and Budget's (OMB) North American Industry Classification System (NAICS) revision for 2017, identified as NAICS 2017, into its table of small business size standards. NAICS 2017 created 21 new industries by reclassifying, combining, or splitting 29 existing industries under changes made to NAICS in 2012 (NAICS 2012). SBA's proposed size standards for these 21 new industries have resulted in an increase to size standards for six NAICS 2012 industries and part of one industry, a decrease to size standards for two, a change in the size standards measure from average annual receipts to number of employees for one, and no change in size standards for twenty industries and part of one industry. SBA proposes to adopt the updated table of size standards, effective October 1, 2017

DATES: SBA must receive comments to this proposed rule on or before June 19, 2017.

ADDRESSES: Identify your comments by RIN 3245–AG84 and submit them by one of the following methods: (1) Federal eRulemaking Portal: *www.regulations.gov,* following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email. SBA will post all comments to this proposed rule on *www.regulations.gov.*

If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, the Office of Size Standards, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

Requests to redact or remove posted comments cannot be honored and a request to redact or remove posted comments will be posted as a comment. See the *www.regulations.gov* help section for information on how to make changes to your comments.

FOR FURTHER INFORMATION CONTACT: Dr. Jorge Laboy-Bruno, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: Effective October 1, 2000, SBA adopted NAICS 1997 industry definitions as a basis for its table of small business size standards, replacing the 1987 Standard Industrial Classification (SIC) (65 FR 30836 (May 15, 2000)). Since then, OMB has issued four revisions to NAICS. SBA's table of size standards adopted the OMB's first revision, NAICS 2002, effective October 1, 2002 (67 FR 52597 (August 13, 2002)), the second revision, NAICS 2007, effective October 1, 2007 (72 FR 49639 (August 29, 2007)), and the third revision, NAICS 2012, effective October 1, 2012 (77 FR 49991 (August 20, 2012)).

OMB published its fourth and latest revision, NAICS 2017, ''Notice of NAICS 2017 final decisions'' in the **Federal Register** on August 8, 2016 (81 FR 52584). The OMB notice stated that Federal statistical establishment data published for reference years beginning on or after January 1, 2017, should be published using NAICS 2017. SBA proposes to adopt NAICS 2017 for its table of size standards, effective October 1, 2017.

As with the previous NAICS revisions, SBA also proposes to adopt the latest NAICS revision, NAICS 2017, effective October 1, 2017 or the beginning of the new fiscal year following the OMB's release of the NAICS revision for several reasons: (1) Federal government contracting data and related statistics will be more consistent and comparable with past data for analyzing future small business activity if implementation of the revised table of size standards occurs at the beginning of a fiscal year; (2) users of size standards, for instance, Federal prime contractors for developing their subcontracting plans, can have more consistent data to examine the past and future Federal contracting trends; and (3) small business size standards apply to most Federal agencies and their programs involving small businesses; with a time lag between the OMB's effective date and SBA's update to its size standards they will have time to implement the changes and develop training tools, if necessary.

Changes in NAICS 2017

NAICS 2017 created 21 new NAICS industries by reclassifying, splitting, or merging 29 industries or their parts under NAICS 2012. Of those 21 new industries, five were created by merging two or more of thirteen NAICS 2012 industries in their entirety, while three were created by combining part of one industry with another industry. Three new industries were created by splitting two industries to two parts each with one part of each industry defined as a separate industry and combining other parts of the two industries to form a separate new industry. One new industry was formed by designating part of one industry as a separate industry. OMB also changed 6-digit NAICS codes for eight industries without changing their definitions and titles and amended the title of one industry without changing its 6-digit code. Table 1, ''NAICS 2012 Industries or Their Parts Matched to NAICS 2017 Industries,'' below, shows the changes from NAICS 2012 to NAICS 2017.

Complete information on the relationship between NAICS 2012 and NAICS 2017 is available on the U.S. Bureau of the Census (Census Bureau) Web site at *http://www.census.gov/eos/www/naics/.* The Census Bureau's Web site also provides detailed documentation on Federal notices involving the replacement of SIC with NAICS, and all subsequent NAICS

updates and revisions, including the August 8, 2017 ''Notice of NAICS 2017 final decisions,'' as well as concordances (*i.e.,* correspondence tables) between SIC and NAICS 1997 and NAICS 2002, and between subsequent NAICS revisions.

TABLE 1—NAICS 2012 INDUSTRIES OR THEIR PARTS MATCHED TO NAICS 2017 INDUSTRIES

NAICS 2012 code	NAICS 2012 industry title	Status code	NAICS 2017 code	NAICS 2017 industry title
211111	Crude Petroleum and Natural Gas Extraction.			
	crude petroleum extraction		211120	Crude Petroleum Extraction.
	natural gas extraction	pt.	211130	Natural Gas Extraction.
211112	Natural Gas Liquid Extraction	pt.	211130	Natural Gas Extraction.
212231	Lead Ore and Zinc Ore Mining	pt.	212230	Copper, Nickel, Lead, and Zinc Mining.
212234	Copper Ore and Nickel Ore Mining	pt.	212230	Copper, Nickel, Lead, and Zinc Mining.
333911	Pump and Pumping Equipment Manufacturing ...	pt.	333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing.
333913	Measuring and Dispensing Pump Manufacturing	pt.	333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing.
335221	Household Cooking Appliance Manufacturing	pt.	335220	Major Household Appliance Manufacturing.
335222	Household Refrigerator and Home Freezer Manufacturing.	pt.	335220	Major Household Appliance Manufacturing.
335224	Household Laundry Equipment Manufacturing	pt.	335220	Major Household Appliance Manufacturing.
335228	Other Major Household Appliance Manufacturing	pt.	335220	Major Household Appliance Manufacturing.
452111	Department Stores (except Discount Department Stores).	pt.	452210	Department Stores.
452112	Discount Department Stores.			
	insignificant perishable grocery sales	pt.	452210	Department Stores.
	significant perishable grocery sales	pt.	452311	Warehouse Clubs and Supercenters.
452910	Warehouse Clubs and Supercenters	pt.	452311	Warehouse Clubs and Supercenters.
452990	All Other General Merchandise Stores	nc.	452319	All Other General Merchandise Stores.
454111	Electronic Shopping	pt.	454110	Electronic Shopping and Mail-Order Houses.
454112	Electronic Auctions	pt.	454110	Electronic Shopping and Mail-Order Houses.
454113	Mail-Order Houses	pt.	454110	Electronic Shopping and Mail-Order Houses.
512210	Record Production	pt.	512250	Record Production and Distribution.
512220	Integrated Record Production/Distribution	pt.	512250	Record Production and Distribution.
517110	Wired Telecommunications Carriers	nc.	517311	Wired Telecommunications Carriers.
517210	Wireless Telecommunications Carriers (except Satellite).	nc.	517312	Wireless Telecommunications Carriers (except Satellite).
532220	Formal Wear and Costume Rental	nc.	532281	Formal Wear and Costume Rental.
532230	Video Tape and Disc Rental	nc.	532282	Video Tape and Disc Rental.
532291	Home Health Equipment Rental	nc.	532283	Home Health Equipment Rental.
532292	Recreational Goods Rental	nc.	532284	Recreational Goods Rental.
532299	All Other Consumer Goods Rental	nc.	532289	All Other Consumer Goods Rental.
541711	Research and Development in Biotechnology.			
	nanobiotechnologies research and experimental development laboratories.	pt.	541713	Research and Development in Nanotechnology.
	except nanobiotechnologies research and experimental development laboratories.		541714	Research and Development in Biotechnology (except Nanobiotechnology).
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).			
	nanotechnology research and experimental development laboratories.	pt.	541713	Research and Development in Nanotechnology.
	except nanotechnology research and experimental development laboratories.		541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology).
721310	Rooming and Boarding Houses	nt.	721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps.

Key to Abbreviations.
pt. = Part of 2017 industry.
nc. = 6-digit NAICS codes changed without changing industries' definitions and titles.
nt. = NAICS industry title amended without changing the 6-digit code.

Proposed Size Standards for New Industries in NAICS 2017

On October 22, 1999, SBA proposed to replace SIC with NAICS 1997 as the basis of industry definitions for its table of small business size standards (64 FR 57188). The proposed rule included a set of guidelines or rules that SBA applied to convert the size standards for industries under SIC to NAICS. The guidelines aimed to minimize the impact of applying a new industry classification system on SBA's size standards and on small businesses that qualified as small under the SIC based size standards. SBA received no negative comments against the proposed guidelines. SBA published its final rule on May 15, 2000 (65 FR 30386) (corrected on September 5, 2000, 65 FR 53533) adopting the resulting table of size standards based on NAICS 1997, as proposed. To be consistent, SBA used the same guidelines when it updated its table of size standards to adopt NAICS 2002, NAICS 2007, and NAICS 2012 revisions. In those updates as well, SBA

received no adverse comments on using those guidelines, or on the resulting changes to the size standards. For this proposed rule to adopt NAICS 2017 for its size standards table, SBA has also generally followed the same guidelines. The guidelines that are applicable to this update are shown below in Table 2, ''General Guidelines to Establish Size Standards for New Industries under NAICS 2017.''

TABLE 2—GENERAL GUIDELINES TO ESTABLISH SIZE STANDARDS FOR NEW INDUSTRIES UNDER NAICS 2017

If the NAICS 2017 industry is composed of:	The size standard for the NAICS 2017 industry code will be:
1. A single NAICS 2012 industry or part of a single NAICS 2012 industry.	The same size standard as for the NAICS 2012 industry or part.
2. Two or more NAICS 2012 industries; two or more parts of an NAICS 2012 industry; parts of two or more NAICS 2012 industries; or one or more NAICS 2012 industries and part(s) of one or more NAICS 2012 industries, and	
2a. they all have the same size standard	The same size standard as for the NAICS 2012 industries or parts.
2b. they all have the same size measure (*e.g.,* receipts, employees, *etc.*) but do not all have the same size standard.	The same size standard as for the NAICS 2012 industry or part that most closely matches the economic activity described by the NAICS 2017 industry, or The highest size standard among the NAICS 2012 industries and part(s) that comprise the NAICS 2017 industry, provided that the highest size standard does not include dominant or potentially dominant firms.
2c. they have different size measures (*i.e.,* for example, some are based on receipts and others on employees) and hence do not all have the same size standard.	The same size standard as for the NAICS 2012 industry or part that most closely matches the economic activity described by the NAICS 2017 industry, or The highest size standard among the NAICS 2012 industries and part(s) that comprise the NAICS 2017 industry, provided that the highest size standard does not include dominant or potentially dominant firms. To apply this rule, SBA converts all size standards to a single measure (*e.g.,* receipts, employees, *etc.*) using the size measure for the NAICS 2012 industry or part(s) that most closely match the economic activity described by the NAICS 2017 industry or using the size measure that applies to most of the NAICS industries or parts comprising the NAICS 2017 industry.

In addition to the above general guidelines, in cases where a new industry is formed by merging multiple industries or their parts with substantially different levels or different measures of size standards, in this proposed rule to adopt NAICS 2017, SBA has also examined the relevant latest industry and Federal procurement data to determine an appropriate size standard for the new industry. Developed based on the above guidelines and analyses of the relevant data, where necessary, SBA's proposed size standards for the new industries under NAICS 2017 are shown in Table 3, ''Proposed Size Standards for New Industries in NAICS 2017.'' Also shown in the table are the current size standards for the affected NAICS 2012 industries and their parts.

As shown in Table 3, the size standards for most of the affected NAICS 2012 industries are not impacted and therefore remain unchanged under NAICS 2017. The majority of the changes consist of revisions to industry codes or titles, or mergers of two or more NAICS 2012 industries or their parts to new industries without impacting their size standards. Of the 29 NAICS 2012 industries affected by the revision, adopting NAICS 2017 would increase size standards for six industries and part of one industry and decrease two. Size standards for twenty industries and part of one industry would not change. This would also result in changing the size standard measure for one industry from average annual receipts to number of employees.

As stated previously, SBA generally applied the guidelines in Table 2 to convert the size standards for industries from NAICS 2012 to NAICS 2017. However, for new industries that were created by combining industries or their parts with significantly different size standards or different measures of size standards, SBA also evaluated the relevant industry and Federal procurement data to determine appropriate size standards for the new industries, as discussed below.

TABLE 3—PROPOSED SIZE STANDARDS FOR NEW INDUSTRIES IN NAICS 2017

NAICS 2012 code	NAICS 2012 industry title	Current size standard (employees)	Current size standard ($ million)	Proposed NAICS 2017 size standard (employees)	Proposed NAICS 2017 size standard ($ million)	NAICS 2017 code	NAICS 2017 industry title
211111	Crude Petroleum and Natural Gas Extraction.	1,250					
	crude petroleum extraction.	1,250	.....	1,250	.....	211120	Crude Petroleum Extraction.
	natural gas extraction	1,250	.....	1,250	.....	211130	Natural Gas Extraction.
211112	Natural Gas Liquid Extraction.	750					

TABLE 3—PROPOSED SIZE STANDARDS FOR NEW INDUSTRIES IN NAICS 2017—Continued

NAICS 2012 code	NAICS 2012 industry title	Current size standard (employees)	Current size standard ($ million)	Proposed NAICS 2017 size standard (employees)	Proposed NAICS 2017 size standard ($ million)	NAICS 2017 code	NAICS 2017 industry title
212231	Lead Ore and Zinc Ore Mining.	750	.....	750	.....	212230	Copper, Nickel, Lead, and Zinc Mining.
212234	Copper Ore and Nickel Ore Mining.	1,500					
333911	Pump and Pumping Equipment Manufacturing.	750	.....	750	.....	333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing.
333913	Measuring and Dispensing Pump Manufacturing.	750					
335221	Household Cooking Appliance Manufacturing.	1,500	.....	1,500	.....	335220	Major Household Appliance Manufacturing.
335222	Household Refrigerator and Home Freezer Manufacturing.	1,250					
335224	Household Laundry Equipment Manufacturing.	1,250					
335228	Other Major Household Appliance Manufacturing.	1,000					
452111	Department Stores (except Discount Department Stores).	.....	$32.5	.....	$32.5	452210	Department Stores.
452112	Discount Department Stores.	.....	29.5				
	insignificant perishable grocery sales.	.....	29.5				
452112	Discount Department Stores.	.....	29.5				
	significant perishable grocery sales.	.....	29.5	.....	29.5	452311	Warehouse Clubs and Supercenters.
452910	Warehouse Clubs and Supercenters.	.....	29.5				
452990	All Other General Merchandise Stores.	.....	32.5	.....	32.5	452319	All Other General Merchandise Stores.
454111	Electronic Shopping	.....	32.5	.....	38.5	454110	Electronic Shopping and Mail-Order Houses.
454112	Electronic Auctions	.....	38.5	.....			
454113	Mail-Order Houses	.....	38.5				
512210	Record Production	.....	7.5	250	.....	512250	Record Production and Distribution.
512220	Integrated Record Production/Distribution.	1,250					
517110	Wired Telecommunications Carriers.	1,500	.....	1,500	.....	517311	Wired Telecommunications Carriers.
517210	Wireless Telecommunications Carriers (except Satellite).	1,500	.....	1,500	.....	517312	Wireless Telecommunications Carriers (except Satellite).
532220	Formal Wear and Costume Rental.	.....	20.5	.....	20.5	532281	Formal Wear and Costume Rental.
532230	Video Tape and Disc Rental.	.....	27.5	.....	27.5	532282	Video Tape and Disc Rental.
532291	Home Health Equipment Rental.	.....	32.5	.....	32.5	532283	Home Health Equipment Rental.
532292	Recreational Goods Rental	.....	7.5	.....	7.5	532284	Recreational Goods Rental.
532299	All Other Consumer Goods Rental.	.....	7.5	.....	7.5	532289	All Other Consumer Goods Rental.
541711	Research and Development in Biotechnology.	1,000					
	nanobiotechnologies research and experimental development laboratories.	1,000	.....	1,000	.....	541713	Research and Development in Nanotechnology.
	except nanobiotechnologies research and experimental development laboratories.	1,000	.....	1,000	.....	541714	Research and Development in Biotechnology (except Nanobiotechnology).

TABLE 3—PROPOSED SIZE STANDARDS FOR NEW INDUSTRIES IN NAICS 2017—Continued

NAICS 2012 code	NAICS 2012 industry title	Current size standard (employees)	Current size standard ($ million)	Proposed NAICS 2017 size standard (employees)	Proposed NAICS 2017 size standard ($ million)	NAICS 2017 code	NAICS 2017 industry title
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology).	1,000					
	nanotechnology research and experimental development laboratories.	1,000	.....	1,000	.....	541713	Research and Development in Nanotechnology.
	except nanotechnology research and experimental development laboratories.	1,000	.....	1,000	.....	541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology).
721310	Rooming and Boarding Houses.	.....	7.5	.....	7.5	721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps.

Derivation of Proposed Size Standards for Select NAICS 2017 Industries

NAICS 211120, Crude Petroleum Extraction

SBA proposes a 1,250-employee size standard for NAICS 2017 industry 211120 (Crude Petroleum Extraction). This new industry was generated by partitioning NAICS 2012 industry 211111 (Crude Petroleum and Natural Gas Extraction) into Crude Petroleum Extraction and Natural Gas Extraction parts and then redefining the Crude Petroleum Extraction part as new NAICS 211120. The current size standard for NAICS 211111 is 1,250 employees. Based on the 2012 Economic Census data, nearly 99 percent of all firms in NAICS 211111 qualify as small under the 1,250-employee size standard. However, SBA cannot quantify the impact of the partition on the size standard precisely because information on the Crude Petroleum Extraction part of NAICS 211111 is not available in the 2012 Economic Census data. Thus, SBA analyzed the impact of reducing the size standard for NAICS 211111 from 1,250 employees to 1,000 or 750 employees using the 2012 Economic Census data to see if a lower than 1,250 employees could be adopted for new NAICS 211120. The NAICS 211111 data showed that about 10–20 firms would lose their small business status if the size standard was lowered to 750 or to 1,000 employees. Based on the Federal procurement data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2013–2015, SBA estimates that 23 firms involved in crude petroleum extraction (using the ''Crude Petroleum Extraction and Others'' Product Service Code (PSC)) received a little over $1 million in Federal contracts annually. Seventeen of those firms had fewer than 1,250 employees, accounting for nearly 60 percent of dollars obligated under that PSC. Thus, using a size standard that is lower than 1,250 employees can hurt those businesses. Based on these results, SBA proposes a size standard of 1,250 employees for new NAICS 2012 industry 211120, Crude Petroleum Extraction.

NAICS 211130, Natural Gas Extraction

SBA proposes to adopt a 1,250-employee size standard for NAICS 2017 industry 211130 (Natural Gas Extraction). This new industry was generated by merging the Natural Gas Extraction part of NAICS 2012 industry 211111 with NAICS 2012 industry 211112 (Natural Gas Liquid Extraction). The current size standards are 1,250 employees for NAICS 211111 and 750 employees for NAICS 211112. Based on the 2012 Economic Census data, about 70 percent of firms in NAICS 211112 are below the 750-employee size standard. If SBA were to increase the size standard for NAICS 211112 to 1,250 employees, 4–6 additional firms would qualify as small. That would increase the share of small firms in that industry to nearly 75 percent.

Because the 2012 Economic Census data does not provide separate information on firms involved in the Natural Gas Extraction part of NAICS 211111, it is not possible to calculate a precise size standard for new NAICS 211130 using the Economic Census data. Thus, SBA examined Federal procurement data from FPDS–NG for fiscal years 2013–2015. In that period, 55 unique firms received Federal contracts under NAICS 211111. Thirty-four of them were small under the 1,250-employee size standard and received a third of total dollars obligated to that industry. The average annual amount obligated to NAICS 211111 was about $58 million. Because the partitioning of NAICS 2012 code 211111 divided firms in that industry between Crude Petroleum Extraction (which became NAICS 211120) and Natural Gas Liquid Extraction (which became part of NAICS 211130), SBA examined the Federal procurement data for the two Product Service Codes (PSCs): Natural Gas Extraction (GAS) and Crude Petroleum Extraction and Others (OTHER THAN GAS).

Thirty-eight firms received contracts under GAS PSC, of which 19 had fewer than 1,250 employees. Of those 19, only one firm would lose its small business status if the 750-employee size standard that currently applies to NAICS 211112 was used as the size standard for NAICS 211130. The GAS PSC category accounted for about 98 percent of total dollars obligated in NAICS 211111, and firms with fewer than 1,250 employees accounted for 33 percent. However, if SBA adopted a size standard of 750 employees for new NAICS 211130, the small business share of total dollars obligated would reduce to 24 percent.

During fiscal years 2013–2015, 62 unique firms received Federal contracts under NAICS 211112. Thirty-nine of them were below the 750-employee size standard and received 38 percent of total contract dollars obligated to that industry. The average annual dollars obligated to NAICS 211112 was about $1.4 million. Using 1,250 employees as a size standard for NAICS 211130 would

enable one currently large firm to qualify as small.

When firms under GAS PSC in NAICS 211111 and those in NAICS 211112 are considered together, 100 unique firms received Federal contracts during fiscal years 2013–2015. Of those 100, 59 had fewer than 1,250 employees, accounting for 33 percent of total dollars obligated in those industries. If SBA were to adopt 750 employees as the size standard for NAICS 211130, the number of firms considered small would decrease from 59 to 57, and the share of dollars obligated to small businesses would decrease from 33 percent to 24 percent. Thus, these results suggest that 1,250 employees is a more appropriate size standard for NAICS 211130 than 750 employees.

Additionally, when a new NAICS 2017 industry consists of one or more NAICS 2012 industries or their part(s) with different size standards, SBA normally adopts the largest size standard for the resulting new industry (see guidelines 2b in Table 2). Accordingly, SBA proposes to adopt a size standard of 1,250 employees for NAICS 211130, Natural Gas Extraction.

NAICS 212230, Copper, Nickel, Lead, and Zinc Mining

SBA proposes to adopt a 750-employee size standard for NAICS 2017 industry 212230 (Copper, Nickel, Lead, and Zinc Mining). NAICS 212230 was formed by merging NAICS 2012 industry 212231 (Lead Ore and Zinc Ore Mining) and NAICS 2012 industry 212234 (Copper Ore and Nickel Ore Mining). The current size standards are 750 employees for NAICS 212231 and 1,500 employees for NAICS 212234. Based on the 2012 Economic Census data, adopting a 1,500-employee size standard for the new industry will result in almost every firm, including potentially dominant ones, qualifying as small in NAICS 212231. In other words, 1,500 employees will be too large a size standard for firms currently operating under NAICS 212231. Similarly, adopting a 750-employee size standard for the new industry will result in only one firm being no longer small in NAICS 212234.

Furthermore, SBA also examined Federal procurement data from FPDS–NG for fiscal years 2013–2015, and found that Federal contracting was not significant in both NAICS 212231 and NAICS 212234. During that period, only one firm with 20 employees received about $55,000 in Federal contracts in NAICS 212231, and only two firms (one with seven employees and other with just one employee) received, on average, about $65,000 in Federal contracts under NAICS 212234.

SBA also examined its loan data for fiscal years 2015–2016 and found that there were no loans granted to firms in both NAICS 212231 and NAICS 212234 during that period.

Given the above results, SBA proposes to adopt a size standard of 750 employees for NAICS 212230, Copper, Nickel, Lead, and Zinc Mining.

NAICS 335220, Major Household Appliance Manufacturing

SBA proposes to adopt 1,500 employees as the small business size standard for NAICS 2017 industry 335220 (Major Household Appliance Manufacturing). This new industry was formed by merging four NAICS 2012 industries as set forth in Table 4, ''Formation of Major Household Appliance Manufacturing,'' below.

TABLE 4—FORMATION OF MAJOR HOUSEHOLD APPLIANCE MANUFACTURING

NAICS 2012 code	NAICS 2012 title	Size standard (employees)	NAICS 2017 code	NAICS 2017 title
335221	Household Cooking Appliance Manufacturing	1,500	335220	Major Household Appliance Manufacturing.
335222	Household Refrigerator and Home Freezer Manufacturing.	1,250		
335224	Household Laundry Equipment Manufacturing	1,250		
335228	Other Major Household Appliance Manufacturing.	1,000		

Rule 2b in Table 2, above, suggests adopting the size standard that most closely matches the economic activity described by the new NAICS 2017 industry, or adopting the highest size standard among the NAICS 2012 industries being merged to form the new industry.

To arrive at a proposed size standard of 1,500 employees, SBA evaluated the 2012 Economic Census data for NAICS 2012 5-digit industry 33522 (Major Appliance Manufacturing), which includes information about all firms allocated to any of the four 6-digit NAICS codes that were merged to form NAICS 2017 industry 335220. About 89 percent of all firms in those four industries would qualify as small if SBA set the size standard for NAICS 335220 at 1,000 employees. That percentage would rise to nearly 91 percent at 1,250 employees and 94.5 percent at 1,500 employees.

Analyzing the four NAICS 2012 industries individually shows that the most affected industry by any reduction of the size standard is NAICS 335221 (Household Cooking Appliance Manufacturing), which currently has a size standard of 1,500 employees. If SBA were to use 1,250 employees or 1,000 employees as the size standard for NAICS 335220, four firms currently operating in NAICS 335220 would lose their small business status. More importantly, NAICS 335221 represents about 77 percent of the total number of firms in the new industry. The industry data, therefore, supports adopting the largest size standard among the four NAICS industries being merged into this new NAICS 325220. A lower size standard at 1,250 employees or 1,000 employees would reduce the number of small firms by about 4 percent to 6 percent.

Furthermore, SBA examined the Federal procurement data from FPDS–NG for fiscal years 2013–2015. During that period, 352 unique firms received about $11 million in Federal contracts annually under the four NAICS 2012 industries being merged to form new NAICS 2017 industry 335220. Of those 352 firms, 320 had fewer than 1,000 employees, accounting for 86.7 percent of dollars obligated in those four industries, 323 had fewer than 1,250 employees with a share of dollars obligated of 87.2 percent, and 327 had fewer than 1,500 employees with a share of dollars obligated of 88.8 percent.

These results show that some firms would be affected if the size standard adopted for the new industry is smaller than 1,500 employees. Accordingly,

SBA proposes adopting a size standard of 1,500 employees for new NAICS 2017 industry 335220, Major Appliance Manufacturing.

NAICS 452210, Department Stores

SBA proposes to adopt $32.5 million as the size standard for NAICS 2017 industry 452210 (Department Stores). This new industry was formed by merging one NAICS 2012 industry and part of another, as set forth in Table 5, ''Formation of Department Stores.''

TABLE 5—FORMATION OF DEPARTMENT STORES

NAICS 2012 code	NAICS 2012 title	Size standard ($ million)	NAICS 2017 code	NAICS 2017 title
452111	Department Stores (except Discount Department Stores).	32.5	452210	Department Stores.
452112	Discount Department Stores pt: Insignificant perishable grocery sales only.	29.5		

According to the 2012 County Business Pattern and Economic Census data, 35 firms were below the $32.5 million size standard in NAICS 452111 and 36 firms were under the $29.5 million size standard in NAICS 452112. Therefore, based on these data the impact of adopting either the lower $29.5 million or the higher $32.5 million size standard for the new industry would be quite negligible.

In accordance with SBA's regulations (13 CFR 121.402(b)(2)), NAICS codes and their size standards in Sectors 42 (Wholesale Trade) and 44–45 (Retail Trade) do not apply to Federal procurement. Therefore, evaluation of Federal procurement data is not warranted although FPDS–NG shows some Federal contracts awarded using both NAICS 452111 and NAICS 452112. It is more than likely that contracting officers applied the 500-employee nonmanufacturer size standard to establish small business eligibility for such contracts.

Because NAICS codes and their size standards in Sectors 42 and 44–45 primarily apply for SBA's loan programs, SBA examined its loan data for fiscal years 2015–2016. During that period, 24 loans, totaling $4.6 million, were granted to firms in NAICS 452111. Similarly, 12 loans, totaling $2.6 million, were approved for firms in NAICS 452112. All of those firms were much smaller than the size standards for the affected industries.

While the industry and program data shows little difference in impacts of adopting either $29.5 million or $32.5 million as the size standard for the new industry, in accordance with SBA's general policy of adopting the highest size standard among the merged industries or industry parts, SBA proposes adopting the higher $32.5 million as the size standard for NAICS 452210, Department Stores.

NAICS 454110, Electronic Shopping and Mail-Order Houses

SBA proposes to adopt $38.5 million in average annual receipts as the small business size standard for NAICS 2017 industry 454110 (Electronic Shopping and Mail-Order Houses). This new industry was formed by merging three NAICS 2012 industries as set forth in Table 6, ''Formation Electronic Shopping and Mail-Order Houses.''

TABLE 6—FORMATION ELECTRONIC SHOPPING AND MAIL-ORDER HOUSES

NAICS 2012 code	NAICS 2012 title	Size standard ($ million)	NAICS 2017 code	NAICS 2017 title
454111	Electronic Shopping	32.5	454110	Electronic Shopping and Mail-Order Houses.
454112	Electronic Auctions	38.5		
454113	Mail-Order Houses	38.5		

Analysis of the 2012 Economic Census data shows that about 27,525 firms were below the $38.5 million size standard associated with two of the three industries, shown above. If the size standard were to reduce to $32.5 million, about 80 firms would lose their small business eligibility. Thus, the data supports adopting $38.5 million as the size standard for the new industry.

For the reason explained under NAICS 452210 (Department Stores), above, the analysis of Federal procurement data is also not warranted for establishing the size standard for NAICS 454110. NAICS codes and their size standards in Sectors 42 and 44–45 primarily apply for SBA's loan programs. During fiscal years 2015–2016, 468 loans were granted to firms in the three NAICS 2012 industries being merged to form NAICS 454110, with a total loan volume of $97.8 million. About 94 percent of total loans and 97 percent of total volume went to firms in NAICS 454111.

Based on the ratio of receipts to employees using the 2012 Economic Census data for those three industries, SBA estimates that the $38.5 million revenue standard is equivalent to 47 employees. Among the firms that received SBA's loans in fiscal years 2015–2016, only four had more than 47 employees (between 50 and 111 employees). The Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240, 124 Stat. 504, title 1, subtitle A, part 1, section 1116 (Sep. 27, 2010), established an alternative size standard for SBA's 7(a) and 504 Loan Programs. Specifically, the Jobs Act provides that a firm that does not meet the size standard for its industry may still qualify as small if it has a tangible net worth that does not exceed $15 million and average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed $5 million. It is very likely that those four firms qualified for SBA's loans under the alternative size standard.

Based on the above results, SBA proposes $38.5 million as the small business size standard for NAICS 454110, Electronic Shopping and Mail-

Order Houses. This also conforms to SBA's general rule of adopting the highest size standard among the merged industries as the size standard for the new industry.

NAICS 512250, Record Production and Distribution

SBA proposes to adopt a 250-employee size standard for new NAICS 2017 industry 512250 (Record Production and Distribution), formed by combining the NAICS 2012 industry 512210 (Record Production) and NAICS 2012 industry 512220 (Integrated Record Production/Distribution). The current size standards are $7.5 million in average annual receipts for NAICS 512210 and 1,250 employees for NAICS 512220. Presently, according to the 2012 Economic Census data, at the current $7.5 million size standard 97.7 percent of all firms in NAICS 512210 qualify as small. Adopting a 1,250-employee size standard for new industry would result in all, but one, firms currently in NAICS 512210 being small. While NAICS 512210 has no firms between 250 employees and 1,250 employees, NAICS 512220 has three firms in that employee range. A 250-employee size standard for NAICS 512250 would include 99.4 percent of all firms in NAICS 512210 and 97.6 percent of all firms in NAICS 512220.

SBA also examined Federal procurement data for fiscal years 2013–2015 for both NAICS 512210 and 512220. In that period, 37 unique firms received about $7.8 million annually in Federal contracts under NAICS 512210. Twenty-seven of them were small under the $7.5 million size standard and 10 were other than small. Of all the small businesses under $7.5 million, the largest had no more than 80 employees. By adopting a 250-employee size standard for NAICS 512250, three of the 10 firms currently in NAICS 512210 that are above $7.5 million would qualify as small and seven will remain large. The three qualifying as small would have average annual revenue between $52 million and $213 million.

During fiscal years 2013–2015, 13 unique firms received Federal contracts under NAICS 512220. Ten of the awardees were at or below the 1,250-employee standard and three were above. Six of them were below $7.5 million. If the size standard for NAICS 512250 is set at 250 employees, only two currently small firms under the 1,250-employee size standard in NAICS 512220 will become other than small. On an average annual basis, only about $174,000 in Federal contract dollars were obligated to NAICS 512220 during that period. With this level of Federal contracting activity, the impact of using a size standard of 250 employees instead of 1,250 employees will be very minimal.

SBA also examined its loan data in these NAICS codes during fiscal years 2015–2016. In NAICS 512210 and 512220 combined, there were fewer than five loans granted each year, with most of the loan recipients having fewer than five employees.

Based on the above results, SBA proposes a size standard of 250 employees for NAICS 512230, Record Production and Distribution.

Evaluation of Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets a specific small business definition or size standard established by SBA's Administrator. SBA considers as part of its evaluation whether a business concern at a proposed or revised size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed or revised standard. SBA also examines distribution of firms by size to ensure that a contemplated size standard derived from its size standards analysis excludes the largest firms within an industry. Market share, the size distribution and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. SBA has determined that for the industries for which it has proposed to revise size standards in this rule, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed size standards, the small business share of total industry receipts among those industries for which SBA has revised size standards is, on average, 2.7 percent, ranging from a minimum of 0.01 percent to a maximum of 9.9 percent. SBA determines that these levels of market shares effectively preclude a firm at or below the revised size standards from exerting control on any of the industries.

Alternatives To Adopting NAICS 2017 for Size Standards

SBA considered retaining NAICS 2012 as the basis for its small business size standards. That would, however, lead to inconsistency between SBA's size standards and data published by Federal agencies that will adopt NAICS 2017 for their statistical and other programs. OMB stated in its August 8, 2016 notice that ''Federal statistical establishment data published for reference years beginning on or after January 1, 2012, should be published using the 2017 NAICS United States codes.'' SBA is not a statistical agency, but the Agency uses for its size standards analyses establishment data collected from other Federal agencies, such as the Economic Census data and County Business Patterns from the Census Bureau. If SBA continues using NAICS 2012 for its size standards, it will not be able to analyze and evaluate industry structure adequately and accurately and adjust small business size standards appropriately because the forthcoming Economic Census and County Business Patterns data based on NAICS 2017 will not be compatible with NAICS 2012. That would run counter to the Jobs Act mandate that requires SBA to review all size standards and adjust them appropriately to reflect the current industry and market data every five years.

To establish, review, and revise, where necessary, small business size standards, SBA uses special tabulations of industry data that the Agency obtains from the Census Bureau based on its Economic Census of U.S. industries and businesses and establishment data from its County Business Patterns. Because the 2017 Economic Census will be based on NAICS 2017 industry definitions, it is imperative that SBA use NAICS 2017 as the basis for its table of small business size standards.

Request for Comments

SBA welcomes public comment on this proposed rule. Specifically, SBA invites comments on whether its proposed size standards for new industries are appropriate and suggestions on alternative size standards, along with supporting data and analysis, if proposed size standards are not appropriate. SBA also seeks comments on its methodology for converting size standards from NAICS 2012 to NAICS 2017 and data sources and analyses it used in developing proposed size standards for certain new industries. SBA will thoroughly evaluate and address all comments in preparing the final rule the Agency will publish to adopt NAICS 2017 for its table of size standards.

Justification for the October 1, 2017 Effective Date

SBA's small business size standards matched to NAICS 2017 to be adopted in a forthcoming final rule, will be

effective on October 1, 2017 for the following reasons:

1. OMB stated in its August 8, 2016 notice that Federal statistical establishment data published for reference years beginning on or after January 1, 2017, should be published using NAICS 2017. SBA is not a statistical agency, but it uses the establishment data collected from other Federal agencies, such as the Economic Census and County Business Patterns data from the Census Bureau for its size standards analysis. Similarly, Federal procurement databases and systems, such as FPDS–NG and the System for Award Management (SAM), are based on NAICS codes from SBA's table of size standards. If SBA does not adopt NAICS 2017 for its table of size standards in a timely manner, it will result in inconsistency between SBA's size standards and other Federal databases.

2. October 1, 2017 is the start of the new Federal Government fiscal year following OMB's adoption of NAICS 2017 effective January 1, 2017, and is consistent with SBA's adoption of previous NAICS revisions for its size standards effective at the beginning of the new fiscal year after the OMB's effective date.

3. With the adoption of the updated size standards at the start of the new fiscal year, Federal agencies that use NAICS industry definitions and SBA's size standards can collect comparable and consistent data on Federal statistics for program and industry analyses.

4. With the October 1, 2017 effective date, Federal agencies that use SBA's small business size standards for their programs will have sufficient time to plan and implement the updated size standards, and assess the impact of size standards changes on their programs.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

OMB has determined that this proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. This rule proposes to incorporate the OMB's 2017 revisions of NAICS, which SBA uses to identify industries in the United States for purposes of establishing small business size standards. As discussed in the Supplementary Information above, the size standard of some activities would change because of the NAICS 2017 revisions. However, SBA has determined that virtually all businesses currently defined as small under the NAICS 2012 based size standards will continue to be small under the NAICS 2017 based size standards. The proposed rule, if adopted in its present form, will also affect other Federal Government programs that provide a benefit for small businesses. SBA welcomes comments describing the impact on small businesses of the size standard changes resulting from this rule. In order to help explain the need of this proposed rule and the rule's potential benefits and costs, SBA is providing below a Cost Benefit Analysis. This is also not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that revising its small business size standards based on NAICS 2017 is in the best interests of small businesses. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes numerical definitions to determine which businesses are deemed small businesses. NAICS 2017 provides the latest industry definitions reflecting the latest changes in industry structure. The Small Business Act (the Act) delegates to SBA's Administrator the responsibility for establishing definitions for small business. The Act also requires that small business definitions vary from industry to industry reflecting differences among the various industries. 15 U.S.C. 632(a). By analyzing and reviewing size standards based on the latest NAICS definitions, SBA can more accurately and appropriately fulfill its mandate. If SBA does not use the latest industry definitions, size standards would not accurately reflect differences among industries. In addition, the Jobs Act requires SBA to review all size standards and make necessary adjustments to reflect current industry and market conditions at least every five years. To better serve this mandate, SBA needs to evaluate industry data based on the latest NAICS industry definitions available. In this proposed rule, SBA generally followed the same guidelines that the Agency used for adopting prior NAICS revisions, as spelled out under the supplemental information section, above. For certain NAICS 2017 industries involving NAICS 2012 industries with substantially different size standards, SBA also analyzed the relevant industry and program data to determine the size standards for them. Size standards based on NAICS 2017 industry definitions and corresponding data will serve SBA's mission more effectively.

2. What are the potential benefits and costs of this regulatory action?

As stated previously, the vast majority of the changes from NAICS 2012 to NAICS 2017 consist of revisions to industry titles or 6-digit codes or mergers of some NAICS 2012 industries or their parts to form the industries in NAICS 2017 without impacting their size standards. Of the 29 affected NAICS 2012 industries or their parts, SBA's proposed size standards using NAICS 2017, if adopted, will result in increases to size standards for six NAICS 2012 industries and part of one industry, decreases for two industries, and the change of size standard from average annual receipts to number of employees for one industry. The size standards will remain unchanged for other affected industries or parts.

Based on the 2012 Economic Census data for the affected NAICS 2012 industries, SBA estimates that approximately 60 additional businesses would gain small business status under the revised size standards. That represents about 0.1 percent of the number of small businesses in the affected industries. SBA also estimates that fewer than five firms that qualify as small under current size standards under NAICS 2012 will no longer qualify. However, almost all of those firms do not currently participate in any small business programs.

The benefits of adopting NAICS 2017 and the resulting revisions to size standards, if adopted, will accrue to three groups in the following ways: (1) Some businesses that are above their current size standards may gain small business status, thereby becoming eligible to participate in Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities intended for small businesses.; (2) growing small businesses that are close to exceeding the current size standards for their NAICS 2012 industry may retain their small business status under NAICS 2017, and can continue participating in the above programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs because they will be able to define more accurately the principal purposes of their procurements under NAICS 2017, as required by 13 CFR 121.402(b).

Additional firms gaining small business status under NAICS 2017 may benefit under SBA's various business development and contracting programs. These include the 8(a) Business Development program and programs benefiting small businesses located in the historically underutilized business zones (HUBZones), woman owned small businesses (WOSBs), and service disabled veteran owned small businesses (SDVOSBs). Added competition may also result in lower prices for some Federal contracts reserved for small businesses, although SBA cannot quantify this benefit. Based on data for fiscal years 2013–2015, SBA estimates that approximately $700,000 in Federal contracts could be awarded to the newly defined small businesses under the proposed revisions of size standards due to the adoption of NAICS 2017.

Under SBA's 7(a) Loan and 504 Loan Programs, SBA will be able to guarantee more loans, although, in this case too, the number and amount cannot be estimated accurately. Based on data for fiscal years 2014–2016, SBA estimates that about two additional loans, totaling approximately $200,000, could be made to newly defined small businesses under the proposed size standards using NAICS 2017. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. Additionally, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs for applicants that do not meet the size standards for their industries. The Jobs Act provides that if a firm applying for a 7(a) or 504 loan does not meet the size standard for its industry, it might still qualify if it has a tangible net worth that does not exceed $15 million and an average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed $5 million. Public Law 111–240, 124 Stat. 504, title 1, subtitle A, part 1, section 1116 (Sep. 27, 2010). Thus, the updated size standards may result in an increase in SBA's loan guarantees to small businesses in the affected industries, but SBA cannot quantify this impact.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of future EIDL benefit.

To the extent that newly defined small firms under NAICS 2017 could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities. More firms may seek SBA's guaranteed loans. More will be enrolled in the SBA's Dynamic Small Business Search database. Since more firms will qualify as small, more may also seek certification as 8(a) or HUBZone firms, or qualify for WOSB, SDVOSB, and/or small disadvantaged business (SDB) status. However, it is important to point out that most business entities that are already registered in SAM will not be required to update their SAM profiles. However, it will be incumbent on registrants to review their profiles to ensure that they have the correct NAICS codes. SAM requires that registered companies review and update their profiles annually, and therefore, businesses will need to pay particular attention to the changes to determine if they might affect them. They will also have to verify and update, if necessary, their Representations and Certifications in SAM.

Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards under NAICS 2017. With more businesses defined as small, Federal agencies might choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting will likely result in competition among fewer total bidders, although there will be a larger pool of small businesses to submit offers. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of gains and losses among small and large businesses, there are several likely impacts. There may be a transfer of some Federal contracts from large businesses to small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open procurement opportunities. Similarly, currently defined small businesses may receive fewer Federal contracts due to the increased competition from more businesses defined as small under NAICS 2017. This transfer may be offset by more Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and small businesses under the existing size standards. SBA cannot estimate with precision the potential distributional impacts of these transfers.

SBA's adoption of NAICS 2017 and resulting revisions to size standards is consistent with SBA's statutory mandate to assist small business by providing access to capital and credit, Government contracts, and management and technical assistance. Updated size standards based on latest industry definitions ensure that Federal small business assistance is more effectively targeted to its intended beneficiaries. The Small Business Act states that ''the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries.'' 15 U.S.C. 632(a)(3). With the adoption of the latest industry definitions in NAICS 2017, SBA's size standards are more consistent with the differing characteristics among the various industries.

Executive Order 13563

A description of the need for this proposed regulatory action and benefits and costs associated with this action including possible distribution impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis.

To engage interested parties in this action, SBA reached out to all Federal agencies advising them that the Agency plans to update its table of size standards to NAICS 2017, effective October 1, 2017, and that agencies must continue using the current size standards until that date. Adopting the

updated size standards on October 1, 2017 is consistent with SBA's adoptions of previous NAICS revisions at the beginning of the new fiscal year following the OMB's January 1 effective date of NAICS revisions for Federal statistical agencies.

Unlike the previous NAICS revisions which SBA adopted for its size standards either through a direct final rule or through an interim final rule, for the adoption of NAICS 2017 revision, SBA is issuing this proposed rule and seeking comments to better engage the public in the process. SBA will also issue a press release on the publication of the proposed rule and update the ''What's New With Size Standards,'' page on its Web site at *www.sba.gov/size,* asking interested parties to comment on the rule. SBA will thoroughly consider all public comments when developing the final rule.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule, if adopted as proposed, will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no Federalism implications warranting preparation of a Federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule would not impose any new reporting or record keeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in some industries whose size standards have been revised. As described above, this rule may affect small businesses applying for Federal government contracts, loans under SBA's 7(a), 504, and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objectives of the rule?; (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply?; (3) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

The Small Business Act requires that small business size standards vary from industry to industry reflecting the differing characteristics of the various industries. SBA uses the latest NAICS as a basis of industries definitions for its table of size standards. As part of its five-year review of and revisions to NAICS industry definitions, OMB published its latest NAICS revision, NAICS 2017, on August 8, 2017. According to the OMB's notice, Federal establishment and industry data for reference years beginning on or after January 1, 2017 should be published using NAICS 2017. This rulemaking proposes to amend SBA's small business size regulations to incorporate NAICS 2017 into its table of size standards. This not only makes SBA's size standards more reflective of the latest industry differences but also makes them more consistent with latest industry data the Agency uses to establish, review or adjust size standards. Updating size standards to the latest industry definitions also serves the SBA's mandate to review all size standards and make appropriate adjustments to reflect market conditions under the Jobs Act.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

With the update of size standards to the latest industry definitions under NAICS 2017, Federal small business assistance is more effectively targeted to its intended beneficiaries. The adoption of NAICS 2017, if adopted as proposed, would result in increases in size standards for six industries and part of one industry under NAICS 2012 and decreases for two. The size standards for the rest of the 29 affected industries will remain unchanged. In industries whose size standards have increased due to the adoption of NAICS 2017, about 60 firms above the current size standards would qualify as small under the updated size standards, thereby making them eligible for Federal small business assistance programs. Based on the recent data, SBA estimates that approximately $700,000 in Federal contracts and about $200,000 in SBA loans could be awarded to the newly defined small businesses under the updated size standards. The updated size standards would enable more small businesses to maintain their small business size status for a longer period. In the two NAICS 2012 industries, about 3–4 firms below the current size standards would lose their small business size status under the proposed size standards. However, the program data suggests that this would not cause much impact on them. Currently, they are not participating in any small business programs. Additionally, in both industries, Federal contracting and SBA's loan activities are quite insignificant.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The proposed size standard changes due to the adoption of NAICS 2017 impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal small business contracting and other programs may require businesses to register in SAM and recertify in SAM that they are small at least once annually. Therefore, the newly qualified small businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with either SAM registration or annual recertification. Changing size standards alters the access to SBA's financial and other Federal programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must generally use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). An agency may establish for its programs a size standard that is different from those established by SBA if approved by SBA's Administrator in accordance with 13 CFR 121.903. SBA is not aware of any Federal rule that would duplicate or

conflict with establishing or updating size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The RFA authorizes a Federal agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying levels of size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards. SBA considered continuing to use NAICS 2012 as a basis of industry definitions for its table of size standards. However, that would render SBA's table of size standards incompatible with Federal industry and establishment statistics and other databases.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. In § 121.201, amend the table, ''Small Business Size Standards by NAICS Industry'' as follows:
■ a. Remove the entries for 211111 and 211112;
■ b. Add entries for 211120 and 211130;
■ c. Remove the entries for 212231 and 212234;
■ d. Add an entry for 212230;
■ e. Remove the entry 333911;
■ f. Remove the entry 333913;
■ g. Add an entry for 333914;
■ h. Add an entry for 335220;
■ i. Remove the entries for 335221, 335222, 335224, and 335228;
■ j. Remove the entries for 452111, 452112, 452910, and 452990;
■ k. Add entries for 452210, 452311, and 452319;
■ l. Add an entry for 454110;
■ m. Remove the entries for 454111, 454112, and 454113;
■ n. Remove the entries for 512210 and 512220;
■ o. Add an entry for 512250;
■ p. Remove the entries for 517110 and 517210;
■ q. Add entries for 517311 and 517312;
■ r. Remove the entries for 532220, 532230, 532291, 532292, and 532299;
■ s. Add entries for 532281, 532282, 532283, 532284, and 532289;
■ t. Remove the entry for 541711;
■ u. Remove the entry for 541712;
■ v. Add entries for 541713 and 541714;
■ w. Add an entry for 541715;
■ x. Revise the NAICS industry title of the entry for 721310 to read, ''Rooming and Boarding Houses, Dormitories, and Workers' Camps''; and
■ y. Revise footnote 11 at the end of the table.

The additions and revisions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * *	*	*
211120	Crude Petroleum Extraction		1,250
211130	Natural Gas Extraction		1,250
*	* * * *	*	*
212230	Copper, Nickel, Lead, and Zinc Mining		750
*	* * * *	*	*
333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing		750
*	* * * *	*	*
335220	Major Household Appliance Manufacturing		1,500
*	* * * *	*	*
452210	Department Stores	$32.5	
452311	Warehouse Clubs and Supercenters	29.5	
452319	All Other General Merchandise Stores	32.5	
*	* * * *	*	*
454110	Electronic Shopping and Mail-Order Houses	38.5	
*	* * * *	*	*
512250	Record Production and Distribution		250
*	* * * *	*	*
517311	Wired Telecommunications Carriers		1,500
517312	Wireless Telecommunications Carriers (except Satellite)		1,500
*	* * * *	*	*
532281	Formal Wear and Costume Rental	20.5	
532282	Video Tape and Disc Rental	27.5	

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
532283	Home Health Equipment Rental	32.5	
532284	Recreational Goods Rental	7.5	
532289	All Other Consumer Goods Rental	7.5	
*	* * * * * *	*	
541713	Research and Technology in Nanotechnology [11]		1,000
541714	Research and Technology in Biotechnology (except Nanobiotechnology) [11]		1,000
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) [11].		1,000
Except,	Aircraft, Aircraft Engine and Engine Parts [11]		1500
Except,	Other Aircraft Parts and Auxiliary Equipment [11]		1,250
Except,	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts [11] ..		1,250
*	* * * * * *	*	

Footnotes

* * * * * * *

[11] *NAICS codes 541713, 541714, and 541715—*

(a) ''Research and Development'' means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(c) For purposes of the Small Business Innovation Research (SBIR) and Small Business Transfer Technology (STTR) programs only, a different definition has been established by law. See 15 U.S.C. 638(e)(5) and section 3 of the SBIR and STTR policy directives available at *www.sbir.gov.*

(d) ''Research and Development'' for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

* * * * * * *

Linda M. McMahon,

Administrator.

[FR Doc. 2017–07709 Filed 4–17–17; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0324; Directorate Identifier 2017–CE–004–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospace Welding Minneapolis, Inc. Mufflers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Aerospace Welding Minneapolis, Inc. mufflers, part numbers A1754001–23 and A1754001–25, installed on Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) Models 172, 172R, 172S, and 177 airplanes. This proposed AD was prompted by occurrences of cracks or broken welds in the connecting weld of the muffler body to muffler cuff that may allow carbon monoxide exhaust fumes into the cockpit heating system. This proposed AD would require an inspection of the muffler for leaking to identify cracks and replacement of the muffler. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 2, 2017.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Aerospace Welding Minneapolis, Inc. (AWI) 1045 Gemini Road, Eagan, Minnesota 55121; telephone: 651–379–9888; fax: 651–379–9889; Internet: *www.awi-ami.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0324; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mark Grace, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone: (847) 294–7377; fax: (847) 294–7834; email: *mark.grace@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0324; Directorate Identifier 2017–CE–004–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy

aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We were notified of broken or cracked welds in the connecting weld of the muffler body to muffler cuff on certain Aerospace Welding Minneapolis, Inc. (AWI) mufflers, part numbers (P/Ns) A1754001–23 and A1754001–25 that were installed on Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) Models 172, 172R, 172S, and 177 airplanes. There have been 54 occurrences identified by maintenance and 2 occurrences identified by the carbon monoxide (CO) gas monitor warning system. This condition, if not corrected, could lead to CO exhaust fumes entering the cockpit heating system and result in inhibiting the pilot's ability to maintain control of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed AWI Cessna 172 (Lycoming) Muffler Removal and Installation, Revision 01, January 17, 2017. The service information describes procedures for removing and replacing the affected mufflers. 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.

Other Related Service Information

We reviewed AWI Mandatory Service Bulletin No. 16063001, dated June 30, 2015. The service bulletin describes how to identify the installation of an affected muffler.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require inspecting the muffler for leaking to identify cracks and replacement of the muffler with an FAA-approved part.

Differences Between This Proposed AD and the Service Information

The AWI service bulletin requires replacement of the muffler before further flight. This proposed AD would require an inspection of the muffler for leaking to identify cracks within 5 hours time-in-service (TIS) after the effective date of the AD with replacement of leaking mufflers before further flight. This proposed AD would allow 100 hours TIS or at the next annual inspection for replacement of non-leaking mufflers. The service bulletin also requires returning the affected mufflers back to AWI, and this proposed AD does not require return of the muffler. The actions of the proposed AD would take precedence over the service information.

Costs of Compliance

We estimate that this proposed AD affects 171 mufflers installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of muffler	1 work-hour × $85 per hour = $85	Not applicable	$85	$14,535
Replacement of the muffler	4 work-hours × $85 per hour = $340	$350	690	117,990

The proposed AD would affect 171 mufflers with parts manufacturer approval; however, only 9 mufflers remain in service.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospace Welding Minneapolis, Inc.: Docket No. FAA–20170324; Directorate Identifier 2017–CE–004–AD.

(a) Comments Due Date

We must receive comments by June 2, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Aerospace Welding Minneapolis, Inc. (AWI) mufflers listed in figure 1 of paragraph (c) of this AD that are installed on but limited to the airplanes listed in figure 2 of paragraph (c) of this AD.

Note 1 to paragraph (c) of this AD: You may use AWI Mandatory Service Bulletin No. 16063001, dated June 30, 2015, to identify if an affected muffler is installed on the airplane.

FIGURE 1 OF PARAGRAPH (C) OF THIS AD—AFFECTED MUFFLERS

Muffler part No.	Muffler serial No.
A1754001–23	33553 through 33557; 34721 through 34728; 35322 through 35329; 35670; 38481 through 38485; 38584 through 38586; and 38723 through 38727.
A1754001–25	32795 through 32800; 33558 through 33569; 33779 through 33790; 34636 through 34653; 34968 through 34984; 35159 through 35176; 37903 through 37906; 38174 through 38193; 38502 through 38506; 38566 through 38575; and 38817 through 38836.

FIGURE 2 OF PARAGRAPH (C) OF THIS AD—AFFECTED AIRPLANES

Muffler part No.	Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) airplanes
A1754001–23	Model 172 Serial numbers (S/Ns) 17259224 and up; Model 172R S/Ns 80001 and up; and Model 172S S/Ns 8001 and up.
A1754001–25	Model 172 S/Ns 17256513 and up; Model 172R S/Ns 80001 and up; 172S S/N 8001 and up; and Model 177 S/N 1770001 and up.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 7820, Exhaust Noise Suppressor.

(e) Unsafe Condition

This AD was prompted by occurrences of cracks or broken welds in the connecting weld of the muffler body to muffler cuff that may allow carbon monoxide (CO) exhaust fumes into the cockpit heating system. We are issuing this AD to prevent cracks in the connecting weld of the muffler body to muffler cuff that may allow CO fumes to enter the cockpit heating system and possibly inhibit the pilot's ability to maintain control of the airplane.

(f) Compliance

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

(g) Inspection of the Muffler

Within 5 hours time-in-service after the effective date of this AD, inspect the affected muffler following the instructions listed in paragraphs (g)(1) through (3).

(1) Using a vacuum cleaner with the hose attached to the blowing side of the vacuum (with the filter installed), attach the vacuum to the airplane tailpipe and seal securely.

(2) The vacuum will pressurize the system sufficiently for a soap solution to be brushed or applied from a spray bottle to the surface of the exhaust system.

(3) Inspect for evidence of breaches (leakage) in the system from cracks.

(4) In lieu of doing this inspection and at the same within 5 hours after the effective date of this AD compliance time, you may replace the affected muffler with an FAA-approved part that is not a muffler listed in figure 1 of paragraph (c) of this AD.

(i) This replacement must be done following AWI Cessna 172 (Lycoming) Muffler Removal and Installation, Revision 01, January 17, 2017.

(ii) If replacement is done instead of the inspection, then paragraph (h)(3) of this AD is the only additional requirement of this AD.

(h) Replacement of the Muffler

(1) If evidence of breaches (leakage) is found during the inspection required in paragraph (g) of this AD, before further flight, replace the affected muffler with an FAA-approved part following AWI Cessna 172 (Lycoming) Muffler Removal and Installation, Revision 01, January 17, 2017.

(2) If no evidence of breaches (leakage) is found during the inspection required in paragraph (g) of this AD, within the next 100 hours TIS after the effective date of this AD or at the next annual inspection after the effective date of this AD, whichever occurs later, replace the affected muffler with an FAA-approved part that is not a muffler listed in figure 1 of paragraph (c) of this AD following AWI Cessna 172 (Lycoming) Muffler Removal and Installation, Revision 01, January 17, 2017.

(3) After the effective date of this AD, do not install on any airplane an affected muffler listed in figure 1 of paragraph (c) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Mark Grace, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone: (847) 294–7377; fax: (847) 294–7834; email: *mark.grace@faa.gov.*

(2) For service information identified in this AD, contact Aerospace Welding Minneapolis, Inc. 1045 Gemini Road, Eagan, Minnesota 55121; telephone: 651–379–9888; fax: 651–379–9889; Internet: *www.awi-ami.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on April 11, 2017.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–07775 Filed 4–17–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2017–F–0969]

Canadian Oilseed Processor Association; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that the Canadian Oilseed Processors Association has filed a petition proposing that the food additive regulations be amended to provide for the safe use of spent bleaching clay as a flow agent in canola meal for all livestock and poultry species. Additionally, the petition proposes that the existing regulations be amended to provide for the safe use of silicon dioxide and diatomaceous earth for use as components of spent beaching clay.

DATES: The food additive petition was filed on December 20, 2016.

FOR FURTHER INFORMATION CONTACT: Chelsea Trull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *Chelsea.trull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2299) has been filed by the Canadian Oilseed Processors Association, 404–167 Lombard Ave., Winnipeg MB R3B 0T6, Canada. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of spent bleaching clay as a flow agent in canola meal for all livestock and poultry species. Additionally, the submission proposes that the existing regulations be amended to provide for the safe use of silicon dioxide (21 CFR 573.940) and diatomaceous earth (21 CFR 573.340) for use as components of spent beaching clay.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(r) because it is of a type that does not individually or cumulatively have a significant effect on the human environment. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: April 12, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–07770 Filed 4–17–17; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0638; FRL–9960–02–Region 3]

Determination of Attainment by the Attainment Date for the 2008 Ozone Standard; Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE marginal ozone nonattainment area (the Philadelphia Area) has attained the 2008 ozone national ambient air quality standard (NAAQS) by the July 20, 2016 attainment date. This proposed determination is based on complete, certified, and quality assured ambient air quality monitoring data for the Philadelphia Area for the 2013–2015 monitoring period. This proposed determination does not constitute a redesignation to attainment. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 18, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0638 at *https://www.regulations.gov,* or via email to *rehn.brian@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Requirement—Determination of Attainment by the Attainment Date

Section 181(b)(2) of the CAA requires EPA to determine, within 6 months of an ozone nonattainment area's attainment date, whether that area attained the ozone standard by that date. Section 181(b)(2) of the CAA also requires that areas that have not attained the standard by their attainment deadlines be reclassified to either the next higher classification (*e.g.,* marginal to moderate, moderate to serious, etc.) or to the classifications applicable to the areas' design values in Table 1 of 40 CFR 51.1103. CAA section 181(a)(5) provides a mechanism by which the EPA Administrator may grant a 1-year extension of an area's attainment deadline, provided that the relevant states meet certain criteria.

B. The Philadelphia Area and Its Attainment Date

On July 18, 1997 at 62 FR 38855, EPA promulgated a revised ozone NAAQS of 0.08 parts per million (ppm), averaged over eight hours. This standard was determined to be more protective of public health than the previous 1979 1-hour ozone standard. In 2008, EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm (the 2008 ozone NAAQS). *See* 73 FR 16436 (March 27, 2008). In a May 21, 2012 final rule, the Philadelphia Area was designated as marginal nonattainment for the more stringent 2008 ozone NAAQS, effective on July 20, 2012. 77 FR 30088, 30143.

The Philadelphia Area consists of Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania; Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem Counties in New Jersey; Cecil County, Maryland; and New Castle County in Delaware. *See* 40 CFR 81.331, 81.339, 81.321, and 81.308.[1]

In a separate rulemaking action, also published on May 21, 2012 and effective on July 20, 2012, EPA established the air quality thresholds that define the classifications assigned to all nonattainment areas for the 2008 ozone NAAQS (the Classifications Rule). See 77 FR 30160. This rule also established December 31 of each relevant calendar year as the attainment date for all nonattainment area classification categories. Section 181 of the CAA provides that the attainment deadline for ozone nonattainment areas is ''as expeditiously as practicable'' but no later than the prescribed dates provided in Table 1 of that section. In the Classifications Rule, EPA translated the deadlines in Table 1 of CAA section 181 for purposes of the 2008 standard by measuring those deadlines from the effective date of the new designations, but extended those deadlines by several months to December 31 of the corresponding calendar year. Pursuant to a challenge of EPA's interpretation of the attainment deadlines, on December 23, 2014, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision rejecting, among other things, the Classifications Rule's attainment deadlines for the 2008 ozone nonattainment areas. *NRDC* v. *EPA,* 777 F.3d 456, 464– 69 (D.C. Cir. 2014). The D.C. Circuit ruled that EPA did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. Accordingly, as part of the final rule, ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan (SIP) Requirements,'' for the 2008 ozone NAAQS (80 FR 12264, March 6, 2015) (hereinafter, SIP Requirements Rule), EPA modified the maximum attainment dates for all nonattainment areas for the 2008 ozone NAAQS, consistent with the D.C. Circuit's decision. The SIP Requirements Rule established a maximum deadline for marginal nonattainment areas of three years from the effective date of designation, or July 20, 2015, to attain the 2008 ozone NAAQS. *See* 80 FR at 12268; 40 CFR 51.1103.

In a final rulemaking action published on May 4, 2016, EPA determined that the Philadelphia Area did not attain the 2008 ozone NAAQS by its July 20, 2015 attainment date, based on ambient air quality monitoring data for the 2012 through 2014 monitoring period. In that same action, EPA determined that the Philadelphia Area qualified for a 1-year extension of its attainment date, as provided in section 181(a)(5) of the CAA and interpreted by regulation at 40 CFR 51.1107, and granted the requested extension. EPA established the new attainment date for the Philadelphia Area as July 20, 2016 to be based on ambient air quality monitoring data for the 2013–2015 monitoring period. *See* 81 FR 26697 (May 4, 2016).[2]

II. EPA's Analysis of the Relevant Air Quality Data

Under EPA regulations at 40 CFR part 50, appendix P, the 2008 ozone NAAQS is attained at a monitoring site when the three-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm. This three-year average is referred to as the design value. When the design value is less than or equal to 0.075 ppm at each ambient air quality monitoring site within the area, then the area is deemed to be meeting the NAAQS. 40 CFR part 50, appendix P dictates that concentrations shall be reported in ppm to the third decimal place, with additional digits to the right being truncated. Thus, a computed three-year average ozone concentration of 0.0759 ppm or lower would meet the standard, but 0.0760 ppm or higher is over the standard.

EPA's proposed determination of attainment for the Philadelphia Area is based upon data that has been collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS) database. Ambient air quality monitoring data for the three-year period must also meet a data completeness requirement. 40 CFR part 50, appendix P. The ambient air quality monitoring data completeness requirement is met when the three-year average of the percent (%) of required monitoring days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness, as determined according to 40 CFR part 50, appendix P. Tables 1 and 2 show the data completeness and ozone design values, respectively, for each of the 18 monitors in the Philadelphia Area for years 2013 through 2015.

TABLE 1—2013–2015 PHILADELPHIA AREA OZONE MONITOR DATA COMPLETENESS

State	County	Site ID	Percent data completeness			2013–2015 average percent completeness	Comment
			2013	2014	2015		
Delaware	New Castle	100031007	97	94	100	97	
		100031010	77	74	91	81	Incomplete [a].
		100031013	91	99	93	94	
		100032004	86	83	87	85	Incomplete [a].
Maryland	Cecil	240150003	98	95	89	94	
New Jersey	Atlantic	340010006	96	99	96	97	
New Jersey	Camden	340070002	100	100	100	100	
New Jersey	Camden	340071001	96	100	97	98	
New Jersey	Cumberland	340110007	99	100	99	99	
New Jersey	Gloucester	340150002	99	84	96	93	

[1] In 2015, EPA revised the 8-hour ozone NAAQS from 0.075 ppm to 0.070 ppm (the 2015 ozone NAAQS). *See* 80 FR 65292 (October 26, 2015). The initial area designations for the 2015 ozone NAAQS are required by October 2017. Those designations will be based on ambient air quality monitoring data for the 2014–2016 monitoring period. This proposed rulemaking action does not address the 2015 ozone NAAQS.

[2] On July 5, 2016, the State of Delaware filed a petition for review (the Petition) of that portion of EPA's May 4, 2016 final rule granting the Philadelphia Area a 1-year extension of the 2008 ozone NAAQS attainment date, under CAA 181(a)(5), 42 U.S.C. 7511(a)(5), from July 20, 2015, to July 20, 2016. The Petition was filed in the U.S. Court of Appeals for the District of Columbia Circuit. *See State of Delaware Department of Natural Resources & Environmental Control* v. *United States Environmental Protection Agency,* No. 16–1230.

TABLE 1—2013–2015 PHILADELPHIA AREA OZONE MONITOR DATA COMPLETENESS—Continued

State	County	Site ID	Percent data completeness			2013–2015 average percent completeness	Comment
			2013	2014	2015		
New Jersey	Mercer	340210005	100	100	99	100	
New Jersey	Mercer	340219991	92	100	99	97	
New Jersey	Ocean	340290006	100	100	100	100	
Pennsylvania ...	Bucks	420170012	100	99	96	98	
Pennsylvania ...	Chester	420290100	100	94	97	97	
Pennsylvania ...	Delaware	420450002	100	98	96	98	
Pennsylvania ...	Montgomery	420910013	100	99	99	99	
Pennsylvania ...	Philadelphia	421010004	100	98	100	99	
Pennsylvania ...	Philadelphia	421010024	97	94	100	97	
Pennsylvania ...	Philadelphia	421010048	6	93	98	66	Site began operation October 2013[b].
Pennsylvania ...	Philadelphia	421011002	82	.....	.....	27	Site shut down in July 2013[b].

Notes:
a. Monitoring data at these sites does not meet completeness criteria set forth in 40 CFR part 50 Appendix P, section 2.3(b).
b. The monitoring site shutdowns and startups are included in the City of the Philadelphia's Air Management Services (AMS) July 2013 Annual Network Plan. AMS submitted the monitoring plan to EPA on July 1, 2013, and EPA approved it on December 10, 2013.

As shown in Table 1, two monitoring sites in Philadelphia County do not meet the completeness criteria set out in 40 CFR part 50, appendix P. However, the reasons for the completeness issues were the shutdown of one monitor and startup of another monitor that were approved by EPA in the City of Philadelphia's AMS July 2013 Annual Network Plan. Because three years of complete data is not possible at these monitoring sites, EPA does not look for valid design values at these sites.

Table 1 also shows that two monitors in New Castle County, Delaware, AQS ID # 100031010 (also known as the ''Brandywine'' monitor), and AQS ID # 100032004 (also known as the ''MLK'' monitor), which are maintained by the Delaware Department of Natural Resources and Environmental Control (DNREC), had insufficient data in the 2013 through 2015 period to meet the data completeness requirements in 40 CFR part 50, appendix P. As stated previously, the three-year average of the percent of required monitoring days with valid ambient monitoring data must be greater than 90%, with no single year having less than 75% data completeness. The ozone season for the Philadelphia Area [3] runs from April 1 through October 31. Therefore, a complete ozone season for this area contains 214 possible monitoring days, with at least 160 days of valid ozone season ambient monitoring data needed to meet the 75% data completeness requirement. Because of missed monitoring days at the Brandywine and MLK monitors (AQS ID # 100031010 and # 100032004), the design value for these two monitors would not be considered valid without further measures being taken to meet the data completeness requirements for these two monitors. Therefore, EPA conducted an analysis of the meteorological data and a regression analysis in order to meet the data completeness requirements for the Brandywine and MLK monitors. EPA also conducted a substitution analysis as a check on the validity of the meteorological analysis and regression analysis. Using these methods, EPA was able to ''add'' enough ozone season days for each of the two monitors to meet the data completeness requirements of 40 CFR part 50, appendix P. Further detail on the missing monitor data at these two Delaware monitors and on the data completeness analysis undertaken by EPA for those monitors is provided in the January 10, 2017 Technical Support Document (TSD) prepared by EPA. This TSD is included in the docket for this rulemaking (EPA–R03–OAR–2016–0638) and is also available online at *www.regulations.gov.*

After ensuring data completeness for those two Delaware monitors (AQS ID # 100031010 and # 100032004), EPA reviewed the ozone ambient air quality monitoring data for the monitoring period from 2013 through 2015 for all the monitors in the Philadelphia Area, as recorded in the AQS database, in accordance with the requirements of 40 CFR part 50. As shown in Table 2, below, all 2013–2015 design values are less than or equal to 0.075 ppm. Therefore, EPA concludes the Philadelphia Area has attained the 2008 ozone NAAQS by July 20, 2016 based upon monitored ozone data for the 2013 through 2015 period in accordance with requirements in 40 CFR part 50.

TABLE 2—2013–2015 PHILADELPHIA AREA 2008 OZONE DESIGN VALUES

State	County	Site ID	4th highest daily maximum			2013–2015 Design value (ppm)
			2013	2014	2015	
Delaware	New Castle	100031007	0.062	0.071	0.065	0.066
		100031010	0.063	0.074	0.071	[a] 0.069
		100031013	0.067	0.069	0.069	0.068
		100032004	0.067	0.068	0.072	[a] 0.069
Maryland	Cecil	240150003	0.072	0.074	0.074	0.073
New Jersey	Atlantic	340010006	0.070	0.061	0.068	0.066

[3] 40 CFR part 58, appendix D specifies the applicable ''ozone season'' for the Philadelphia Area.

TABLE 2—2013–2015 PHILADELPHIA AREA 2008 OZONE DESIGN VALUES—Continued

State	County	Site ID	4th highest daily maximum			2013–2015 Design value (ppm)
			2013	2014	2015	
New Jersey	Camden	340070002	0.065	0.068	0.079	0.070
New Jersey	Camden	340071001	0.068	0.068	0.072	0.069
New Jersey	Cumberland	340110007	0.061	0.067	0.068	0.065
New Jersey	Gloucester	340150002	0.073	0.070	0.076	0.073
New Jersey	Mercer	340210005	0.070	0.071	0.073	0.071
New Jersey	Mercer	340219991	0.069	0.071	0.075	0.071
New Jersey	Ocean	340290006	0.070	0.072	0.075	0.072
Pennsylvania	Bucks	420170012	0.073	0.071	0.082	0.075
Pennsylvania	Chester	420290100	0.068	0.071	0.068	0.069
Pennsylvania	Delaware	420450002	0.069	0.073	0.074	0.072
Pennsylvania	Montgomery	420910013	0.069	0.072	0.073	0.071
Pennsylvania	Philadelphia	421010004	0.047	0.058	0.057	0.054
Pennsylvania	Philadelphia	421010024	0.068	0.072	0.079	0.073
Pennsylvania	Philadelphia	421010048	0.036	0.068	0.078	.....
Pennsylvania	Philadelphia	421011002	0.071	.....	.....	.....

Notes:
a. Monitoring data at these sites did not meet completeness criteria set forth in 40 CFR part 50 Appendix P 2.3(b) prior to EPA undertaking the analyses set forth in the TSD.

EPA acknowledges that preliminary 2014 through 2016 ambient air quality monitoring data, which has not been quality assured or certified, shows potential violations of the 2008 ozone NAAQS in the Philadelphia Area.[4] However, this does not affect EPA's proposed determination of attainment by the attainment date for section 181(b)(2) of the CAA. This determination for section 181(b)(2) is an evaluation of the Philadelphia Area's design value as of its attainment date, July 20, 2016, considering 2013–2015 ozone monitored data, and does not consider air quality monitoring data from any other monitoring period.

III. Proposed Action

EPA evaluated ozone data from air quality monitors in the Philadelphia Area in order to determine the Area's attainment status under the 2008 ozone NAAQS. State and local agencies responsible for ozone air monitoring networks supplied and quality assured the data. All the monitoring sites in the Philadelphia Area had design values equal to or less than 0.075 ppm based on the 2013 through 2015 monitoring period. Considering that review, EPA concludes that this area attained the 2008 ozone NAAQS based on complete, quality assured and certified data for the 2013 through 2015 ozone seasons. Thus, EPA proposes to determine, in accordance with its statutory obligations under section 181(b)(2)(A) of the CAA, that the Philadelphia Area attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016. EPA's proposed determination is in accordance with applicable regulatory requirements under 81 FR 26697 (with respect to issuance of the 1-year extension of the attainment date for Philadelphia Area) and with the related provisions of the SIP Requirements Rule (40 CFR 51.1103).

This proposed determination of attainment does not constitute a redesignation to attainment. Redesignations require states to meet a number of additional criteria, including EPA approval of a state plan to maintain the air quality standard for 10 years after redesignation. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

This rulemaking action proposes to make a determination of attainment of the 2008 ozone NAAQS based on air quality and, if finalized, would not impose additional requirements. For that reason, this proposed determination of attainment:

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

In addition, this proposed rulemaking to determine that the Philadelphia Area attained the 2008 ozone NAAQS by its July 20, 2016 attainment date does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this proposed determination of attainment does not apply in Indian country located in the states and because EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

[4] On January 19, 2017, EPA received an email request from the Pennsylvania Department of Environmental Protection (PADEP) requesting EPA remove certain data from the PADEP Philadelphia monitors based on exceptional events. EPA is considering PADEP's request related to monitoring data for 2016, but has not taken further action at this time.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: March 2, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

Dated: March 1, 2017.

Catherine McCabe,

Acting Regional Administrator, Region II.

[FR Doc. 2017–07826 Filed 4–17–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0052; FRL–9961–50-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Major New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Commonwealth of Virginia state implementation plan (SIP). The revisions amend Virginia's major source New Source Review (NSR) regulations to make them consistent with the federal program. EPA is proposing to approve these revisions to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 18, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0052 at *http://www.regulations.gov,* or via email to *miller.linda@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

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

SUPPLEMENTARY INFORMATION:

I. Background

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA requires EPA to promulgate primary national ambient air quality standards (NAAQS) to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Pursuant to section 110, each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality-related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and, to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision. Section 172 of the CAA requires a permit program in areas which are not attaining the NAAQS, and section 173 provides the specific requirements for that permit program.

On October 16, 2015, the Virginia Department of Environmental Quality (VADEQ), on behalf of the Commonwealth of Virginia, submitted a formal revision to the Virginia SIP. The SIP revision consists of amendments to the preconstruction permit requirements under VADEQ's major NSR permit program. The revision affects sources subject to VADEQ's Prevention of Significant Deterioration (PSD) program, which applies in areas which are in attainment with (or unclassifiable for) the NAAQS, as well as affecting sources subject to its nonattainment NSR permit program, applicable in areas not in attainment with the NAAQS. By letter dated March 1, 2017, VADEQ officially withdrew a small and specific portion of the October 16, 2015 submittal from consideration for approval into the Virginia SIP. A copy of the letter has been included in the docket for this action. Further discussion of the withdrawal is provided in section II.A of this notice.

II. Summary of SIP Revision and EPA Analysis

Generally, the October 16, 2015 SIP submittal revision (as amended March 1, 2017) (hereinafter referred to as the 2015 NSR SIP Revision) is intended to make the Virginia Administrative Code regulations at 9VAC5 consistent with the federal NSR program at 40 CFR 51.165 and 51.166. The specific changes to 9VAC5 are intended to: (1) Allow the use of a 10-year lookback period to calculate pre-change emissions for sources other than electric utility steam generating units (EGUs); (2) Allow the use of different lookback periods for different regulated NSR pollutants; (3) Extend the effective period for plantwide applicability limits (PALs) to 10 years; and, (4) Allow replacement units to be treated as existing units, and thus provide the ability to use baseline actual and projected actual emissions when determining applicability. Additionally, there are a number of minor changes which are strictly administrative in nature, consisting of small grammatical revisions, or re-numbering. EPA is proposing to approve VADEQ's 2015 NSR SIP Revision as a revision to the Virginia SIP because it meets the federal requirements of 40 CFR 51.165 and 51.165, and CAA sections 110(a) and 173. Additionally, the revisions are in accordance with section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

A. Baseline Actual Emissions

NSR applicability is determined by comparing the pre-change emissions of the project to the post-change emissions and determining whether the net increase is ''significant.'' For new units, pre-change (baseline) emissions are

zero. For modified units, sources must calculate baseline actual emissions (BAE). For sources other than EGUs, the federal PSD and nonattainment NSR regulations provide for the calculation of BAE using ''. . . the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority . . .'' *See* 40 CFR 51.165(a)(1)(xxxv)(B) and 51.166(b)(47)(ii). VADEQ's currently approved BAE definitions, codified at 9VAC5–80 sections 1615C (PSD) and 2010C (nonattainment NSR), provide for a 5-year lookback period. The 2015 NSR SIP Revision includes VADEQ's revised definitions of BAE to provide for a 10-year lookback period for non EGUs, consistent with the federal counterpart.

When EPA originally approved the 5-year lookback into VADEQ's nonattainment NSR and PSD programs, limited approval was granted. *See* 73 FR 62893, 62897 (October 22, 2008). The previous definitions of BAE at 9VAC5–80 sections 1615C and 2010C in VADEQ's June 27, 2008 SIP submittals included the 5-year lookback which EPA found approvable, despite being different from the federal lookback period. However, VADEQ's regulations at the time in sections 1615C and 2010C also included provisions for the use of a different time period to calculate BAE if it was found to be more representative of normal operations. In our October 22, 2008 final rulemaking notice, EPA raised concerns that this provision could allow for the use of a lookback period that extended beyond the ten years allowed by the federal programs for PSD and NSR. However, EPA noted that because VADEQ had affirmed that it was not its intention to extend the lookback period beyond ten years, a limited approval was justified. *See* 73 FR at 62898. In VADEQ's 2015 NSR SIP Revision submittal, the provision allowing for the use of a different lookback period if it was found to be more representative of normal operations was struck from the definition of BAE at 9VAC5–80 section 1615C, making it consistent with the federal counterpart. However, that provision was inadvertently left in the definition of BAE in the version of 9VAC5–80 section 2010C for NSR. By letter dated March 1, 2017, VADEQ officially withdrew from EPA's consideration for inclusion into the SIP the portion of the definition of BAE at section 2010C stating, ''The board will allow the use of another time period upon a determination that it is more representative of normal source operation.'' Thus, EPA finds the revised definition of BAE at 9VAC5–80 section 2010C (with the provision for a different lookback period stricken) fully approvable as the definition is consistent with federal CAA requirements. EPA expects that the sentence withdrawn from the SIP submittal will be removed from the Virginia Code as soon as practicable as Virginia affirmed in its March 1, 2017 letter, and that VADEQ will implement its NSR program consistent with the approved SIP and the federal requirements for NSR in the interim. With this approval, EPA would also remove its prior limited approval for these regulations.

Finally, the federal requirement for calculating BAE for PSD and NSR provide for the use of different 24-month periods for different regulated NSR pollutants. *See* 40 CFR 51.165(a)(1)(xxxv)(B)(4) and 51.166(b)(47)(ii)(c). Under VADEQ's currently SIP-approved BAE definitions at 9VAC5–80 sections 1615C and 2010C, and 9VAC5–85 section 50, sources were required to use the same 24-month period for all regulated NSR pollutants. VADEQ has revised these provisions to allow for the use of different 24-month periods for different regulated NSR pollutants for both PSD and NSR and has submitted these revised definitions in 9VAC5–80 sections 1615C and 2010C and 9VAC5–85 section 50 in its 2015 NSR SIP Revision to be consistent with the federal requirements relating to different lookback periods for different regulated NSR pollutants. Because these revisions are consistent with federal definitions in 40 CFR 51.165 and 51.166 for using different 24-month periods for different regulated NSR pollutants, EPA finds these additional revisions in 9VAC5–80 sections 1615C and 2010C and 9VAC5–85 section 50 approvable in accordance with CAA requirements.

B. Plantwide Applicability Limits (PALs)

Federal requirements for PALs include an effective period of ten years for the plantwide permit.[1] *See* 40 CFR 51.165(f) *et seq* and 51.166(w) *et seq.* VADEQ's currently-SIP approved regulations only provided for a 5-year effective period for such plantwide permits. The 2015 NSR SIP Revision includes amended versions of 9VAC–5–80 sections 1615C, 1865C(1)(f), 2010C, and 2144C(1)(f), as well as 9VAC5–85–50, to provide for a PAL effective period of ten years, consistent with the federal regulations providing for a ten-year PAL effective period. In addition, the 2015 NSR SIP Revision includes amended versions of 9VAC5–80 sections 1865E and 2144E and 9VAC5–85–55 to allow for the use of different 24-month periods for different regulated NSR pollutants when establishing PALs, consistent with the discussion in Section II.A of this notice. Because these amended regulations for PAL effective period and baseline calculations are now consistent with federal requirements for PALs in 40 CFR 51.165 and 51.166, EPA finds these amended provisions approvable for the Virginia SIP.

C. Replacement Units

Finally, the 2015 NSR SIP Revision submittal adds definitions of ''replacement unit,'' and amends the definitions of ''emissions unit,'' under 9VAC5–80 sections 1615C and 2010C and 9VAC5–85 section 50. The effect of these revisions is to allow replacement units to be treated as existing units when calculating pre- and post-change emissions for purposes of determining NSR applicability. VADEQ's definitions of ''replacement unit'' are consistent with their federal counterparts at 40 CFR 51.165(a)(1)(xxi) and 51.166(b)(32). VADEQ's amended definitions of ''emissions unit'' are now consistent with their federal counterparts at 40 CFR 51.165(a)(1)(vii) and 51.166(b)(7), as is VADEQ's approach to calculating pre- and post-change emissions for replacement units. Thus, EPA finds these new and amended provisions in the 2015 NSR SIP Revision approvable.

EPA finds the revisions to 9VAC5–80 sections 1615, 1865, 2010, and 2144 and 9 VAC5–85 sections 50 and 55 (including the changes discussed herein as well as the minor administrative changes for grammatical and numbering consistency) consistent with CAA section 110(l). None of the revisions interfere with any applicable requirement concerning attainment of any NAAQS nor interfere with reasonable further progress or any other applicable requirement of the CAA. As

[1] A PAL is a voluntary permit option that provides the ability to manage facility-wide emissions without triggering major NSR review. The flexibility provided under a PAL facilitates the ability to respond rapidly to changing market conditions while enhancing the environmental protection afforded under the program. If facility emissions remain below a plantwide actual emissions cap (that is, an actuals PAL), then a facility can avoid major NSR permitting process when making alterations to the facility or individual emissions units that would otherwise trigger NSR permitting. In return for this flexibility, facilities must monitor emissions from all emissions units under the PAL in addition to other recordkeeping and reporting requirements.

described in this rulemaking, the revisions to the Virginia Code in the 2015 NSR SIP Revision are consistent with federal requirements for PSD and NSR in 40 CFR 51.165 and 51.166. Because the revisions are consistent with federal requirements for PSD and NSR permitting programs which permit construction and modifications in accordance with permitting and emission limitation requirements and address definitions for BAE and PAL effective periods, EPA does not expect any interference with the NAAQS from these revisions.

III. Proposed Action

EPA's review of VADEQ's 2015 NSR SIP Revision submittal indicates that it is consistent with the CAA and all of its implementing regulations. Therefore, EPA is proposing to approve the October 16, 2015 submittal, as amended on March 1, 2017, as a revision to the Virginia SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . . '' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.'' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its NSR program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the VADEQ regulations regarding definition and permitting requirements discussed in Section II of this notice. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule, pertaining to Virginia's preconstruction permitting requirements does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 21, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

[FR Doc. 2017–07820 Filed 4–17–17; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Chapter X

[Docket No. EP 664 (Sub-No. 3)]

Revisions to the Cost-of-Capital Composite Railroad Criteria

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: To better reflect the current marketplace, the Surface Transportation Board (Board) is proposing to update one of the screening criteria used to create the ''composite railroad'' for the Board's annual cost-of-capital determination. Specifically, the Board proposes that one of its screening criteria now require a company's stock to be listed on either the New York Stock Exchange (NYSE) or the Nasdaq Stock Market (NASDAQ), rather than be listed on either the NYSE or American Stock Exchange (AMEX), as the AMEX is no longer in existence.

DATES: Comments are due by May 18, 2017. Reply comments are due by June 19, 2017.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 664 (Sub-No. 3), 395 E Street SW., Washington, DC 20423–0001. Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Amy C. Ziehm, (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: One of the Board's regulatory responsibilities is to determine annually the railroad industry's cost of capital. The cost-of-capital figure represents the Board's estimate of the average rate of return needed to persuade investors to provide capital to the freight rail industry. This figure is an essential component of many of the Board's core regulatory responsibilities.

The Board calculates the cost of capital as the weighted average of the cost of debt and the cost of equity, with the weights determined by the railroad industry's capital structure (the fraction of capital from debt or equity on a market-value basis). *See Methodology to be Employed in Determining R.R. Indus.'s Cost of Capital,* EP 664, slip op. at 6 (STB served Jan. 17, 2008). The Board determines the railroad industry's cost of capital for a ''composite railroad,'' which is based on data from a sample of railroads. Pursuant to *Railroad Cost of Capital—1984,* 1 I.C.C.2d 989 (1985), the sample includes all railroads that meet the following criteria:

—The company is a Class I line-haul railroad; [1]

—If the Class I railroad is controlled by another company, the controlling company is primarily a railroad company and is not already included in the study frame; [2]

—The company's bonds are rated at least BBB by Standard & Poor's and Baa by Moody's;

—The company's stock is listed on either the NYSE or the AMEX; and

—The company has paid dividends throughout the review year. 1 I.C.C.2d at 1003–04; *see also R.R. Cost of Capital—2015,* EP 558 (Sub-No. 19), slip op. at 3 (STB served Aug. 5, 2016).

Proposed Rule

The Board proposes to revise the fourth screening criterion, which currently requires that a company's stock be listed on either the NYSE or the AMEX. The AMEX was acquired in October 2008 by NYSE Euronext, a now defunct Euro-American multinational financial services corporation that operated multiple securities exchanges. As a result, the Board's screening criteria used to determine the composite railroad should be updated to reflect the current marketplace. The Board therefore proposes that the fourth screening criterion be amended to remove the AMEX listing and instead require that a company's stock be listed on either the NYSE or the NASDAQ, the primary competitor to the NYSE.

The NASDAQ is a robust and reputable stock exchange, and the Board believes that it is a suitable replacement for the AMEX in the cost-of-capital determination. The NASDAQ is the world's second-largest stock exchange, behind only the NYSE, and the NYSE and NASDAQ combined account for the major portion of all equities trading in North America. When the Board's predecessor adopted the fourth screening criterion, it did so to ''insure the availability of stock price data.'' *Railroad Cost of Capital—1984,* 1 I.C.C.2d at 1004. By requiring applicable carriers to trade on either the NYSE or the NASDAQ, the Board would ensure the availability of stock price data for use in the Board's computation of the rail industry's cost of capital.[3] Therefore, the Board seeks public comment on its proposal to require the listing of a company's stock on either the NYSE or the NASDAQ for a railroad to be included in the composite group to determine the industry's cost of capital.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980

[1] For the definition of a Class I railroad, see fn. 4, *infra.*

[2] A company is considered to be primarily in the railroad business if at least 50% of its total assets are devoted to railroad operations. *Railroad Cost of Capital—1984,* 1 I.C.C.2d at 1003–04.

[3] For its 2015 cost of capital calculation, the Board waived its requirement that a company's stock be listed on either the NYSE or the AMEX, noting that CSX Corporation (CSX) transferred its stock exchange listing from the NYSE to the NASDAQ in 2015. *R.R. Cost of Capital—2015,* EP 558 (Sub-No. 19), slip op. at 2 n.5 (STB served Mar. 10, 2016).

(RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Sections 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities.'' Section 605(b).

Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 478, 480 (7th Cir. 2009).

This proposal will not have a significant economic impact upon a substantial number of small entities within the meaning of the RFA. A change in the listing requirement for inclusion in the composite railroad does not have a significant economic impact on the railroads included; likewise, whether or not a railroad is included in the composite group has no significant economic impact on that individual railroad. The proposed rule would therefore have no significant impact on small railroads (small entities).[4]

Paperwork Reduction Act. The Board's proposal does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

It is ordered:

1. Comments are due by May 18, 2017. Reply comments are due by June 19, 2017.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on its service date.

Decided: April 12, 2017.

By the Board, Board Members Begeman, Elliott, and Miller.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2017–07815 Filed 4–17–17; 8:45 am]

BILLING CODE 4915–01–P

[4] Effective June 30, 2016, for the purpose of RFA analysis for rail carriers subject to our jurisdiction, the Board defines a ''small business'' as a rail carrier classified as a Class III rail carrier under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual carrier operating revenues of $20 million or less in 1991 dollars, or $36,633,120 or less when adjusted for inflation using 2015 data. Class II carriers have annual carrier operating revenues of less than $250 million but in excess of $20 million in 1991 dollars, or $457,913,998 and $36,633,120 respectively, when adjusted for inflation using 2015 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

Notices

Federal Register
Vol. 82, No. 73
Tuesday, April 18, 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

Agricultural Marketing Service

[Doc. No. AMS–TM–17–0028]

USDA Farmers Market Application; Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension of and revision to the currently approved information collection for USDA Farmers Market Application. Copies of this one-time yearly application form to participate in the U.S. Department of Agriculture (USDA) Farmers Market may be obtained by calling the AMS Transportation and Marketing Program contact listed or visiting the Web site at *www.usda.gov/farmersmarket.*

DATES: Comments on this notice must be received by June 19, 2017 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Annie Ceccarini, Market Manager, Transportation and Marketing Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1097 South Building, Washington, DC 20250. Telephone 202/577–7462 or Fax 202/690–0338. Comments should reference docket number AMS–TM–17–0028.

SUPPLEMENTARY INFORMATION:

Title: USDA Farmers Market Application.

OMB Number: 0581–0229.

Expiration Date of Approval: Three years from approval.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the Secretary of Agriculture to conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market packaging, handling, transporting, distributing, and marketing agricultural products, 7 U.S.C. 1622(a). Moreover, 7 U.S.C.1622(f) directs and authorizes the Secretary to conduct and cooperate in consumer education for more effective utilization and greater consumption of agricultural products. In addition, 7 U.S.C. 1622(n) authorizes the Secretary to conduct services and to perform activities that will facilitate the marketing and utilization of agricultural products through commercial channels.

On December 23, 2005, the AMS published a final rule in the **Federal Register** (70 FR 76129) to implement established regulations and procedures under 7 CFR part 170 for AMS to operate the USDA Farmers Market, specify vendor criteria and selection procedures, and define guidelines to be used for governing the USDA Farmers Market. In conjunction, the USDA Farmers Market Application was developed to receive information from farmers and small business owners who are interested in participating in the market. Prospective vendors fill out the Application online once per year.

The information collected on the Application allows AMS the means to review and select participants for the annual market season. The type of information requested on the Application includes: (1) Certification the applicant is the owner or representative of the farm or business; (2) applicant contact information including name(s), address, phone number, and email address; (3) farm or business location; (4) types of products grown or to be sold; (5) business practices and direct sourcing relationships with local farmers, ranchers and growers; (6) weekly sales data; (7) insurance coverage; and (8) all applicable food safety documents. Vendors selected to the market provide a signed copy of the Participant Agreement, which states that the vendor has read, understands and agrees to adhere to all applicable rules and guidelines as outlined in the USDA Farmers Market Rules, Procedures, and Operating Guidelines. Sales Data is collected from vendors weekly. This information is useful in letting AMS know how well the market and vendors are doing overall.

Two new information collections—the USDA Farmers Market Customer Satisfaction Questionnaire and the VegUcation Questionnaire—are being requested so that AMS can receive feedback from market customers. The purpose of the USDA Farmers Market Customer Satisfaction Questionnaire is to learn who our customers are and what their preferences are in order to improve the USDA Farmers Market. Fruit and vegetable education classes called VegU take place weekly at the USDA Farmers Market. The classes are free for anyone to attend and are taught by USDA subject matter experts. The purpose of the VegUcation Questionnaire is to learn how familiar attendees are with the featured fruit or vegetable, if they found the class valuable, and if their attendance affected their market purchases.

Estimate of Burden: The public reporting burden for this collection is estimated to be .101 hours per response.

USDA Farmers Market Application:

Respondents: Farmers and/or small business owners complete to participate.

Estimated Number of Respondents: 68.

Estimated Total Annual Responses: 68.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 68 hours.

Participant Agreement:

Respondents: Vendors accepted into the market submit.

Estimated Number of Respondents: 32.

Estimated Total Annual Responses: 32.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0 (burden for this is included in the USDA Farmers Market Application).

Sales Data (weekly):

Respondents: Vendors accepted into the market submit each week.

Estimated Number of Respondents: 32.

Estimated Total Annual Responses: 1,664.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 133.12.

USDA Farmers Market Customer Satisfaction Questionnaire:

Respondents: Customers at the market complete voluntarily.

Estimated Number of Respondents: 520.

Estimated Total Annual Responses: 520.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 41.60.

VegUcation Questionnaire:

Respondents: Customers who attend the fruit and vegetable education program at the market complete voluntarily.

Estimated Number of Respondents: 520.

Estimated Total Annual Responses: 520.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 41.60.

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 comments will become a matter of public record and may be sent to the following address:

• *Mail:* Annie Ceccarini, Market Manager, Transportation and Marketing Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1097 South Building, Washington, DC 20250.

• *Internet: www.regulations.gov.* All written comments should be identified with the docket number AMS–TMP–14–0005. All comments received will be available for public inspection during regular business hours at the same address. It is our intention to have all comments whether submitted by mail or Internet available for viewing on the *Regulations.gov* (*www.regulations.gov*) Internet site. Comments submitted will also be available for public inspection in person at USDA–AMS, Transportation and Marketing Programs, Marketing Services Division, Room 4523-South Building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday, (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received are requested to make an appointment in advance by calling (202) 690–1300.

The information collected is used only by authorized employees of the USDA, AMS.

All responses to this notice will be summarized and included in the request for OMB approval.

Dated: April 12, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–07738 Filed 4–17–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Resource Coordinating Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Resource Coordinating Committee (Committee) will meet in Washington, DC. The Committee is established consistent with the Federal Advisory Committee Act of 1972 (FACA), and the Food, Conservation, and Energy Act of 2008 (the Act). Committee information can be found at the following Web site at *http://www.fs.fed.us/spf/coop/frcc/.*

DATES: The meeting will be held on the following dates and time:

• Wednesday, June 21, 2017, from 8:00 a.m. to 5:00 p.m., and

• Thursday, June 22, 2017, from 8:00 a.m. to 5:00 p.m.

All meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the U.S. Forest Service Headquarters, 201 14th Street, Southwest, Second Floor, Leopold Training Room, Washington, DC. For anyone who would like to attend via teleconference, please visit the Web site listed in the **SUMMARY** section or contact Scott Stewart at *sstewart@fs.fed.us* for further details.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments placed on the Committee's Web site listed above.

FOR FURTHER INFORMATION CONTACT: Scott Stewart, Designated Federal Officer, Cooperative Forestry Staff by telephone at 202–205–1618, or Nancy Stremple, Forest Resource Coordinating Committee Program Coordinator, Cooperative Forestry Staff by phone at 202–309–9873.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Report out from Committee work groups,
2. Deliver educational presentations,
3. Perform administrative tasks, and
4. Develop annual recommendations.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by June 14, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Stewart, 201 14th Street SW., Washington, DC 20024, or by email at *sstewart@fs.fed.us.* A summary of the meeting will be posted on the Web site listed above within 30 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: March 31, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–07763 Filed 4–17–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sitka Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sitka Resource Advisory Committee (RAC) will meet in Sitka, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcwXAAS.*

DATES: The meeting will be held May 25, 2017, at 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at Sitka Ranger District, Katlian Room, 2108 Halibut Point Road, Sitka, Alaska. Meeting will also be available by teleconference, to attend via teleconference, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

FOR FURTHER INFORMATION CONTACT: Lisa Hirsch, RAC Coordinator, by phone at 907–747–4214 or via email at *lisahirsch@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review project proposals, and
2. Make project recommendations for Title II funds.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 15, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Lisa Hirsch, RAC Coordinator, 2108 Halibut Point Road, Sitka, Alaska 99835; by email to *lisahirsch@fs.fed.us,* or via facsimile to 907–747–4253.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: March 30, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–07761 Filed 4–17–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pike/San Isabel National Forests and Cimarron/Comanche National Grasslands; Chaffee County Colorado; Browns Canyon National Monument Plan Assessment

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to start Browns Canyon National Monument Plan Assessment Phase.

SUMMARY: Notice of intent to start the assessment phase for The Browns Canyon National Monument Management Plan—Pike/San Isabel National Forests and Cimarron/Comanche National Grasslands (PSICC) Plan amendment and Bureau of Land Management (BLM) Eastern Colorado Resource Management Plan update. An assessment report of ecological, social, and economic conditions and trends for Browns Canyon National Monument will be prepared for the Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands (PSICC) Plan Amendment and Bureau of Land Management Resource Management Plan update.

DATES: A draft of the assessment report for the Browns Canyon National Monument, Pike/San Isabel National Forests and Cimarron/Comanche National Grasslands and BLM Royal Gorge Field Office is expected to be completed by fall 2017 and will be posted on the Pike and San Isabel National Forests Projects Web site at: *https://www.fs.usda.gov/project/?project=51098* and BLM Browns Canyon National Monument RMP link at: *https://eplanning.blm.gov/epl-frontoffice/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=69924&dctmId=0b0003e880dda953*. From April to June 2017, the public is invited to engage in a collaborative process to identify relevant baseline information and local knowledge to be considered for the assessment and development of the Browns Canyon National Monument management plan. The Forest, in coordination and cooperation with BLM, will then initiate procedures pursuant to the National Environmental Policy Act (NEPA) and prepare a joint monument management plan-Environmental Impact Statement (EIS). The Forest and BLM will again be cooperatively inviting the public to help identify the appropriate plan components that will become the NEPA proposed action and/or alternatives for the land management plan revision. The NEPA procedures result in a record of decision and the plan revision process results in a draft revised plan. The **Federal Register** availability announcement for these documents starts the pre-decisional administrative review process (36 CFR 219 Subpart B). The administrative review process provides an individual or entity an opportunity for an independent Forest Service review and resolution of issues before the final approval of a plan, plan amendment or plan revision.

ADDRESSES: Written comments or questions concerning this notice should be addressed to U.S. Forest Service—Salida Ranger District Attn.: Browns Canyon National Monument—Planning Assessment, 5575 Cleora Road, Salida, CO 81201, or by email to: *blm_co_brownscanyon@blm.gov* (subject heading Browns Canyon National Monument—Planning Assessment).

FOR FURTHER INFORMATION CONTACT: John Dow, Forest Planner at 719–553–1476 or Joseph Vieira, BLM Planner-Project Manager at (719) 246–9966. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 5 a.m. and 5 p.m., Pacific Time, Monday through

Friday. More information on the planning process can also be found on the Pike and San Isabel National Forests Web site at *https://www.fs.usda.gov/project/?project=51098*.

SUPPLEMENTARY INFORMATION: The National Forest Management Act (NFMA) of 1976 requires that every National Forest System (NFS) unit develop a land management plan. On April 9, 2012, the Forest Service finalized its land management planning rule (2012 Planning Rule), which provides broad programmatic direction to National Forests and National Grasslands for developing and implementing their land management plans.

Forest plans describe the strategic direction for management of forest resources for fifteen to twenty years, and are adaptive and amendable as conditions change over time. Under the 2012 Planning Rule, the assessment of ecological, social, and economic trends and conditions is the first stage of the planning process. The second stage is a development and decision process guided, in part, by the NEPA and includes the preparation of a draft environmental impact statement and revised Forest Plan for public review and comment, and the preparation of the final environmental impact statement and revised Forest Plan. The third stage of the process is monitoring and feedback, which is ongoing over the life of the revised forest plans. With this notice, the agency invites other governments, non-governmental parties, and the public to contribute to the development of the assessment report.

The assessment will rapidly evaluate the sustainability of existing ecological, economic, and social conditions and trends within the context of the broader landscape. It will help inform the planning process through the use of Best Available Scientific Information, while also taking into account other forms of knowledge, such as local information, national perspectives, and native knowledge. Lastly, the assessment will help identify the need to change the existing 1984 plan.

The Pike/San Isabel National Forests and Cimarron/Comanche National Grasslands and Bureau of Land Management Royal Gorge Field Office, with lands administered in Chaffee County, Colorado are initiating the Browns Canyon National Monument (NM) planning assessment and management plan process pursuant to Proclamation 9232, establishing the monument specifically states: *In the development and implementation of the management plan, the Secretaries (USDA and Department of Interior) shall maximize opportunities, pursuant to applicable legal authorities, for shared resources, operational efficiency, and cooperation.* A joint agency assessment process will be performed in cooperation with the BLM and National Conservation Lands. The assessment process and results are to be used to inform a Browns Canyon NM Management Plan describing the strategic direction for management of monument resources, objects, and values for the next 15 to 20 years on the Pike/San Isabel National Forests and Cimarron/Comanche National Grasslands and BLM Royal Gorge Field Office.

The Browns Canyon NM Management Plan will amend the PSICC's Land and Resource Management Plan and be incorporated into the BLM's Royal Gorge Field Office Eastern Colorado Resource Management Plan during revision. The first phase of the process, the assessment phase, has begun and interested parties are invited to contribute to the development of the assessment (36 CFR 219.12–17).

Additional information on public participation opportunities will be available on the project Web site: *https://www.fs.usda.gov/project/?project=51098* and BLM Browns Canyon National Monument RMP link at *https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=69924&dctmId=0b0003e880dda953*. The trends and conditions identified in the assessment will help in identifying the need for change, in the development of plan components.

Collaboration as part of the assessment phase supports the development of relationships of key stakeholders throughout the plan revision process, and is an essential step to understanding current conditions, available data, and feedback needed to support a strategic, efficient planning process. As public meetings, other opportunities for public engagement, and public review and comment opportunities are identified to assist with the development of the forest plan revision, public announcements will be made, and notifications will be posted on the Browns Canyon National Monument Project Web page at *https://www.fs.usda.gov/project/?project=51098* and information will be sent out to the Forest's mailing list. If anyone is interested in being on the Forest's mailing list to receive these notifications, please contact John Dow, Forest Planner at 719–553–1476 or Joseph Vieira, BLM Planner-Project Manager at (719) 246–9966 at the mailing address identified above, or by sending an email to: *blm_co_brownscanyon@blm.gov* (subject heading titled Browns Canyon National Monument—Planning Assessment).

Responsible Official: The responsible official for the Browns Canyon National Monument management plan for the Pike/San Isabel National Forests and Cimarron/Comanche National Grasslands is Erin Connelly, Forest Supervisor, Pike/San Isabel National Forests and Cimarron/Comanche National Grasslands, 2840 Kachina Drive, Pueblo, CO 81008.

Dated: April 7, 2017.

Glenn Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–07797 Filed 4–17–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee (LTBFAC) will meet in South Lake Tahoe, California. The Committee is established pursuant to Executive Order 13057, and the Federal Advisory Committee Act of 1972. Additional information concerning the Committee can be found by visiting the Committee's Web site at: *http://www.fs.usda.gov/goto/ltbmu/LTFAC.*

DATES: The meeting will be held on Friday, May 1, 2017, from 1:00 p.m. to 3:00 p.m.

All LTBFAC meetings are subject to cancellation. For updated status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the USDA Forest Service, 35 College Drive, South Lake Tahoe, California.

FOR FURTHER INFORMATION CONTACT: Heather Noel, Lake Tahoe Basin

Management Unit, USDA Forest Service, 35 College Drive, South Lake Tahoe, California 96150 by phone at 530–543–2608, or by email at *hmnoel@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to:

1. Share information on the Lake Tahoe Restoration Act Priority List projects and submission information,

2. Finalize the prioritization of the South Nevada Public Land Management Act (SNPLMA) secondary project list and provide a recommendation,

3. Provide Lake Tahoe Federal Advisory Committee membership and vacancy information, and

4. Provide information on what's next for LTFAC.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by April 12, 2017, to be scheduled on the agenda. However, anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Written comments, time requests for oral comments, or requests for remote access via a conference call line must be sent to Heather Noel, USDA Forest Service, Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, California 96150; by email at *hmnoel@fs.fed.us,* or via facsimile to 530–543–2693.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: March 30, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–07762 Filed 4–17–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Region Recreation Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern Region Recreation Resource Advisory Committee (Recreation RAC) will meet in Decatur, Georgia. The Recreation RAC is authorized pursuant with the Federal Lands Recreation Enhancement Act of 2004 (the Act) and the Federal Advisory Committee Act of 1972 (FACA). Additional information concerning the Recreation RAC can be found by visiting the Recreation RAC's Web site at: *http://www.fs.usda.gov/main/r8/recreation/racs.*

DATES: The meeting will be held on:

- Tuesday, May 9, 2017, from 8:30 a.m.–5:00 p.m.; and
- Wednesday, May 10, 2017, from 8:30 a.m.–5:00 p.m.

All Recreation RAC meetings are subject to cancellation. For status of the meetings prior to attendance, please contact the person listed under the **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held on Tuesday, May 9, 2017 at the Courtyard Marriott, 130 Clairemont Avenue, Decatur, Georgia and Wednesday, May 10, 2017 on a field trip at the Chattahoochee-Oconee National Forest. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the USDA Forest Service, 1720 Peachtree Road, Northwest, Atlanta, Georgia. Visitors are encouraged to call ahead at 404–347–2769 to facilitate entry into the USDA Forest Service building.

FOR FURTHER INFORMATION CONTACT: Tiffany Williams, Committee Coordinator, USDA Forest Service, 1720 Peachtree Road NW., Atlanta, Georgia 30309, or by phone at 404–347–2769.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

(1) Discuss preliminary administrative work such as adoption of by-laws;

(2) Review of procedures such as roles and responsibilities, FACA, and ethics;

(3) Review the fee proposal schedule; and

(4) View some of the Southern Region's recreation sites and programs.

The meeting is open to the public. Written comments and time requests for oral comments must be sent to Tiffany Williams, Committee Coordinator, USDA Forest Service, 1720 Peachtree Road Northwest, Atlanta, Georgia 30309; by email to *tiffanypwilliams@fs.fed.us,* or via facsimile to 404–347–6217. A summary of the meeting will be posted on the Web site listed above within 21 days of the meeting.

Meeting Accommodations: If you require reasonable accommodation, please make your request in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation, please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: March 30, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–07835 Filed 4–17–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[3/24/2017 through 4/2/2017 (Amended)]

Firm name	Firm address	Date accepted for investigation	Product(s)
Auburn Manufacturing, Inc	P.O. Box 220, Mechanic Falls, ME 04256.	3/27/2017	The firm manufactures high performance coated textiles and composite fabrics for extreme temperature applications.
Boose Aluminum Foundry Company, Inc.	77 North Reamstown Road, Reamstown, PA 17567.	3/27/2017	The firm manufactures high-quality aluminum sand castings for an array of industries.
Clemco Industries Corporation	1 Cable Car Drive, Washington, MO 63090.	3/28/2017	The firm manufactures air powered blast equipment for outdoor use.
Masterclock, Inc.	2484 West Clay Street, Saint Charles, MO 63301.	3/28/2017	The firm manufactures precise timing equipment.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2017–07760 Filed 4–17–17; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–24–2017]

Foreign-Trade Zone 145—Shreveport, Louisiana; Application for Subzone; Glovis America, Inc.; Shreveport, Louisiana

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Caddo-Bossier Parishes Port Commission, grantee of FTZ 145, requesting subzone status for the facility of Glovis America, Inc., located in Shreveport, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 12, 2017.

The proposed subzone (530 acres) is located at 7600 General Motors Boulevard in Shreveport. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 30, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 12, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: April 12, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–07809 Filed 4–17–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–858]

Certain Oil Country Tubular Goods From India: Final Results of Countervailing Duty Administrative Review; 2013–2014

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

SUMMARY: The Department is conducting this administrative review of the countervailing duty order on certain oil country tubular goods from India pursuant to a request for review by Jindal SAW Ltd. (Jindal SAW). The period of review (POR) is December 23, 2013, through December 31, 2014. On October 14, 2016, the Department published the preliminary results of the administrative review. Based on an analysis of the comments received after the preliminary results, the Department has made changes to the subsidy rate determined for Jindal SAW. The final subsidy rate is listed in the ''Final Results of Administrative Review'' section below.

DATES: Effective April 18, 2017.

FOR FURTHER INFORMATION CONTACT: Elfi Blum, AD/CVD Operations, Office VII, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0197.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. For a complete description of the scope of the order, *see* Appendix II to this notice.

Analysis of Comments Received

The issues raised by Jindal SAW and the Government of India (GOI) in their

case briefs, and by Domestic Interested Parties [1] in their rebuttal brief, are addressed in the Issues and Decision Memorandum.[2] The issues are identified in the Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/enforcement/frn/index.html.* The signed Issues and Decision Memorandum and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

The Department published the preliminary results of this administrative review on October 14, 2016.[3] Based on comments received from Jindal SAW, we made changes to the benchmark and benefit calculations for the Provision of Mining Rights of Iron Ore program and corrected our benefit calculations for the Duty Drawback scheme (DDB) by excluding Jindal SAW's 2013 benefits earned under the DDB from the numerator in our calculations. For a discussion of these issues, *see* the Issues and Decision Memorandum and Memorandum to the File from Elfi Blum, International Trade Compliance Analyst, titled ''Final Results of 2013–2014 Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from India—Jindal SAW Ltd.,'' each dated concurrently with these final results.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a description of the methodology underlying all of the Department's conclusions, see the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with section 751(a)(1) of the Act and 19 CFR 351.221(b)(5), we determine the total net countervailable subsidy rate for the period December 23, 2013, through December 31, 2014 to be:

Manufacturer/ exporter	Subsidy rate (percent *ad valorem*)
Jindal SAW Ltd	14.41

Assessment and Cash Deposit Requirements

In accordance with 19 CFR 351.212(b)(2), the Department intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of the final results of this review. The Department will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered or withdrawn from warehouse, for consumption from December 23, 2013, through December 31, 2014, at the percentage rate, as listed above, of the entered value.

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amount shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

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

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 12, 2017.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I—Issues and Decision Memorandum

I. Summary
II. Scope of the Order
III. Period of Review
IV. Subsidies Valuation Information
  A. Allocation Period
  B. Attribution of Subsidies
  C. Benchmarks Interest Rates
  D. Denominator
V. Analysis of Programs
  A. Programs Determined To Be Countervailable
  B. Programs Determined To Be Not Used or to Provide No Benefit During the POR
  C. Programs Determined To Be Terminated
VI. Final Results of Review
VII. Analysis of Comments
Comment 1: Whether Jindal SAW's mining rights of iron ore are a countervailable subsidy.
Comment 2: Whether the Department relied upon an incorrect benchmark for both iron ore and freight in its preliminary results.
Comment 3: Whether the Department incorrectly countervailed licenses attributable to non-subject merchandise under the advance authorization program (AAP).
Comment 4: Whether the Department incorrectly countervailed licenses attributable to non-subject merchandise under the Export Promotion Capital Goods Scheme (EPCGS).
Comment 5: Whether the Department should deduct an amount for CENVAT from the benefit calculation under the EPCGS.
Comment 6: Whether the Department conducted a selective/incomplete analysis of elements in determining a countervailable subsidy in the context of Article 1.1 of the Agreement on Subsidies and Countervailing Duty Measures (ASCM), the Tariff Act of 1930, as amended (the Act), and the Department's regulations, by mechanically relying on past decisions.
Comment 7: Whether the Department should consider other factors adversely impacting the domestic industry during the POR.
Comment 8: Whether the Department erred in countervailing certain exemptions, remissions, and drawbacks of indirect taxes in the context of Article 12, Article

[1] Energex Tube, TMK IPSCO, Vallourec Star L.P., and Welded Tube USA (collectively, Domestic Interested Parties).

[2] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Oil Country Tubular Goods from India; 2013–2014,'' dated concurrently with this notice and herein incorporated by reference (Issues and Decision Memorandum).

[3] *See Certain Oil Country Tubular Goods From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review,* 81 FR 71059 (October 14, 2016) (*Preliminary Results 2013–2014*).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

27, Annex II, and Annex VII of the ASCM.

Comment 9: Whether the Department's analysis of certain programs is inconsistent with the ASCM, the Act, and the Department's regulations, as they do not involve a financial contribution and do not confer a benefit

Comment 10: Whether the Department made a calculation error in the benefit calculation of duty drawback (DDB).

Appendix II—Scope of the Order

The merchandise covered by the order is certain oil country tubular goods (''OCTG''), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: Casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

[FR Doc. 2017–07806 Filed 4–17–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–853]

Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review; 2015–2016

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

SUMMARY: On January 30, 2017, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on citric acid and certain citrate salts from Canada. The review covers one producer/exporter of the subject merchandise, Jungbunzlauer Canada, Inc. (JBL Canada). The period of review (POR) is May 1, 2015, through April 30, 2016. The final weighted-average dumping margin for JBL Canada, which does not differ from the preliminary results, is listed below in the ''Final Results of Review'' section of this notice.

DATES: Effective April 18, 2017.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers one producer/exporter of the subject merchandise, JBL Canada. On January 30, 2017, the Department published in the **Federal Register** the *Preliminary Results.*[1] We invited parties to comment on the *Preliminary Results.*[2] No interested party submitted comments.[3] Further, no party submitted a request for a hearing in the instant review. The Department conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[4]

The merchandise subject to the order is citric acid and certain citrate salts from Canada. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2918.14.0000, 2918.15.1000, 2918.15.5000, and 3824.90.9290. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in the Preliminary Decision Memorandum,[5] remains dispositive.

Changes Since the Preliminary Results

As no parties submitted comments on the margin calculation methodology used in the *Preliminary Results,* the Department made no adjustments to that methodology in the final results of this review.

Final Results of the Review

As a result of this review, the Department determines that the following weighted-average dumping margin exists for entries of subject merchandise that were produced and/or exported by the following company during the POR:

Manufacturer/Exporter	Weighted-average margin (percent)
Jungbunzlauer Canada, Inc	0.00

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review, pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b).[6] Because we calculated a zero margin for JBL Canada in the final results of this review, we intend to

[1] *See Citric Acid and Citrate Salts from Canada: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 8722 (January 30, 2017) (*Preliminary Results*), and accompanying *Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from Canada from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance* (Preliminary Decision Memorandum).

[2] *Preliminary Results,* 82 FR at 8723.

[3] JBL Canada submitted a case brief stating: ''Respondent JBL has no comments on the Department's *Preliminary Results.* We reserve the right to submit a rebuttal brief in response to any issues which may be raised by petitioners in their case brief.'' *See* Letter from JBL ''*Seventh Administrative Review of the Antidumping Order on Citric Acid and Certain Citrate Sales from Canada—JBL Canada's Case Brief,*'' dated March 1, 2017.

[4] *See Citric Acid and Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders,* 74 FR 25703 (May 29, 2009) (the *Order*).

[5] For a complete description of the scope of the *Order,* see the Preliminary Decision Memorandum at 2, which can be accessed directly at *http://enforcement.trade.gov/frn/.*

[6] *See* section 751(a)(2)(C) of the Act and 19 CFR 351.212(b).

instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The Department intends to issue the appropriate assessment instructions to CBP 41 days after the date of publication of these final results of review, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of these final results for all shipments of citric acid and certain citrate salts from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for JBL Canada will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 23.21 percent, the all-others rate established in the *Order.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

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

Notification to Interested Parties

We intend to issue and publish these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: April 13, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–07805 Filed 4–17–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014

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

SUMMARY: On October 14, 2016, the Department published the preliminary results of the administrative review of the countervailing duty order on certain new pneumatic off-the-road tires (OTR Tires) from People's Republic of China (PRC). This review covers 47 companies, only two of which were selected as mandatory respondents: Guizhou Tyre Co., Ltd. (Guizhou Tyre) and Xuzhou Xugong Tyres Co. Ltd. (Xuzhou Xugong). The period of review (POR) is January 1, 2014, through December 31, 2014. Based on an analysis of the comments received, the Department has made changes to the subsidy rates that were preliminary determined for Guizhou Tyre and Xuzhou Xugong. The final subsidy rates are listed in the ''Final Results of Administrative Review'' section below.

DATES: Effective April 18, 2017.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang or Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5484 or (202) 482–1396.

Scope of the Order

The products covered by the scope are new pneumatic tires designed for off-the-road (OTR) and off-highway use. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.70.0010, 4011.62.00.00, 4011.80.1020, 4011.90.10, 4011.70.0050, 4011.80.1010, 4011.80.1020, 4011.80.2010, 4011.80.2020, 4011.80.8010, and 4011.80.8020. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope, which is contained in the accompanying Issues and Decision Memorandum, is dispositive.[1]

Analysis of Comments Received

The issues raised by Guizhou Tyre, Xuzhou Xugong, Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC), the Government of the People's Republic of China (GOC), and Titan Tire Corporation (Titan) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (the USW) (collectively, the petitioners) in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum.[2] The issues are identified in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/enforcement/frn/index.html.* The signed Issues and Decision Memorandum and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

The Department published the preliminary results of this administrative review of OTR Tires from

[1] For a full description of the scope of the order, *see* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald Lorentzen, Acting Assistant Secretary for Enforcement and Compliance,'' Issues and Decision Memorandum for the Final Results in the Countervailing Duty Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2014,'' dated concurrently with this notice and herein incorporated by reference (Issues and Decision Memorandum).

[2] *Id.*

PRC on October 14, 2016.[3] Based on the comments received from all interested parties, we made revisions to some of our benchmark and benefit calculations for both Guizhou Tyre and Xuzhou Xugong. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a description of the methodology underlying all of the Department's conclusions, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with section 777A(e)(1) of the Act and 19 CFR 351.221(b)(5), we determine the total net countervailable subsidy rates for the period January 1, 2014, through December 31, 2014 for each of the mandatory respondents, Guizhou Tyre and Xuzhou Xugong. For the non-selected respondents, we followed the Department's practice, which is to base the subsidy rates on an average of the subsidy rates calculated for those companies selected for individual review, excluding *de minimis* rates or rates based on entirely on adverse facts available.[5] In this case, we assigned to the non-selected respondents the simple average of the rates calculated for Guizhou Tyre and Xuzhou Xugong. We are using a simple, rather than a weighted, average due to inconsistent units of measure in the publicly ranged quantity and value data provided by Guizhou Tyre and Xuzhou Xugong. For a list of the non-selected companies, please see Appendix II.

We find the countervaible subsidy rates for the producers/exporters under review to be as follows:

Manufacturer/exporter	Subsidy rate (percent *ad valorem*)
Guizhou Tyre Co., Ltd	34.46
Xuzhou Xugong Tyres Co., Ltd	46.01
Non Selected Companies	40.24

Assessment and Cash Deposit Requirements

In accordance with 19 CFR 351.212(b)(2), the Department intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of the final results of this review. The Department will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered or withdrawn from warehouse, for consumption from January 1, 2014, through December 31, 2014, at the percent rates, as listed above for each of the respective companies, of the entered value.

The Department intends also to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. Accordingly, the cash deposit requirements that will be applied to companies covered by this order, but not examined in this administrative review, are those established in the most recently completed segment of the proceeding for each company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

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

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 12, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Subsidies Valuation Information
  A. Allocation Period
  B. Attribution of Subsidies
  C. Denominator
  D. Creditworthiness
V. Benchmarks and Discount Rates
VI. Analysis of Programs
  A. Programs Determined To Be Countervailable
  B. Programs Determined To Be Not Used
  C. Programs Determined To Provide No Benefit During the POR
VII. Analysis of Comments
  Comment 1: Whether to Make Changes in LTAR Calculations
  Comment 2: Whether to Change the Benchmark for Synthetic Rubber
  Comment 3: Whether Brokerage and Handling Costs Should be Included in LTAR Benchmarks for Nylon Cord and Carbon Black
  Comment 4: Whether the Department Should Continue To Rely on a Tier 2 Benchmark for Nylon Cord
  Comment 5: Whether the ''Well-Know Brand Reward'' Benefit Should be Calculated Using Xuzhou Xugong's Total Sales or Export Sales
  Comment 6: Whether the Department Should Make Changes to Land Purchases From Affiliates and Calculate a Benefit for Land Parcel #7 for Guizhou Tyre
  Comment 7: Whether the VAT and Import Duty Exemptions Should be Countervailable
  Comment 8: The Sales Denominator Used To Calculate Guizhou Tyre and Xuzhou Xugong
  Comment 9: Whether to Countervail Additional Grants to Guizhou Tyre
  Comment 10: Whether the Department Should Find the Export Buyer's Credit Program Used in This Case
VIII. Conclusion

Appendix II—Companies Not Selected for This Review

1. Air Sea Transport Inc.
2. Beijing Kang Jie Kong Intl Cargo Agent Co Ltd.
3. C&D Intl Freight Forward Inc.
4. Caesar Intl Logistics Co Ltd.
5. CD Intl Freight Forwarding.
6. Cheng Shin Rubber (Xiamen) Ind Ltd.
7. China Intl Freight Co Ltd.
8. Chonche Auto Double Happiness Tyre Corp Ltd.
9. City Ocean Logistics Co Ltd.
10. Consolidator Intl Co Ltd.
11. CTS Intl Logistics Corp.

[3] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2014,* 81 FR 71056 (October 14, 2016) (*Preliminary Results*).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

[5] *See, e.g., Certain Pasta from Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 18806, 18811 (April 13, 2010) unchanged in *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Adminstrative Review,* 75 FR 37386 (June 29, 2010).

12. De Well Container Shipping Inc.
13. England Logistics (Qingdao) Co Ltd.
14. Extra Type Co Ltd.
15. Fedex International Freight Forwarding Services Shanghai Co Ltd.
16. FG Intl Logistic Ltd.
17. JHJ Intl Transportation Co.
18. Kendra Rubber (China) Co Ltd.
19. Landmax Intl Co Ltd.
20. Orient Express Container Co Ltd.
21. Pudong Prime Intl Logistics Inc.
22. Qingdao Aotai Rubber Co Ltd.
23. Qingdao Chengtai Handtruck Co Ltd.
24. Qingdao Chuangtong Founding Co Ltd.
25. Qingdao Ftz Full-World Intl Trading Co Ltd.
26. Qingdao Haomai Hongyi Mold Co Ltd.
27. Qingdao Kaoyoung Intl Logistics Co Ltd.
28. Qingdao Milestone Tyres Co Ltd.
29. Qingdao Nexten Co Ltd.
30. Qingdao Wonderland.
31. Schenker China Ltd.
32. SGL Logistics South China Ltd.
33. Shanghai Grand South Intl Transportation Co Ltd.
34. Shanghai Hua Shen Imp & Exp Co Ltd.
35. Shanghai Part-Rich Auto Parts Co Ltd.
36. Thi Group (Shanghai) Ltd.
37. Tianjin United Tire & Rubber International Co., Ltd.
38. Toll Global Forwarding China Ltd.
39. Translink Shipping Inc.
40. Trelleborg Wheel Systems Hebei Co.
41. Universal Shipping Inc.
42. UTI China Ltd.
43. Weiss-Rohlig China Co Ltd.
44. World Bridge Logistics Co Ltd.

[FR Doc. 2017–07807 Filed 4–17–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Large Pelagic Fishing Survey.

OMB Control Number: 0648–0380.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 15,024.

Average Hours per Response: 11 minutes for a telephone interview; 5 minutes for a dockside interview; 1½ minutes to respond to a follow-up validation call for dockside interviews; 1 minute for a biological sampling of catch.

Burden Hours: 3,608.

Needs and Uses: This request is for extension of a currently approved information collection. The Large Pelagic Fishing Survey consists of dockside and telephone surveys of recreational anglers for large pelagic fish (tunas, sharks, and billfish) in the Atlantic Ocean. The survey provides the National Marine Fisheries Service (NMFS) with information to monitor catch of bluefin tuna, marlin and other federally managed species. Catch monitoring in these fisheries and collection of catch and effort statistics for all pelagic fish is required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. The information collected is essential for the United States (U.S.) to meet its reporting obligations to the International Commission for the Conservation of Atlantic Tuna.

Affected Public: Business or other for-profit organizations.

Frequency: Annually, weekly or on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 12, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–07756 Filed 4–17–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2017–OS–0016]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Rescindment of a System of Records notice.

SUMMARY: The Office of the Secretary of Defense is rescinding a system of records, DPR 31, Personal Commercial Solicitation Evaluation. These files document service member experiences with sales representatives soliciting on DoD installations.

DATES: Comments will be accepted on or before May 18, 2017. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination. The specific date when this system ceased to be a Privacy Act System of Records is unknown.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To submit general questions about the rescinded system, please contact Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: Based on a recent program review, it was determined that these records are presently retrieved by company and sales representative name, rather than the personal identifier of the service member.

The Office of the Secretary systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties and Transparency Division Web site at *http://defense.gov/privacy.*

The proposed rescindment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

SYSTEM NAME AND NUMBER:

Personal Commercial Solicitation Evaluation, DPR 31.

HISTORY:

July 19, 2006, 71 FR 41000.

Dated: April 13, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–07829 Filed 4–17–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board Meeting Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's Web site at *http://www.iwr.usace.army.mil/Missions/Navigation/InlandWaterwaysUsersBoard.aspx.*

DATES: The Army Corps of Engineers, Inland Waterways Users Board will meet from 9:00 a.m. to 1:00 p.m. on May 17, 2017. Public registration will begin at 8:15 a.m.

ADDRESSES: The Inland Waterways Users Board meeting will be conducted at the Embassy Suites by Hilton Charleston, 300 Court Street, Charleston, WV 25301, 304–347–8700.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GM, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–6438; and by email at *Mark.Pointon@usace.army.mil.* Alternatively, contact Mr. Kenneth E. Lichtman, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GW, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–8083; and by email at *Kenneth.E.Lichtman@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

Agenda: At this meeting the agenda will include the status of FY 2017 funding for the Navigation Program; status of the Inland Waterways Trust Fund and project updates; implementing modifications to the web viewer of the Lock Performance Monitoring System (LPMS); status of the Olmsted Locks and Dam Project, and the Locks and Dams 2, 3, and 4 on the Monongahela River Project; update of Chickamauga Lock; presentation of Kentucky Lock cost increases and efficient funding; update of the Inner Harbor Navigation Canal (IHNC) Lock Project; and presentation on the combining of Brazos River Floodgates and Colorado River Locks into a single study.

Availability of Materials for the Meeting. A copy of the agenda or any updates to the agenda for the May 17, 2017 meeting. The final version will be provided at the meeting. All materials will be posted to the Web site after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.1 65, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 8:15 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact Mr. Pointon, the committee DFO, or Mr. Lichtman, the ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Pointon, the committee DFO, or Mr. Lichtman, the committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three business (3) days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is

relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2017–07671 Filed 4–17–17; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2017–ICCD–0052]

Agency Information Collection Activities; Comment Request; Revision of the National Center for Education Statistics (NCES) Confidentiality Pledges Under Confidential Information Protection and Statistical Efficiency Act (CIPSEA) and Education Sciences Reform Act of 2002 (ESRA 2002)

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: The National Center for Education Statistics (NCES) is announcing revisions to the confidentiality pledge(s) it provides to its respondents under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) and under the Education Sciences Reform Act of 2002 (ESRA 2002). These revisions are required by the passage and implementation of provisions of the Federal Cybersecurity Enhancement Act of 2015, which permits and requires the Secretary of Homeland Security to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. More details on this announcement are presented in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Interested persons are invited to submit comments on or before June 19, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0052. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 224–84, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Dr. Cleo Redline by telephone at 202–245–7695 (this is not a toll-free number); by email at *cleo.redline@ed.gov;* or by mail at the National Center for Education Statistics, Potomac Center Plaza, 550 12th Street SW., Washington DC 20202. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: Federal statistics provide key information that the Nation uses to measure its performance and make informed choices about education, employment, health, investments, budgets, taxes, and a host of other significant topics. The overwhelming majority of Federal surveys are conducted on a voluntary basis. Respondents, ranging from businesses to households to institutions, may choose whether or not to provide the requested information. Many of the most valuable Federal statistics come from surveys that ask for highly sensitive information such as proprietary business data from companies or particularly personal information or practices from individuals.

Confidential Information and Protection and Statistical Efficiency Act (CIPSEA)

Strong and trusted confidentiality and exclusively statistical use pledges under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) and similar statistical confidentiality pledges are effective and necessary in honoring the trust that businesses, individuals, and institutions, by their responses, place in statistical agencies. Under CIPSEA and similar statistical confidentiality protection statutes, many Federal statistical agencies make statutory pledges that the information respondents provide will be seen only by statistical agency personnel or their sworn agents, and will be used only for statistical purposes. CIPSEA and similar statutes protect the confidentiality of information that agencies collect solely for statistical purposes and under a pledge of confidentiality. These acts protect such statistical information from administrative, law enforcement, taxation, regulatory, or any other non-statistical use and immunize the information submitted to statistical agencies from legal process. Moreover, many of these statutes carry criminal penalties of a Class E felony (fines up to $250,000, or up to five years in prison, or both) for conviction of a knowing and willful unauthorized disclosure of covered information.

As part of the Consolidated Appropriations Act for Fiscal Year 2016 signed on December 17, 2015, the Congress included the Federal Cybersecurity Enhancement Act of 2015 (6 U.S.C. 151). This Act, among other provisions, permits and requires the Secretary of Homeland Security to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. The technology currently used to provide this protection against cyber malware is known as Einstein 3A; it electronically searches Internet traffic in and out of Federal civilian agencies in real time for malware signatures.

When such a signature is found, the Internet packets that contain the malware signature are shunted aside for further inspection by Department of Homeland Security (DHS) personnel. Because it is possible that such packets entering or leaving a statistical agency's information technology system may contain a small portion of confidential statistical data, statistical agencies can no longer promise their respondents that their responses will be seen only by statistical agency personnel or their sworn agents.

Accordingly, DHS and Federal statistical agencies, in cooperation with their parent departments, have developed a Memorandum of Agreement for the installation of Einstein 3A cybersecurity protection technology to monitor their Internet traffic.

However, many current CIPSEA and similar statistical confidentiality pledges promise that respondents' data will be seen only by statistical agency personnel or their sworn agents. Since it is possible that DHS personnel could see some portion of those confidential data in the course of examining the suspicious Internet packets identified by Einstein 3A sensors, statistical agencies need to revise their confidentiality pledges to reflect this process change.

Therefore, the National Center for Education Statistics (NCES) is providing this notice to alert the public to these confidentiality pledge revisions in an efficient and coordinated fashion.

Under CIPSEA, the following is the revised statistical confidentiality pledge for applicable NCES data collections, with the new line added to address the new cybersecurity monitoring activities bolded for reference only:

The information you provide will be used for statistical purposes only. In accordance with the Confidential Information Protection provisions of Title V, Subtitle A, Public Law 107–347 and other applicable Federal laws, your responses will be kept confidential and will not be disclosed in identifiable form to anyone other than employees or agents. By law, every NCES employee as well as every agent, such as contractors and NAEP coordinators, has taken an oath and is subject to a jail term of up to 5 years, a fine of $250,000, or both if he or she willfully discloses ANY identifiable information about you. **Electronic submission of your information will be monitored for viruses, malware, and other threats by Federal employees and contractors in accordance with the Cybersecurity Enhancement Act of 2015.**

The following listing shows the current NCES Paperwork Reduction Act (PRA) OMB number and information collection title whose CIPSEA confidentiality pledge will change to reflect the statutory implementation of DHS' Einstein 3A monitoring for cybersecurity protection purposes:

OMB control No.	Information collection title
1850–0928	National Assessment of Educational Progress (NAEP) 2017.

Education Sciences Reform Act of 2002 (ESRA 2002)

NCES sample surveys are governed by additional laws, one of which is the Education Sciences Reform Act of 2002 (ESRA 2002) (20 U.S.C. 9573). Under ESRA 2002, the information respondents provide can be seen only by statistical agency personnel or their sworn agents, and may not be disclosed, or used, in identifiable form for any other purpose, except in the case of an authorized investigation or prosecution of an offense concerning national or international terrorism. Under ESRA 2002, the Attorney General is permitted to petition a court of competent jurisdiction for an ex parte order requiring the Secretary of Education to provide data relevant to an authorized investigation or prosecution of an offense concerning national or international terrorism. Thus, ESRA 2002 affords many of the same protections as CIPSEA, that is, surveys conducted under ESRA 2002 are protected from administrative, taxation, regulatory, and many other non-statistical uses and the disclosure of information carries criminal penalties of a Class E felony (fines up to $250,000, or up to five years in prison, or both) for conviction of a knowing and willful unauthorized disclosure of covered information for any non-statistical uses, except as noted previously, in the case of an authorized investigation concerning national or international terrorism.

As part of the Consolidated Appropriations Act for Fiscal Year 2016 signed on December 17, 2015, the Congress included the Federal Cybersecurity Enhancement Act of 2015 (6 U.S.C. 151). This Act, among other provisions, permits and requires the Secretary of Homeland Security to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. Since it is possible that DHS personnel could see some portion of the confidential data collected under ESRA 2002 in the course of examining the suspicious Internet packets identified by Einstein 3A sensors, the National Center for Education Statistics needs to revise the confidentiality pledges made under ESRA 2002 to reflect this process change.

Therefore, the National Center for Education Statistics (NCES) is providing this notice to alert the public to these confidentiality pledge revisions in an efficient and coordinated fashion.

Under ESRA 2002, the following is the revised statistical confidentiality pledge for applicable NCES data collections, with the new line added to address the new cybersecurity monitoring activities bolded for reference only:

All of the information you provide may be used only for statistical purposes and may not be disclosed, or used, in identifiable form for any other purpose except as required by law (20 U.S.C. 9573 **and 6 U.S.C. 151**)

The following listing shows the current NCES Paperwork Reduction Act (PRA) OMB numbers and information collection titles whose ESRA 2002 confidentiality pledge will change to reflect the statutory implementation of DHS' Einstein 3A monitoring for cybersecurity protection purposes:

OMB control No.	Information collection title
1850–0631	2012/17 Beginning Postsecondary Students Longitudinal Study (BPS:12/17).
1850–0695	Trends in International Mathematics and Science Study (TIMSS 2019) Pilot Test.
1850–0733	Fast Response Survey System (FRSS) 108: Career and Technical Education (CTE) Programs in Public School Districts.
1850–0755	Program for International Student Assessment (PISA 2018) Field Test.
1850–0852	High School Longitudinal Study of 2009 (HSLS:09) Second Follow-up Main Study.
1850–0870	Program for the International Assessment of Adult Competencies (PIAAC) 2017 National Supplement.
1850–0888	2018 Teaching and Learning International Survey (TALIS 2018) Field Test.
1850–0911	Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) Operational Field Test (OFT) and Recruitment for Main Study Base-year.
1850–0923	ED School Climate Surveys (EDSCLS) National Benchmark Study.
1850–0929	International Computer and Information Literacy Study (ICILS 2018) Field Test.
1850–0931	NCER–NPSAS Grant Study—Connecting Students with Financial Aid (CSFA) 2017: Testing the Effectiveness of FAFSA Interventions on College Outcomes.
1850–0932	NCER–NPSAS Grant Study—Financial Aid Nudges 2017: A National Experiment to Increase Retention of Financial Aid and College Persistence.
1850–0934	Principal Follow-Up Survey (PFS 2016–17) to the National Teacher and Principal Survey (NTPS 2015–16).
1850–0803 v.174	The National Assessment of Educational Progress (NAEP) Oral Reading Fluency Pilot Study 2017.

OMB control No.	Information collection title
1850–0803 v.176	National Assessment of Educational Progress (NAEP) Survey Assessments Innovations Lab (SAIL) English Language Arts (ELA) Collaboration and Inquiry Study 2017.
1850–0803 v.177	2017 Integrated Postsecondary Education Data System (IPEDS) Time Use and Burden Cognitive Interviews Round 1.
1850–0803 v.178	ED School Climate Surveys (EDSCLS) Additional Item Cognitive Interviews—Set 2 Round 2.
1850–0803 v.179	National Assessment of Educational Progress (NAEP) Pretesting of Survey and Cognitive Items for Pilot in 2017 and 2018.
1850–0803 v.180	National Assessment of Educational Progress (NAEP) 2017 Feasibility Study of Middle School Transcript Study (MSTS).
1850–0803 v.181	National Assessment of Educational Progress (NAEP) Digitally Based Assessments (DBA) Usability Study 2017–18.
1850–0803 v.182	2017 National Household Education Survey (NHES) Web Data Collection Test.
1850–0803 v.186	National Household Education Surveys Program 2019 (NHES:2019) Focus Groups with Parents of Students using Virtual Education.
1850–0803 v.187	National Household Education Surveys Program (NHES) 2017 Web Test Debriefing Interviews for Parents of Homeschoolers.
1850–0803 v.189	2017–2018 National Teacher and Principal Survey (NTPS) Portal Usability Testing.
1850–0803 v.191	NCER- NPSAS Grant Study—Connecting Students with Financial Aid (CSFA) 2017 Cognitive Testing.
1850–0803 v.190	International Early Learning Study (IELS 2018) Cognitive Items Trial.
1850–0803 v.164	National Assessment of Educational Progress (NAEP) 2019 Science Items Pretesting.
1850–0803 v.170	National Assessment of Educational Progress (NAEP) Survey Assessments Innovations Lab (SAIL) Pretesting Activities: Virtual World for English Language Arts Assessment.
1850–0803 v.175	National Assessment of Educational Progress (NAEP) Science Questionnaire Cognitive Interviews 2017.
1850–0803 v.184	NCER- NPSAS Grant Study—Connecting Students with Financial Aid (CSFA) 2017 Focus Groups.
1850–0803 v.183	NCER–NPSAS Grant Study—Financial Aid Nudges 2017 Focus Groups.
1850–0803 v.185	The School Survey on Crime and Safety (SSOCS) Principals Focus Groups.

Title of Collection: Revision of the National Center for Education Statistics (NCES) Confidentiality Pledges under Confidential Information Protection and Statistical Efficiency Act (CIPSEA) and Education Sciences Reform Act of 2002 (ESRA 2002).

OMB Control Number: 1850–0937.

Type of Review: An extension of an existing information collection.

Affected Public: Survey respondents to applicable NCES information collections.

Total Respondents: Unchanged from current collections.

Frequency: Unchanged from current collections.

Total Responses: Unchanged from current collections.

Average Time per Response: Unchanged from current collections.

Estimated Total Burden Hours: Unchanged from current collections.

Estimated Total Cost: Unchanged from current collections.

Abstract: Under 44 U.S.C. 3506(e), and 44 U.S.C. 3501 (note), the National Center for Education Statistics (NCES) is announcing revisions to the confidentiality pledge(s) it provides to its respondents under the Confidential Information Protection and Statistical Efficiency Act (44 U.S.C. 3501 (note)) (CIPSEA) and under the Education Sciences Reform Act of 2002 (ESRA 2002). These revisions are required by the passage and implementation of provisions of the Federal Cybersecurity Enhancement Act of 2015 (6 U.S.C. 151), which permits and requires the Secretary of Homeland Security to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic.

Dated: April 12, 2017.

Kate Mullan,

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

[FR Doc. 2017–07741 Filed 4–17–17; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9961–46–OARM]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: Under the Federal Advisory Committee Act, Environmental Protection Agency (EPA) gives notice of a public meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NACEPT members represent academia, industry, non-governmental organizations, and state, local and tribal governments. The purpose of this meeting is for NACEPT to develop a framework for its next report addressing how to best integrate citizen science work at EPA through effective collaboration and partnerships. In addition, the Assumable Waters Subcommittee under NACEPT will provide an overview of its draft recommendations on how the EPA can best clarify which waters a state or tribe assumes permitting responsibility under the Clean Water Act (CWA) section 404 program. A copy of the meeting agenda will be posted at *http://www2.epa.gov/faca/nacept.*

DATES: NACEPT will hold a two-day public meeting on May 10, 2017, from 8:30 a.m. to 5:00 p.m. (EST) and May 11, 2017, from 8:30 a.m. to 1:00 p.m. (EST).

ADDRESSES: The meeting will be held at the NC Museum of Natural Sciences, William G. Ross Environmental Conference Center, 11 West Jones Street, Raleigh, North Carolina 27601.

FOR FURTHER INFORMATION, CONTACT: Eugene Green, Designated Federal Officer, *green.eugene@epa.gov*, (202) 564–2432, U.S. EPA, Office of Resources, Operations and Management, Federal Advisory Committee Management Division (MC1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NACEPT should be sent to Eugene Green at *green.eugene@epa.gov* by May 3, 2017. The meeting is open to the public, with limited seating available on a first-come, first-served basis. Members of the public wishing to attend should contact Eugene Green via

email or by calling (202) 564–2432 no later than May 3, 2017.

Meeting Access: Information regarding accessibility and/or accommodations for individuals with disabilities should be directed to Eugene Green at the email address or phone number listed above. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the meeting.

Dated: March 31, 2017.

Eugene Green,

Designated Federal Officer.

[FR Doc. 2017–07812 Filed 4–17–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9961–47–OARM]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Federal Advisory Committee Teleconference Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board will hold a public teleconference meeting on Thursday, May 11, 2017. The meeting is open to the public.

DATES: The Good Neighbor Environmental Board will hold an open teleconference meeting on Thursday, May 11, 2017 from 12 p.m. to 4:00 p.m. EDT.

Purpose of Meeting: The purpose of this meeting is to discuss the Board's next report, which is examining environmental protection and security issues in the U.S.—Mexico border region.

General Information: The agenda for the teleconference will be available at *http://www2.epa.gov/faca/gneb.* General information about the Board can be found on its Web site at *http://www2.epa.gov/faca/gneb.* If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting. Written comments should be submitted to Mark Joyce at *joyce.mark@epa.gov.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at (202) 564–2130 or email at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: April 3, 2017.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2017–07813 Filed 4–17–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0042; FRL–9960–66]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency's (EPA's) Office of Pesticide Programs is announcing a public meeting of the Pesticide Program Dialogue Committee (PPDC) on May 3–4, 2017. This meeting provides advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides.

DATES: The meeting will be held on Wednesday, May 3, 2017, from 9:00 a.m. to 5:00 p.m., and Thursday, May 4, 2017, from 9:00 a.m. to 12:00 p.m.

Agenda: A draft agenda will be posted on or before April 19, 2017.

Accommodations Requests: To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The PPDC Meeting will be held at 1 Potomac Yard South, 2777 S. Crystal Drive, Arlington, VA, in the lobby-level Conference Center.

EPA's Potomac Yard South Bldg. is approximately 1 mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Dea Zimmerman, Office of Pesticide Programs (LC–17J), Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, IL 60604; telephone number: (312) 353–6344; email address: *zimmerman.dea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you work in an agricultural settings or if you are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; the Pesticide Registration Improvement Act, and the Endangered Species Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; State, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0042, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

The PPDC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the PPDC in September 1995 to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the current PPDC: Environmental/public interest and animal rights groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and State/local/tribal governments; the

general public; academia; and public health organizations.

III. How can I request to participate in this meeting?

PPDC meetings are free, open to the public, and no advance registration is required. Public comments may be made during the public comment session of each meeting or in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 28, 2017.

Richard P. Keigwin, Jr.,

Acting Director, Office of Pesticide Programs.

[FR Doc. 2017–07817 Filed 4–17–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 3, 2017.

A. *Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Robert David Becker, Cedar Rapids, Iowa, individually and as a member of a group acting in concert consisting of: Dianne Becker, Cedar Rapids, Iowa; Maya Becker, Cedar Rapids, Iowa; Robert David Becker, in his individual capacity and as trustee for The Harold M. Becker Irrevocable Children's Trust, Cedar Rapids, Iowa; The Harold M. Becker Irrevocable Children's Trust; Sherri A. Becker, Kansas City, Missouri; Linda Deaktor, Chatsworth, California; Alan Josephson, Omaha, Nebraska; Deborah B. Josephson, as trustee for the Deborah B. Josephson Revocable Trust, Omaha, Nebraska; the Deborah B. Josephson Revocable Trust; Lawrence B. Josephson, as trustee for the Lawrence B. Josephson Revocable Trust, Omaha, Nebraska; the Lawrence B. Josephson Revocable Trust; Melissa Josephson, Omaha, Nebraska; Eric Leibsohn, Paradise Valley, Arizona; Steven Leibsohn, Scottsdale, Arizona; Matthew Rose, Phoenix, Arizona; Thomas J. Rose, as trustee of The Rose Family Trust under the Anne D. Rose Revocable Trust, Phoenix, Arizona; and The Rose Family Trust under the Anne D. Rose Revocable Trust,* to retain voting shares of Guaranty Bankshares, Ltd and thereby indirectly retain voting shares of Guaranty Bank and Trust Company, both of Cedar Rapids, Iowa.

Board of Governors of the Federal Reserve System, April 12, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–07737 Filed 4–17–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0736]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Tracking Network for PETNet, LivestockNet, and SampleNet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 18, 2017.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0680. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Cappezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Tracking Network for PETNet, LivestockNet, and SampleNet OMB Control Number 0910–0680—Revision

The Center for Veterinary Medicine and the Partnership for Food Protection developed a Web-based tracking network (the tracking network) to allow Federal, State, and Territorial regulatory and public health Agencies to share safety information about animal food. Information is submitted to the tracking network by regulatory and public health Agency employees with membership rights. The efficient exchange of safety information is necessary because it improves early identification and evaluation of a risk associated with an animal food product. We use the information to assist regulatory Agencies to quickly identify and evaluate a risk and take whatever action is necessary to mitigate or eliminate exposure to the risk. Earlier identification and communication with respect to emerging safety information may also mitigate the potential adverse economic impact for the impacted parties associated with such safety issues. The tracking network was developed under the requirements set forth under section 1002(b) of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–085). Section 1002(b) of FDAAA required FDA, in relevant part, to establish a pet food early warning alert system.

Currently we receive two types of reports via the tracking network: (1) Reports of pet food-related illness and product defects associated with dog food, cat food, and food for other pets, which are submitted via the Pet Event Tracking Network (PETNet); and (2) reports of animal food-related illness and product defects associated with animal food for livestock animals, aquaculture species, and horses, which are submitted via LivestockNet. We are revising the collection to include a third type of report that would be submitted via ''SampleNet.'' SampleNet will collect reports about animal food laboratory samples considered adulterated by State or FDA regulators. SampleNet will allow Federal, State, and Territorial regulatory and public health Agencies to share laboratory data related to adulterated samples for

purposes of surveillance, mitigation, work planning, and supporting the animal food standard requirements.

PETNet and LivestockNet reports share the following common data elements, the majority of which are drop down menu choices: Product details (product name, lot code, product form, and the manufacturer or distributor/packer (if known)), the species affected, number of animals exposed to the product, number of animals affected, body systems affected, product problem/defect, date of onset or the date product problem was detected, the State where the incident occurred, the origin of the information, whether there are supporting laboratory results, and contact information for the reporting member (*i.e.,* name, telephone number will be captured automatically when member logs in to the system). For the LivestockNet report, additional data elements specific to livestock animals will be captured: Product details (indication of whether the product is a medicated feed under 21 CFR 558.3(b)(8), product packaging, and intended purpose of the product), class of the animal species affected, and production loss. For PETNet reports, the only additional data field is the animal life stage. The proposed SampleNet reports will have the following data elements, many of which are drop down menu choices: Product information (product name, lot code, guarantor information, date and location of sample collection, and product description); laboratory information (sample identification number, the reason for testing, whether the food was reported to the Reportable Food Registry, who performed the analysis); and results information (analyte, test method, analytical results, whether the results contradict a label claim or guarantee, and whether action was taken as a result of the sample analysis).

Description of Respondents: Respondents to the collection of information are Federal, State, and Territorial regulatory and public health Agency employees with membership access to the Animal Feed Network.

In the **Federal Register** of March 15, 2016 (81 FR 13794), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
PETNet	20	5	100	*0.25	25
LivestockNet	20	5	100	*0.25	25
SampleNet	20	5	100	*0.25	25
Total	75				

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
*15 minutes.

Our estimate is based on our experience with the tracking network over the past 3 years. We estimate that we will receive an average of 5 submissions from 20 respondents for each type of report, and that it will take 15 minutes (0.25 hour) per response.

Dated: April 11, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–07769 Filed 4–17–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0062]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Exception From General Requirements for Informed Consent

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection regarding exception from the general requirements for informed consent.

DATES: Submit either electronic or written comments on the collection of information by June 19, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your

comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–N–0062 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Exception From General Requirements for Informed Consent.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Exception From General Requirements for Informed Consent—21 CFR 50.23 OMB Control Number 0910–0586—Extension

In the **Federal Register** of June 7, 2006 (71 FR 32827), FDA issued an interim final rule to amend its regulations to establish a new exception from the general requirements for informed consent, to permit the use of investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents without informed consent in certain circumstances. The Agency took this action because it was concerned that, during a potential terrorism event or other potential public health emergency, delaying the testing of specimens to obtain informed consent may threaten the life of the subject. In many instances, there may also be others who have been exposed to, or who may be at risk of exposure to, a dangerous chemical, biological, radiological, or nuclear agent, thus necessitating identification of the agent as soon as possible. FDA created this exception to help ensure that individuals who may have been exposed to a chemical, biological, radiological, or nuclear agent are able to benefit from the timely use of the most appropriate diagnostic devices, including those that are investigational.

Section 50.23(e)(1) (21 CFR 50.23(e)(1)) provides an exception to the general rule that informed consent is required for the use of an investigational in vitro diagnostic device. This exception applies to those situations in which the in vitro investigational diagnostic device is used to prepare for, and respond to, a chemical, biological, radiological, or nuclear terrorism event or other public health emergency, if the investigator and an independent licensed physician make the determination and later certify in writing that: (1) There is a life-threatening situation necessitating the use of the investigational device, (2) obtaining informed consent from the subject is not feasible because there was no way to predict the need to use the investigational device when the specimen was collected and there is not sufficient time to obtain consent from the subject or the subject's legally authorized representative, and (3) no satisfactory alternative device is available. Under the rule, these determinations are made before the device is used, and the written certifications are made within 5 working days after the use of the device. If use of the device is necessary to preserve the life of the subject and there is not sufficient time to obtain the determination of the independent licensed physician in advance of using the investigational device, § 50.23(e)(2) provides that the certifications must be made within 5 working days of use of the device. In either case, the certifications are submitted to the Institutional Review Board (IRB) and, under § 50.23(e)(3) (76 FR 36989, June 24, 2011), to FDA within 5 working days of the use of the device.

Section 50.23(e)(4) provides that an investigator must disclose the investigational status of the device and what is known about the performance characteristics of the device at the time

test results are reported to the subject's health care provider and public health authorities, as applicable. Under § 50.23(e)(4), the investigator provides the IRB with the information required by § 50.25 (21 CFR 50.25) (except for the information described in § 50.25(a)(8)) and the procedures that will be used to provide this information to each subject or the subject's legally authorized representative.

FDA estimates that there are approximately 150 laboratories that could perform testing that uses investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents. FDA estimates that in the United States each year there are approximately 450 naturally occurring cases of diseases or conditions that are identified in the Centers for Disease Control and Prevention's list of category ''A'' biological threat agents. The number of cases that would result from a terrorist event or other public health emergency is uncertain. Based on its knowledge of similar types of submissions, FDA estimates that it will take about 2 hours to prepare each certification. We estimate the operating and maintenance cost of $200 for copying and mailing the information to FDA.

Based on its knowledge of similar types of submissions, FDA estimates that it will take about 1 hour to prepare a report disclosing the investigational status of the in vitro diagnostic device and what is known about the performance characteristics of the device and submit it to the health care provider and, where appropriate, to public health authorities.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
Written certification (sent to FDA)—50.23(e)(3)	150	3	450	0.25	113	$200

[1] There are no capital costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR Part	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Written certification (sent to IRB)—50.23(e)(1) and (e)(2)	150	3	450	2	900
Informed consent information—50.23(e)(4)	150	3	450	1	450
Total					1,350

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 11, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–07768 Filed 4–17–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–2093]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee (ODAC). The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on May 24, 2017, from 8 a.m. to 5 p.m. The docket number is FDA–2017–N–1063. The docket will close on May 23, 2017. Comments received on or before May 10, 2017, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–2093 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lauren D. Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Building 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: During the morning session, the committee will discuss new drug application (NDA) 208051, for neratinib maleate, an application submitted by Puma Biotechnology. The proposed indication (use) for this product is as a single agent for the extended adjuvant treatment of adult patients with early-stage HER2-overexpressed/amplified breast cancer who have received prior adjuvant traustuzumab-based therapy. During the afternoon session, the committee will discuss NDA 208587, for L-glutamine powder (oral solution), submitted by Emmaus Medical, Inc. The proposed indication (use) for this product is for the treatment of sickle cell disease.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions must be submitted on or before May 23, 2017. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m. and 3:30 p.m. and 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 2, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 3, 2017.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require special accommodations due to a disability, please contact Lauren D. Tesh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 12, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–07771 Filed 4–17–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–1063]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The public meeting will be held on May 25, 2017, from 8 a.m. to 1:30 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2017–N–1063. The docket will close on May 23, 2017. Submit either electronic or written comments on this public meeting by May 23, 2017. Late untimely filed comments will not be considered. Electronic comments must be submitted on or before May 23, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of May 23, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions: Will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before May 10, 2017, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA—305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–1063 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lauren D. Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss biologics license application (BLA) 125545, for a proposed biosimilar to Amgen Inc.'s Epogen/Procrit (epoetin alfa), submitted by Hospira Inc., a Pfizer company. The proposed indications/uses for this product are: (1) For the treatment of anemia due to chronic kidney disease, including patients on dialysis and not on dialysis, to decrease the need for red blood cell (RBC) transfusion; (2) for the treatment of anemia due to zidovudine administered at ≤4,200 mg/week in HIV-infected patients with endogenous serum erythropoietin levels of ≤500 m units/mL; (3) for the treatment of anemia in patients with non-myeloid malignancies where anemia is due to the effect of concomitant myelosuppresive chemotherapy, and upon initiation, there is a minimum of 2 additional months of planned chemotherapy; and (4) to reduce the need for allogeneic RBC transfusions among patients with perioperative hemoglobin >10 to ≤13 g/dL who are at high risk for perioperative blood loss from elective, noncardiac, and nonvascular surgery.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section) on or before May 10, 2017, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 11:15 a.m. and 12:15 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 2, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 3, 2017.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require special accommodations due to a disability, please contact Lauren D. Tesh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 12, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–07772 Filed 4–17–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–1957]

Medical Imaging Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Medical Imaging Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on May 10, 2017, from 8 a.m. to 4 p.m. The docket number is FDA–2017–N–1957. The docket will close on May 5, 2017. Comments received on or before April 26, 2017, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–1957 for ''Medical Imaging Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *MIDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug application (NDA) 208–630 for 5-Aminolevulinic Acid Hydrochloride [5–ALA HCl], Powder, for oral solution, submitted by NX Development Corp., for the proposed indication as an imaging agent to facilitate the real time detection and visualization of malignant tissue during glioma surgery.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before April 26, 2017, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 18, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 19, 2017.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require special accommodations due to a disability, please contact Jennifer Shepherd at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 11, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–07767 Filed 4–17–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–1094]

Training Health Care Providers on Pain Management and Safe Use of Opioid Analgesics—Exploring the Path Forward; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: As part of the work by the Federal Government to address the epidemic of prescription and illicit opioid abuse, the Food and Drug Administration (FDA, the Agency, or we) is announcing a public workshop to obtain input on issues and challenges associated with Federal efforts to support training on pain management and the safe prescribing, dispensing, and patient use of opioids (safe use of

opioids) for health care providers. As discussed in this document, the workshop has three main goals. First, participants will be asked to discuss the role that health care provider training plays, within the broader context of ongoing activities, to improve pain management and the safe use of opioids. Second, participants will be asked to comment on how best to provide health care providers, who prescribe or are directly involved in the management or support of patients with pain, appropriate training in pain management and the safe use of opioids. Finally, participants will be asked about the issues and challenges associated with possible changes to Federal efforts to educate health care providers on pain management and the safe use of opioids.

Participants are expected to include individuals from a broad set of Federal, State, and private stakeholder groups that are working on the challenges of improving pain management while addressing the opioid abuse epidemic. The Federal Agencies participating include FDA, the Drug Enforcement Administration, the Department of Veterans Affairs, the Centers for Disease Control and Prevention, the Department of Defense, the Centers for Medicare & Medicaid Services, the National Institute on Drug Abuse, and the Substance Abuse and Mental Health Services Administration, and the Indian Health Service. Public participation and comment are encouraged.

DATES: The public workshop will be held on May 9 and 10, 2017, from 8:30 a.m. to 5 p.m. Submit either electronic or written comments on this public workshop by July 10, 2017. Late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 10, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of July 10, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Ave., Silver Spring, MD 20910, 877–298–2066.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–1094 for ''Training Health Care Providers on Pain Management and Safe Use of Opioid Analgesics —Exploring the Path Forward; Public Workshop; Request for Comments.'' Received comments, those filed in a timely manner (see DATES), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Gross, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6178, Silver Spring, MD 20993–0002, 301–796–3519, email: *Mary.Gross@fda.hhs.gov;* or Doris Auth, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 2480, Silver Spring, MD 20993–0002; 301–796–0487, email: *Doris.Auth@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 2012, FDA approved a risk evaluation and mitigation strategy (REMS) for extended release (ER) and long-acting (LA) opioid analgesic medications (ER/LA Opioid Analgesics REMS). The goal of such REMS is to reduce serious adverse outcomes resulting from inappropriate prescribing, misuse, and abuse of extended-release or long-acting (ER/LA) opioid analgesics while maintaining patient access to pain medications.

Adverse outcomes of concern include addiction, unintentional overdose, and death. The ER/LA Opioid Analgesics REMS requires that prescriber training in the form of accredited continuing education be made available to health care providers who prescribe ER/LA opioid analgesics.

On May 3 and 4, 2016, FDA convened a joint meeting of the Drug Safety and Risk Management Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee to discuss whether this REMS assures safe use of these products, whether it is not unduly burdensome to patient access to the drugs, and whether it (to the extent practicable) minimizes the burden to the health care delivery system (*https://www.gpo.gov/fdsys/pkg/FR-2016-03-14/pdf/2016-05573.pdf*). FDA sought input on possible modifications to the ER/LA Opioid Analgesic REMS, including expansion of the scope and content of prescriber training and expansion of the REMS program to include immediate release (IR) opioid analgesics. The majority of committee members were in favor of modifying the REMS program to include the IR opioid analgesics as well as broadening the training program to include pain management. Though the majority of the committee members were in favor of a requirement for all prescribers to complete training, they recommended that the required training program be implemented through mechanisms outside of the FDA REMS authority. The committees also stated that other health care providers involved in the management of pain should be included as a target audience for education, though they did not specify that the training should be mandatory for non-prescribing health care providers.

In addition to the joint Advisory Committee advice on prescriber education, a Request for Information (RFI) was posted by the Department of Health and Human Services (HHS) Assistant Secretary of Planning and Education on July 8, 2016 (81 FR 44640), seeking comment on the most promising approaches in prescriber education and training programs and effective ways to leverage HHS programs to implement/expand them. The 2017 public workshop on May 9 and 10 seeks to build on one of the requests outlined in that RFI, specifically, the request for suggestions of additional activities HHS and its federal partners could implement to support universal prescriber education on appropriate pain management and opioid analgesic prescribing.

II. Topics for Discussion at the Public Workshop

On May 9 and 10, 2017, FDA on its own behalf and in conjunction with the other participating federal agencies will hold a public workshop and convene government experts, representatives from State licensing boards, professional associations, health care systems, patient groups, and other relevant stakeholder groups. The workshop has three major goals. First, participants will be asked to discuss the role that health care provider training plays, within the broader context of ongoing activities, to improve pain management and the safe use of opioids. Second, participants will be asked to comment on how best to provide health care providers, who prescribe or are directly involved in the management or support of patients with pain, appropriate training in pain management and the safe use of opioids. As a part of this discussion, current training efforts by States, hospitals and health care systems, Federal Agencies, professional associations and other groups will be considered in order to strategize how best to facilitate training for these health care providers. Finally, participants will also be asked about issues and challenges associated with possible changes to Federal efforts to educate health care providers on pain management and the safe use of opioids.

Participants include individuals from a broad set of Federal, State, and private stakeholders that are working on the challenges of improving pain management while addressing the opioid abuse epidemic. The Federal Agencies participating include FDA, the Drug Enforcement Administration, the Department of Veterans Affairs, the Centers for Disease Control and Prevention, the Department of Defense, the Centers for Medicare & Medicaid Services, the National Institute on Drug Abuse, the Substance Abuse and Mental Health Services Administration, and the Indian Health Service. Public participation and comment is encouraged.

Panels will be drawn from Federal and State agencies, as well as other private and public groups working to address pain management and/or opioid abuse. During the panel discussions, panelists will be asked to address the following:

(1) The relative role of Federal training/education efforts in the larger landscape of activities aimed at improving pain management, including the use of opioid analgesics. This includes a discussion of ongoing efforts being led by States, hospitals and health care systems, other Federal Agencies, and medical societies that focus on other aspects of the issue, such as Prescription Drug Monitoring Programs.

(2) The merits and challenges of utilizing Federal mechanisms to provide education on pain management and the safe use of opioid analgesics. This includes a discussion of the role, if any, of mandatory Federal education efforts.

(3) The merits and challenges of utilizing non-Federal mechanisms to provide education on pain management and the safe use of opioid analgesics. This includes a discussion of current State and other efforts and the role they are playing in training/education on pain management and the safe use of opioid analgesics.

(4) The merits and challenges of utilizing partnerships between Federal Agencies and other groups to provide education on pain management and the safe use of opioid analgesics. This includes a discussion of the role of the Federal Government in formal public-private partnerships or other combined approaches to training/education on pain management and the safe use of opioid analgesics for all prescribers. It also includes a discussion of the appropriate organizations (*e.g.,* Federal Agency, State medical board, other) to include in such efforts.

(5) The aspects of the opioid epidemic that can be most impacted by the training of health care providers and how outcomes of these training programs can be measured.

III. Participating in the Public Workshop

Registration: Persons interested in attending this public workshop must register online by sending an email to *https://nakamotoevents.wufoo.com/forms/p1gsrzm80gd7lkd/* before May 1, 2017. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by May 1, 2017. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when their registration has been accepted. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Mary Gross or Doris Auth (see **FOR FURTHER INFORMATION CONTACT**) no later than May 1, 2017.

Requests for Oral Comments: During online registration you may indicate if you wish to provide a statement during the Open Public Comment Period. We will do our best to accommodate requests to make public comments based on time allocated for public comment. Individuals and organizations with common interests are urged to consolidate or coordinate their comments, and request time for a joint presentation. Following the close of registration date, we will determine the amount of time allotted to each commenter and the approximate time each oral comment is scheduled to begin; commenters should arrive ahead of their scheduled time in case the agenda moves ahead of schedule so as to be sure not to forfeit their speaking time. All requests to make oral comments must be received by the close of registration on May 1, 2017. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Additional information will be made available regarding accessing the Webcast 2 days prior to the public workshop at *http://www.fda.gov/Drugs/NewsEvents/ucm538047.htm.*

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see ADDRESSES). A link to the transcript will also be available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm538047.htm.*

Dated: April 13, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–07821 Filed 4–17–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–1989]

Second Annual Workshop on Clinical Outcome Assessments in Cancer Clinical Trials; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Drug Evaluation and Research, in co-sponsorship with the Critical Path Institute's (C-Path) Patient-Reported Outcome (PRO) Consortium, is announcing a public workshop entitled ''Second Annual Workshop on Clinical Outcome Assessments in Cancer Clinical Trials.'' The purpose of the public workshop is to provide a forum for collaborative multidisciplinary discussion to identify opportunities and address challenges for clinical outcome assessments, particularly patient-reported outcome (PRO) assessments, in oncology drug development. In this public workshop, a broad array of international stakeholders involved in oncology drug development and PRO measurement will provide perspectives on the role of PRO measures to provide complementary clinical data on the symptomatic side effects of anti-cancer agents. Speakers and panelists will explore the utility of information derived from existing and emerging PRO measures and discuss potential ways to improve the collection, analysis, and presentation of the data to support drug development and better inform treatment decisions. In addition, workshop participants will discuss possible approaches to the patient-reported assessment of an investigational drug's overall side effect burden as a clinical trial endpoint. This public workshop will include speakers and panelists from regulatory agencies, academia, patient advocacy groups, and the medical product industry.

DATES: The public workshop will be held on April 25, 2017, from 8 a.m. to 5 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Ave., Bethesda, MD 20814, 301–657–1234.

FOR FURTHER INFORMATION CONTACT: Theresa Hall, Patient-Reported Outcome Consortium, Critical Path Institute, 1730 East River Road, Tucson, AZ 85718, 520–777–2875, FAX: 525–547–3456, email: *thall@c-path.org;* and Valerie Vashio, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3710, FAX: 301–796–9909, email: *valerie.vashio@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Clinical outcome assessment (COA) tools are intended to capture how patients experience a disease and its treatment by assessing symptoms, function, and other aspects of a patient's health-related quality of life (HRQL). PRO measures are one important type of COA tool. There is growing interest in optimizing the use of PRO measures to better incorporate the patient perspective into oncology drug development. While PRO measures can be used to evaluate the efficacy of cancer treatments, there is increasing interest in the use of PRO tools to assess symptomatic side effects of treatment. New PRO item banks and libraries are becoming available that can provide needed flexibility to tailor the PRO assessment to the wide range of side effects seen with the various mechanistic classes utilized in contemporary drug development. FDA is interested in gaining feedback on methods to integrate the patient into the assessment of safety and tolerability of cancer drugs through systematic patient-reporting of side effects during clinical trials. This public workshop will discuss standard clinician reporting of adverse events, the development and implementation of the PRO-Common Terminology Criteria for Adverse Events (CTCAE) assessment tool, and explore different analysis and presentation methods for longitudinal patient-reported adverse event data.

II. Registration and Accommodations

A. Registration

There is a registration fee to attend this public workshop. The registration fee is charged to help defray the costs of the public workshop facility, speaker and panelist expenses, audiovisual equipment, materials, and food. Persons interested in attending this public workshop must register by April 21, 2017. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 8 a.m. Seats are limited, and registration will be on a first-come, first-served basis.

To register for the public workshop, please complete registration online at *https://www.cvent.com/events/second-annual-workshop-on-clinical-outcome-assessments-coas-in-cancer-clinical-trials/registration-270d8a5ee3ae4a108938851e2a7d0ea7.aspx.* (FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.) The costs of registration for the different categories of attendees are as follows:

Category	Cost
Industry Representatives.	$400.
Charitable Nonprofit/ Academic.	$100 (Contact C-Path).

Category	Cost
Government	$100 (Contact C-Path).

B. Accommodations

Attendees are responsible for their own hotel accommodations. Attendees making reservations at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814, are eligible for a reduced rate of $249 per night, not including applicable taxes. To receive the reduced rate, please contact the hotel directly at 301–657–1234 and reference the Critical Path Institute April 2017 workshop or book online at: *https://aws.passkey.com/event/15624700/owner/14877/landing?gtid=8d00149fbdf860c0e824aee45de33531.*

If you need special accommodations due to a disability, please contact the Hyatt Regency Bethesda at least 7 days in advance.

III. Transcripts

Transcripts will not be available. Presentations and associated audio files will be available on the C-Path Web site approximately 30 days after the public workshop at *https://c-path.org/category/events/.*

Dated: April 12, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–07766 Filed 4–17–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: 0937–0198–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number <OCN>, scheduled to expire on <expiration date>. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before May 18, 2017.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 795–7714.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0937–0198 and document identifier 0937–0198–30D for reference.

Information Collection Request Title: Public Health Service Polices on Research Misconduct (42 CFR part 93)—OMB No. 0937–0198—Extension—Office of Resource Integrity.

OMB No.: 0937–0198.

Abstract: This is a request to extend the currently approved collection, OMB No. 0937–0198, which involves two forms: PHS–6349 and PHS–6315. The purpose of the Institutional Assurance and Annual Report on Possible Research Misconduct form (PHS–6349) is to provide data on the amount of research misconduct activity occurring in institutions conducting PHS-supported research, as well as providing an annual assurance that those institutions have established and will follow administrative policies and procedures for responding to allegations of research misconduct that comply with the Public Health Service (PHS) Regulations on Research Misconduct (42 CFR part 93). The purpose of the Assurance of Compliance by Sub-Award Recipients form (PHS–6315) is to establish a similar assurance of compliance with 42 CFR part 93 for sub-awardee institutions, as well as provide data on the amount of research misconduct activity occurring in those sub-awardee institutions. Research misconduct is defined as receipt of an allegation of research misconduct and/or the conduct of an inquiry and/or investigation into such allegations. These data enable the ORI to monitor institutional compliance with the PHS regulation. Lastly, the forms will be used to respond to congressional requests for information to prevent misuse of Federal funds and to protect the public interest.

Need and Proposed Use of the Information: Public Health Service Polices on Research Misconduct (42 CFR part 93)—OMB No. 0937–0198—Extension—Office of Research Integrity.

Likely Respondents: PHS awardee and sub-awardee institutions.

The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
PHS–6349	5,435	1	10/60	906
PHS–6315	200	1	5/60	17
Total	.....	.....	.....	923

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2017–07787 Filed 4–17–17; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: May 19, 2017.

Closed: 8:30 a.m. to 9:40 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Open: 9:40 a.m. to 2:00 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, Ph.D., Director, Division of Extramural Activities, NIDCD, NIH, Room 8345, MSC 9670, 6001 Executive Blvd., Bethesda, MD 20892–9670, 301–496–8693, *jordanc@nidcd.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/Pages/Advisory-Groups-and-Review-Committees.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 12, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–07735 Filed 4–17–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

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

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

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; MSM Program Review (2017/10).

Date: June 6, 2017.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 920, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@mail.nih.gov.*

Dated: April 12, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–07734 Filed 4–17–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Task Force on Research Specific to Pregnant Women and Lactating Women.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Task Force on Research Specific to Pregnant Women and Lactating Women.

Date: August 21–22, 2017.

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

Agenda: The Task Force is charged with providing advice and guidance to the Secretary of HHS, regarding Federal activities related to identifying and addressing gaps in knowledge and research regarding safe and effective therapies for pregnant women and lactating women, including the development of such therapies and the collaboration on and coordination of such activities.

Place: National Institutes of Health, Building 31, C-Wing, Conference Rm. 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Ms. Lisa Kaeser, Executive Secretary, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 31 Center Drive, Room 2A03, MSC 2425, Bethesda, MD 20892, (301) 496–0536, *kaeserl@mail.nih.gov*.

Name of Committee: Task Force on Research Specific to Pregnant Women and Lactating Women.

Date: November 6–7, 2017.

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

Agenda: The Task Force is charged with providing advice and guidance to the Secretary of HHS, regarding Federal activities related to identifying and addressing gaps in knowledge and research regarding safe and effective therapies for pregnant women and lactating women, including the development of such therapies and the collaboration on and coordination of such activities.

Place: National Institutes of Health, Conference Rm. C–D, 6001 Executive Blvd., Rockville, MD 20852.

Contact Person: Ms. Lisa Kaeser, Executive Secretary, Eunice Kennedy Shriver National Institute of Child Health and Human

Development, 31 Center Drive, Room 2A03, MSC 2425, Bethesda, MD 20892, (301) 496–0536, *kaeserl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: April 12, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–07739 Filed 4–17–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Genetic Basis and/or Omics Phenotypes of Heart, Lung and Blood Disorders.

Date: May 12, 2017.

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

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 12, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–07740 Filed 4–17–17; 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; NIDDK Central Biorepositories Non-renewable Sample Access (X01) PAR–14–301.

Date: May 11, 2017.

Time: 1:00 p.m. to 2:30 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: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–16–034: NIDDK Ancillary Studies to Major Ongoing Clinical Studies (R01).

Date: May 15, 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: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Diabetes Research Centers (P30).

Date: May 24–25, 2017.

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

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton, Ballroom C, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumm@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: April 12, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–07736 Filed 4–17–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information on Input on Opportunities of Engagement of External Stakeholders With the "Illuminating the Druggable Genome" (IDG) Program

SUMMARY: NIH seeks input from the biomedical research community, biotechnology and pharmaceutical companies and other members of the public on interest and opportunities of engagement with the Illuminating the Druggable Genome (IDG) Program. The purpose of this Request for Information (RFI) is to identify and obtain comments on strategies for sharing potential data, tools, and other resources of common interest generated by the IDG Program and by external stakeholders to maximize the impact of the IDG Program.

DATES: The IDG Program Request for Information is open for public comment for a period of 30 days. Comments must be received by May 18, 2017 to ensure consideration. After the public comment period has closed, the comments received by the IDG Program will be considered in a timely manner by the National Center for Advancing

Translational Sciences (NCATS) and the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

ADDRESSES: Submissions may be sent electronically to *DK-IDG-Phase2-RFI@mail.nih.gov* or by mail to Dr. Karlie Sharma, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Blvd., Suite 900, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Questions about this request for information should be directed to Dr. Karlie Sharma, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Blvd., Suite 900, Bethesda, MD 20892, *DK-IDG-Phase2-RFI@mail.nih.gov,* 301–451–4965.

SUPPLEMENTARY INFORMATION: Out of the nearly 30,000 genes in the human genome, approximately 3,000 genes are estimated to be part of the druggable genome—the subset of genes expressing proteins with the ability to bind drug-like molecules. Yet, only about ten percent of druggable proteins are targeted by Food and Drug Administration (FDA)-approved drugs. Many proteins that comprise the druggable genome are members of the G-protein coupled receptor (GPCR), ion channel, and kinase families. A significant number of proteins within these classes are understudied and are the focus of the data and resource generation initiative of the IDG Program.

1. Goals and Requirements

The IDG Program was originally funded as a three-year pilot program in 2014 with two overarching goals: (1) Integrate information about understudied druggable proteins from disparate sources into a single informatics site and (2) foster technology development to enable the determination of function and therapeutic potential of understudied druggable proteins. Having successfully achieved these goals, the IDG Program is currently transitioning to a new implementation phase intended to:

- Expand the informatics tools developed in the pilot phase to include additional data and allow users to access, analyze, and visualize a wide range of information on sets of proteins.
- Facilitate the elucidation of the function of understudied proteins from the three key druggable protein families (GPCR, ion channels, and kinases) by generating new reagents and new data.
- Disseminate the IDG-generated resources and data to the greater scientific community.

2. Information Requested

NIH is seeking input from national and international experts and interested members of the public that includes, but is not limited to, the following areas:

- Resources that an outside organization (biotechnology or pharmaceutical company; non-profit organization; academic institution and national/international consortia) might be willing to share with the IDG Program and may:
  - Strategize development of chemical probes against proteins drawn from the IDG focused list
  - develop assays and platforms that can help to answer questions about understudied protein function
  - identify reagents that may be useful in annotation efforts
  - provide data or knowledge on any understudied protein
- Potential resources of the IDG Program that are of interest to an outside organization of the broader biomedical research community including:
  - Sharable databases of relevant subsets of data on understudied proteins
  - data analysis and query tools
  - links between protein target and disease pathologies
  - new methods of analysis to accelerate collection of data

This RFI is for planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Federal government. The Federal government will not pay for the preparation of any information submitted or for the government's use. Additionally, the government cannot guarantee the confidentiality of the information provided.

Dated: April 12, 2017.

Christopher P. Austin,

Director, NCATS.

Griffin P. Rodgers,

Director, NIDDK, Illuminating the Druggable Genome Program, National Center for Advancing Translational Sciences, National Institute of Diabetes and Digestive and Kidney Diseases.

[FR Doc. 2017–07795 Filed 4–17–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVCES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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.

Proposed Project: Strategic Prevention Framework for Prescription Drugs (SPF-Rx)—New

The Substance Abuse and Mental Health Services Administration (SAMHSA)'s Center for Substance Abuse Prevention (CSAP) aims to conduct a cross-site evaluation of the Strategic Prevention Framework for Prescription Drugs (SPF-Rx) program. The SPF-Rx program is designed to address nonmedical use of prescription drugs (as well as opioid overdoses) by raising awareness about the dangers of sharing medications. and by working with pharmaceutical and medical communities. The SPF-Rx program aims to promote collaboration between states/tribes and pharmaceutical and medical communities to understand the risks of overprescribing to youth ages 12–17 and adults 18 years of age and older. The program also aims to enhance capacity for, and access to, Prescription Drug Monitoring Program (PDMP) data for prevention purposes.

The SPF-Rx program aims to address SAMHSA's priorities on prevention and

reduction of prescription drug and illicit opioid misuse and abuse. Its indicators of success are reductions in opioid overdoses and the incorporation of PDMP data into needs assessments and strategic plans. Data collected through the tools described in this statement will be used for the national cross-site evaluation of SAMHSA's SPF-Rx program. This package covers continued data collection through 2020, as the evaluation is expected to continue through at least that time; however, the Program Evaluation for Prevention Contract (PEP–C) is scheduled to conduct a national cross-site evaluation of SPF-Rx through September 2018. The PEP–C team will systematically collect and maintain an Annual Implementation Instrument (AII) and outcomes data submitted by SPF-Rx grantees through the online PEP–C Management Reporting Tool (MRT).

SAMHSA is requesting approval for data collection for the SPF-Rx cross-site evaluation with the following four instruments:

• *Grantee Interview* to obtain the perspective of the implementing Project Directors (PDs) or their staff on important topics, including infrastructure and capacity, collaboration, leveraging funding and resources, criteria and use of evidence-informed interventions, monitoring and evaluation, collaboration, challenges, and health disparities. Information from these interviews will help inform SPF-Rx cross-site evaluation reports and will help identify lessons learned and success stories from grantees' SPF-Rx programs.

• *Grantee- and Community-Level Outcomes Modules* to collect data on key SPF-Rx program outcomes, including opioid misuse and abuse, opioid overdoses, and opioid prescribing patterns. Grantees will provide outcomes data at the grantee level for their state, tribal area, or jurisdiction, as well as at the community level for each of their subrecipient communities.

• *Substitute Data Source Request* to allow grantees to request permission from SAMHSA to use ''substitute measures'' for their outcomes data—that is, measures that differ from a list of preapproved outcomes measures.

• *Annual Implementation Instrument* to collect data completed by grantees and subrecipient community PDs. Data collected from the survey will be used to monitor subrecipient and state, tribal entity, or jurisdiction performance, and to evaluate the effectiveness of the SPF-Rx program across states, tribal entities, and jurisdictions.

• *Grantee Interview* to collect semistructured telephone interview data to gather more in-depth information on organizational infrastructure, use of PDMP data.

• *Evaluation Plan* to allow grantees to outline their local evaluation plan. This section should include goals and objectives, performance measures, a data analysis plan, and reporting plan.

ANNUALIZED DATA COLLECTION BURDEN

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Grantee-Level Outcomes Module	25	1	25	3	75
Community-Level Outcomes Module	25	1	25	3	75
Substitute Data Request Form	3.67	1	3.67	1	3.67
Annual Implementation Instrument	100	1	100	2.3	230
Grantee-Level Interview	17	1	17	1.5	25.5
Evaluation Plan	25	1	25	8	200
Overall Total	170.67		170.67		609.17

Note: Annualized Data Collection Burden captures the average number of respondents and responses, burden hours, and respondent cost over the 3 years (FY2018–FY2020).

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by June 19, 2017.

Summer King,

Statistician.

[FR Doc. 2017–07764 Filed 4–17–17; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01000 L10200000.XZ0000 17X LXSIOVHD0000]

Notice of Public Meeting: Northern California District Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Northern California District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held on Wednesday, April 26, 2017, from 10 a.m. to 4 p.m. The meeting is open to the public. Public comments will be accepted at 11 a.m. to noon.

ADDRESSES: The meeting will be held in the conference room of the Bureau of Land Management Northern California District Office, 6640 Lockheed Drive, Redding, CA 96002. Those unable to attend can participate by teleconference. The toll-free telephone number is (888) 282–0374, and the passcode is 50716. Written comments can be sent to the district office at the above address.

FOR FURTHER INFORMATION CONTACT: BLM Northern California District Manager, Alan Bittner, (530) 224–2160; or Public Affairs Officer, Joseph J. Fontana, (530) 252–5332. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339, to contact the above individuals during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual.

You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management on BLM-administered lands in northern California and northwest Nevada. At this meeting, the RAC will discuss development of the Northern California Integrated Resource Management Plan, and receive updated reports from BLM Northern California District field offices. This meeting will be open to the public. Members of the public may present written comments to the RAC. Depending on the number of people who wish to speak, and the time available, the time for individual comments may be limited. Written comments may be sent to the BLM Northern California District Office at the address listed in the **ADDRESSES** section of this notice. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1784.4–2.

Erica St. Michel,

Acting Deputy State Director, Communications.

[FR Doc. 2017–07798 Filed 4–17–17; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–575 and 731–TA–1360–1361 (Preliminary)]

Tool Chests and Cabinets From China and Vietnam Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–575 and 731–TA–1360–1361 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of tool chests and cabinets from China and Vietnam, provided for in subheading 9403.20 and 7326.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by May 26, 2017. The Commission's views must be transmitted to Commerce within five business days thereafter, or by June 5, 2017.

DATES: *Effective Date:* April 11, 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 investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on April 11, 2017, by Waterloo Industries, Inc., Sedalia, Missouri.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Tuesday, May 2, 2017, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before April 28, 2017. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 5, 2017, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in

connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 12, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–07749 Filed 4–17–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1049]

Certain Digital Cable and Satellite Products, Set-Top Boxes, Gateways and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 10, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Sony Corporation of Japan and Sony Electronics Inc. of San Diego, California. A letter supplementing the complaint was filed on March 28, 2017. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital cable and satellite products, set-top boxes, gateways, and components thereof by reason of infringement of certain claims of U.S. Patent No. RE45,126 (''the '126 patent''); U.S. Patent No. 6,467,093 (''the '093 patent''); U.S. Patent No. 8,032,919 (''the '919 patent''); U.S. Patent No. 6,556,221 (''the '221 patent''); and U.S. Patent No. 6,915,525 (''the '525 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2017).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 11, 2017, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital cable and satellite products, set-top boxes, gateways, and components thereof by reason of infringement of one or more of claim 26 of the '126 patent; claims 1, 3, and 8 of the '093 patent; claims 1–16 of the '919 patent; claims 1–6 and 12–16 of the '221 patent; and claims 1, 3–5, 7, 8, 34, 36, and 37 of the '525 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding Administrative Law Judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Sony Corporation, 1–7–1 Konan, Minato-ku, Tokyo, 108–0075, Japan

Sony Electronics Inc., 16530 Via Esprillo, San Diego, CA 92127

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ARRIS International plc, 3871 Lakefield Drive, Suwanee, GA 30024

ARRIS Group, Inc., 3871 Lakefield Drive, Suwanee, GA 30024

ARRIS Technology, Inc., 101 Tournament Drive, Horsham, PA 19044

ARRIS Enterprises LLC, 3871 Lakefield Drive, Suwanee, GA 30024

ARRIS Solutions, Inc., 3871 Lakefield Drive, Suwanee, GA 30024

ARRIS Global Ltd. (formerly Pace Ltd.), Victoria Road, Saltaire, West Yorkshire BD18 3LF, England

Pace Americas, LLC, 3701 FAU Boulevard, Suite 200, Boca Raton, FL 33431

Pace Americas Holdings, Inc., 3701 FAU Boulevard, Suite 200, Boca Raton, FL 33431

Pace USA LLC, 3701 FAU Boulevard, Suite 200, Boca Raton, FL 33431

Pace Americas Investments LLC, 3701 FAU Boulevard, Suite 200, Boca Raton, FL 33431

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 12, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–07733 Filed 4–17–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0057]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Uniform Crime Reporting Data Collection Instrument Pretesting and Burden Estimation General Clearance

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division (CJIS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until June 19, 2017.

FOR FURTHER INFORMATION CONTACT: All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mrs. Amy C. Blasher, Unit Chief, Federal Bureau of Investigation, Criminal Information Services Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Uniform Crime Reporting Data Collection Instrument Pretesting and Burden Estimation General Clearance.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1110–0057. The applicable component within the Department of Justice is the Criminal Justice Information Services Division, in the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, tribal and federal law enforcement agencies. Abstract: This clearance provides the UCR Program the ability to conduct pretests which evaluate the validity and reliability of information collection instruments and determine the level of burden state and local agencies have in reporting crime data to the FBI. The Paperwork Reduction Act only allows for nine respondents in pretesting activities. This clearance request expands the pretesting sample to 30 people for each of the twelve information collections administered by the UCR Program. Further, the clearance will allow for a brief 5-minute cost and burden assessment for the 18,000 law enforcement agencies participating in the UCR Program.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* UCR Participation Burden Estimation: There are approximately 18,000 law enforcement respondents; calculated estimates indicate five minutes per submission. UCR Form Pretesting: There are approximately 300 respondents; calculated estimates indicate one hour per pretest.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 1,800 hours, annual burden, associated with this information collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: April 13, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–07803 Filed 4–17–17; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 4–17]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Thursday, April 27, 2017: 10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2017–07909 Filed 4–14–17; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Guam World War II Loyalty Recognition Program Statement of Claim

AGENCY: Foreign Claims Settlement Commission, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Foreign Claims Settlement Commission (Commission), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 82 *FR* 10498, on February 13, 2017, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional days until May 18, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeremy LaFrancois, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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:* New Collection.

2. *The Title of the Form/Collection:* Statement of Claim for filing of Claims in the Guam Claims Program Pursuant to the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328 (December 23, 2016).

3. *The agency form number:* FCSC–2. Foreign Claims Settlement Commission, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals.

Other: Estates.

Abstract: Information will be used as a basis for the Commission to receive, examine, adjudicate and render final decisions with respect to claims for compensation of claims pursuant to the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328 (December 23, 2016).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5,000 individual respondents will complete the application, and that the amount of time estimated for an average respondent to reply is approximately two hours each.

6. *An estimate of the total public burden (in hours) associated with the collection:* 10,000 annual burden hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405A, Washington, DC 20530.

Dated: April 13, 2017.

Melody Braswell,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. 2017–07823 Filed 4–17–17; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0218]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Generic Clearance for Cognitive, Pilot, and Field Studies for Office of Juvenile Justice and Delinquency Prevention Data Collection Activities

AGENCY: Office of Justice Programs.

ACTION: 60-Day notice of information collection under review.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency

Prevention (OJJDP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until June 19, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Brecht Donoghue, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 or *brecht.donoghue@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1 *Type of Information Collection:* New collection.

2 *The Title of the Form/Collection:* Generic clearance for cognitive, pilot, and field studies for Office of Juvenile Justice and Delinquency Prevention data collection activities.

3 *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–14, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

4 *Affected public who will be asked or required to respond, as well as a brief abstract:* The proposed information collection activity will enable OJJDP to develop, test, and improve its survey and data collection instruments and methodologies. OJJDP will engage in cognitive, pilot, and field test activities to inform its data collection efforts and to minimize respondent burden associated with each new or modified data collection. OJJDP anticipates using a variety of procedures including, but not limited to, tests of various types of survey and data collection operations, focus groups, cognitive laboratory activities, pilot testing, field testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Following standard Office of Management and Budget (OMB) requirements, OJJDP will submit an individual request to OMB for every group of data collection activities undertaken under this generic clearance. OJJDP will provide OMB with a copy of the individual instruments or questionnaires (if one is used), as well as other materials describing the project. Currently, OJJDP anticipates the need to conduct testing and development work that will include the collection of information from law enforcement agencies, child welfare agencies, courts, probation supervision offices, and the state agencies, local governments, non-profit organizations, and for-profit organizations that operate juvenile residential placement facilities.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 2,500 respondents will be involved in the anticipated cognitive, pilot, and field testing work over the 3-year clearance period. Specific estimates for the average response time are not known for development work covered under a generic clearance. Estimates of overall burden are included in item 6 below.

6 *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden for identified and future projects covered under this generic clearance over the 3-year clearance period is approximately 5,000 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: April 13, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–07773 Filed 4–17–17; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers United States City Average

Pursuant to Section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94–283), 2 U.S.C. 441a(c)(1)–(2), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967 = 100) increased 386.8 percent from its 1974 annual average of 147.7 to its 2016 annual average of 718.955 and that it increased 35.5 percent from its 2001 annual average of 530.4 to its 2016 annual average of 718.955. Using 1974 as a base (1974 = 100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 386.8 percent from its 1974 annual average of 100 to its 2016 annual average of 486.767. Using 2001 as a base (2001 = 100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers increased 35.5 percent from its 2001 annual average of 100 to its 2016 annual average of 135.550. Using 2006 as a base (2006 = 100), I certify that the CPI increased 19.1 percent from its 2006 annual average of 100 to its 2016 annual average of 119.052.

Signed at Washington, DC, on March 29, 2017.

Edward C. Hugler,

Acting Secretary of Labor.

[FR Doc. 2017–07832 Filed 4–17–17; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to Section 33105(c) of Title 49, United States Code, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the Federal Highway Administration (49 CFR 501.2(a)(9)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967 = 100) increased 131.1 percent from its 1984 annual average of 311.1 to its 2016 annual average of 718.955.

Signed at Washington, DC, on March 29, 2017.

Edward C. Hugler,

Acting Secretary of Labor.

[FR Doc. 2017–07831 Filed 4–17–17; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 17–019]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Frances Teel, National Aeronautics and Space Administration, 300 E Street SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, (202) 358–2225.

SUPPLEMENTARY INFORMATION:

I. Abstract

Homeland Security Presidential Directive 12 (HSPD–12) established a mandatory requirement for a Government-wide identify verification standard. In compliance with HSPD–12 and the National Institute of Standards and Technology (NIST) Federal Information Processing Standard (FIPS) 201: Personal Identity Verification of Federal Employees and Contractors, and OMB Policy memorandum M–05–24 Implementation of Homeland Security Presidential Directive 12, NASA must collect information from members of the public to: (1) Validate identity and (2) issue secure and reliable federal credentials to enable access to NASA facilities/sites and NASA information systems. Information collected is consistent with background investigation data to include but not limited to name, date of birth, citizenship, social security number (SSN), address, employment history, biometric identifiers (*e.g.* fingerprints), signature, digital photograph.

NASA collects information from U.S. Citizens requiring access 30 or more days in a calendar year. NASA also collects information from foreign nationals regardless of their affiliation time.

NASA collects, stores, and secures information from individuals identified above in the NASA Identify Management System (IdMAX) in a manner consistent with the Constitution and applicable laws, including the Privacy Act.

Information is collected via a combination of electronic and paper processes and stored in the NASA Identify Account Exchange (IdMAX) System.

II. Method of Collection

Electronic (90%) and paper (10%).

III. Data

Title: Personal Identity Validation for Routine and Intermittent Access to NASA Facilities, Sites, and Information Systems.

OMB Number: 2700–0158.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Individuals.

Estimated Number of Respondents: 52,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Public Burden Hours: 8,667.

Estimated Total Annual Government Cost: $1,189,350.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2017–07780 Filed 4–17–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–037]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by May 18, 2017. Once NARA finishes appraising the records,

we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road, College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of the Air Force, Agency-wide (DAA–AFU–2017–0001, 1 item, 1 temporary item). Records relating to verification of heat treatment of metal components.

2. Department of the Air Force, Agency-wide (DAA–AFU–2017–0002, 1 item, 1 temporary item). Reports, assessments, worksheets, data, and other records used to estimate the cost of major weapons systems.

3. Department of the Air Force, Agency-wide (DAA–AFU–2017–0003, 1 item, 1 temporary item). Data generated by an electronic information system used to notify personnel of emergencies.

4. Department of the Air Force, Agency-wide (DAA–AFU–2017–0005, 1 item, 1 temporary item). Diagnostic reports, specimen records, photographs, consultation requests, data, and other records relating to genetic laboratory studies.

5. Department of Defense, Defense Contract Management Agency (DAA–0558–2016–0004, 2 items, 2 temporary items). Contract administration files.

6. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0024, 1 item, 1 temporary item). Records regarding personnel access to military installations.

7. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0045, 1 item, 1 temporary item). Records of an electronic database for tracking location and condition of weapons systems.

8. Department of Defense, National Security Agency (DAA–0457–2017–0001, 1 item, 1 temporary item). Records related to requests for training assistance for dependent family members of agency staff.

9. Department of Defense, National Security Agency (DAA–0457–2017–0002, 1 item, 1 temporary item). Medical files related to staff dependents.

10. Department of Health and Human Services, Office of the Secretary (DAA–0468–2017–0002, 1 item, 1 temporary item). Records include comments left by the public on the agency Web site.

11. Department of Health and Human Services, Agency-wide (DAA–0468–2017–0003, 2 items, 2 temporary items). Web site records relating to content and activity.

12. Department of Homeland Security, Immigration and Customs Enforcement (DAA–0567–2015–0017, 19 items, 17 temporary items). Records related to policy development, administrative management, rulemaking, planning, internal review processes, non-executive official presentations, and news media contact. Proposed for permanent retention are adopted mission related policy files and controlled correspondence.

13. Department of Homeland Security, Transportation Security Administration (DAA–0560–2017–0002, 1 item, 1 temporary item). Records related to international missions by Federal Air Marshals, including certification of completion of pre-mission procedural requirements and conformance with departure procedures, and supporting documents.

14. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2017–0005, 1 item, 1 temporary item). Master files of an electronic information system that prepares, manages, and processes benefit card order requests.

15. Department of Justice, Department-wide (DAA–0060–2017–0009, 4 items, 4 temporary items). Records relating to administration of training programs in law enforcement, legal, and investigative programs, and

training in technical skills germane to administration of justice.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2017–07757 Filed 4–17–17; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0102]

Superseded or Outdated Generic Communications

AGENCY: Nuclear Regulatory Commission.

ACTION: Generic communications; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing the selected generic communications because their guidance no longer provides useful information, their guidance is superseded by updated guidance, or the information can be more effectively made available to interested stakeholders by other means.

DATES: The effective date of the withdrawals is April 18, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0102 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–2017–0102. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain-publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Erika A. Lee, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2065; email: *Erika.Lee@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

A. General Information

The NRC performs periodic reviews of generic communications and withdraws them when they no longer provide useful information or are superseded by technological innovations or updated guidance. A withdrawal includes the original generic communication and any supplements or revisions. The NRC is currently publishing withdrawals of generic communications on a quarterly basis.

Withdrawal of the original generic communication and supplements, if applicable, will not affect the public's ability to obtain this information. The original generic communication and supplements will remain accessible through ADAMS and the NRC's generic communications Web site. The NRC's generic communication Web site will be updated to reflect the generic communications status as withdrawn. The generic communications Web site is accessible at *https://www.nrc.gov/reading-rm/doc-collections/gen-comm/.*

B. Withdrawals of Generic Communications

The following generic communications are withdrawn:

• Administrative Letter (AL) 1996–03, ''Centralization of Quality Assurance Program Review Responsibility in the Office of Nuclear Reactor Regulation,'' September 27, 1996 (ADAMS Accession No. ML031110120).

This AL discusses the transition of responsibilities for the review of quality assurance program (QAP) changes from the region to headquarters. These administrative changes do not impact the process for licensee submittals, since licensees are required to submit QAP changes via section 50.54(a) of title 10 of the *Code of Federal Regulations* (10 CFR), in accordance with 10 CFR 50.4.

• Generic Letter 1994–04, ''Voluntary Reporting of Additional Occupational Radiation Exposure Data,'' September 2, 1994 (ADAMS Accession No. ML031200443).

Updated requirements for data submission are contained in 10 CFR 20.1007, ''Communications.''

• Information Notice (IN) 1993–03, ''Recent Revisions to 10 CFR part 20 and Change of Implementation Date to January 1, 1994,'' January 5, 1993 (ADAMS Accession No. ML031080060).

The implementation date of January 1, 1994 for compliance with 10 CFR part 20 has passed.

• IN 1993–80, ''Implementation of the Revised 10 CFR 20,'' October 8, 1993 (ADAMS Accession No. ML031070060).

The deadline of January 1, 1994 to be in compliance with 10 CFR part 20 has passed.

• Regulatory Information Summary 2014–03, ''Notice of 10 CFR Part 37 Implementation Deadline for NRC Licensees,'' March 13, 2014 (ADAMS Accession No. ML14052A157).

The deadline of March 19, 2014 to be in compliance with 10 CFR part 37 has passed.

Dated at Rockville, Maryland, this 12th day of April 2017.

For the Nuclear Regulatory Commission.

Sheldon D. Stuchell,

Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–07825 Filed 4–17–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2017–163]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 20, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2017–163; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* April 12, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* April 20, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–07774 Filed 4–17–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80440; File No. SR–NYSEArca–2017–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

April 12, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 5, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective April 5, 2017. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Lead Market Maker (''LMM'') Rights Fees (''Rights Fee'') to encourage OTP Firms acting as LMMs to add more issues to their allocation. The Exchange proposes to implement the fee change effective April 5, 2017.

The LMM Rights Fee is charged ''on a per issue basis to the OTP Firm acting as LMM in the issue.'' [4] Currently, the Exchange charges a Rights Fee on each issue in a LMM's allocation, with rates based on the Average National Daily Customer Contracts (''CADV''). The monthly Rights Fee ranges from $25 per month to $3,000 per month. Under the current Fee Schedule, the more active an issue is, the higher the Rights Fee, as set forth below:

Average national daily customer contracts	Monthly issue fee
0 to 100	$25
101 to 1,000	35
1,001 to 2,000	75
2,001 to 5,000	200
5,001 to 15,000	750
15,001 to 100,000	1,500
Over 100,000	3,000

LMM Rights Fee Discount

Currently, the Exchange provides an LMM Rights Fee Discount applicable to each issue in an LMM's appointment with a CADV above 5, 000 based on the amount of monthly (i) total electronic volume and/or (ii) total posted volume executed by an LMM in the Market Maker range relative to other Marker Makers appointed in that issue (the ''Discount'').[5] This Discount was designed to incent LMMs that already transact a significant amount of business on the Exchange and trade competitively in their issues to achieve one of the Discounts as well as to incent LMMs to apply for new issue allocation.

The Exchange proposes to modify and expand the Discount. First, the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Fee Schedule, Endnote 2, *available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[5] *See* Securities and Exchange Act Release No. 77885 (May 23, 2016), 81FR 33716 (May 27, 2016) (SR–NYSEArca–2016–75) (immediately effective filing that provides how the Discount is applied). The Exchange notes that total posted volume executed by an LMM refers to the total volume executed from posted liquidity.

Exchange proposes to make the Discount available to LMMs with issues in their appointment with a CADV above 2,000. The Exchange also proposes to modify the amount of the Discount available as set forth in the table below (with new text underlined and existing text to be deleted in brackets):

* * * * *

LMM ranking	Discount to LMM rights fee
1st in total electronic volume ...	50%.
2nd in total electronic volume ..	[25%] *40%*.
3rd [or lower ranking] *in total electronic volume*.	[N/A] *30%*.
4th or lower ranking in total electronic volume.	*N/A*.
1st in total posted volume	50%.
2nd in total posted volume	[25%] *40%*.
3rd [or lower ranking] *in total posted volume*.	[N/A] *30%*.
4th or lower ranking in total posted volume.	*N/A*.

Under the proposal, as with the current Discount, each month the LMM in an issue would be ranked against non-LMM Market Makers that quote and trade in that LMM's issue. For each issue, each month, if the LMM achieves the highest total electronic volume (or total posted volume) amongst all Market Makers, the LMM would continue to receive a 50% discount to its Rights Fee. In addition, as proposed, for each issue, each month, if the LMM achieves the second highest total electronic volume (or total posted volume) amongst all Market Makers, the LMM would receive a 40% discount to its Rights Fee (raised from 25%). The Exchange also proposes to introduce an additional discount of 30% for an LMM that achieves the third highest total electronic volume (or total posted volume) amongst all Market Makers. An LMM that achieves the fourth highest or lower total electronic volume (or total posted volume) would not be eligible for a Discount. The Exchange believes the proposed discounts would incent LMMs [sic] to compete against non-LMM Market Makers to reduce its own Rights Fee. For example, if one or more non-LMM Market Makers were ranked first, second, and third in (i) total electronic volume and (ii) total posted volume, the LMM would not receive a discount to its Rights Fee. However, when the LMM achieves one or both of the top volume rankings, the LMM would be eligible for a reduction. As is the case today, the Discounts would be cumulative and the same LMM would be eligible to achieve the discount for each monthly volume category.[6] To illustrate how the cumulative discount applies, the Fee Schedule currently provides that ''if an LMM was 1st in Total Electronic Volume, and 2nd in Total Posting Volume, the LMM would achieve a 75% discount in that issue.'' To reflect the proposed rule change, the Exchange proposes to amend the current text in the Fee Schedule by replacing the LMM's ranking from 2nd to 3rd in Total Posting Volume and replacing the percentage of discount that the LMM would achieve from 75% to 80%. As proposed, the resulting text on the Fee Schedule would provide that ''For example, if an LMM was 1st in Total Electronic Volume, and 3rd in Total Posting Volume, the LMM would achieve an 80% discount in that issue.''

The Exchange believes that the proposed discounts may incent LMMs that already transact a significant amount of business on the Exchange to quote and trade competitively in their issues to achieve the highest (or second or third highest) monthly ranking in total electronic volume and total posted volume. The Exchange also believes the proposed changes may generate interest in LMMs to apply for new issue allocations, which would increase not only an LMM's volume, but would also encourage liquidity on the Exchange to the benefit of all market participants.

Cap on LMM Rights Fees

The Exchange also currently offers a cap on the LMM Rights Fee (the ''Cap''). Specifically, the Exchange caps at 50 issues the Rights Fee it charges OTP Firms for issues with a CADV of 0 to 100 contracts (''First Tier''). The Exchange does not charge for any First Tier issues in the LMM's allocation that exceed 50 issues. The Exchange also caps at 100 issues the Rights Fee it charges for issues with a CADV of 101 to 1000 (''Second Tier''). The Exchange does not charge for any Second Tier issues in the LMM's allocation that exceed 100 issues.

The Exchange proposes to modify the Cap to encourage LMMs to add issues to their appointments. Specifically, the Exchange proposes to reduce the Cap from 100 issues to 50 issues on the Rights Fee it charges OTP Firms for issues in the Second Tier. The Exchange would not charge for any Second Tier issues in the LMM's allocation that exceed 50 issues. The Exchange also proposes to cap at 50 issues the Rights Fee it charges for issues with a CADV of 1,001 to 2000 (''Third Tier''). The Exchange would not charge for any Third Tier issues in the LMM's allocation that exceed 50 issues. The practical impact of this Cap would be that the maximum LMM Rights Fee charged to an OTP Firm for issues trading in the Second Tier would be $1,750 (*i.e.,* $35 × 50) and the maximum Rights Fee charged to an OTP Firm for issues trading in the Third Tier would be $3,750 (*i.e.,* $75 × 50). For example, an OTP Firm acting as an LMM with 55 issues that trade in the Second Tier, and another 130 that trade in the Third Tier, would be charged an LMM Rights fee of $5,500 ($1,750 (the max charged for Second Tier issues) plus $3,750 (the max charged for Third Tier issues).

The Exchange is proposing to set the Cap the [sic] Second and Third Tiers at the same amount (*i.e.,* at 50 issues) as the First Tier, which the Exchange believes would reduce confusion and provide a commensurate benefit across the three lowest Tiers. The Exchange believes that the proposed modification to the Cap would increase interest of OTP Firms acting as LMMs in adding to their allocation issues in the First, Second, and Third Tiers.

The Exchange does not believe that the proposed modification to the Cap would hinder an LMM's ability to achieve any of the existing discounts applicable to the Rights Fees; rather, to the extent that the Cap encourages an OTP Firm acting as an LMM to increase the number of issues in its allocation, the proposal may increase an LMM's chances of achieving existing discounts (*i.e.,* to achieve the 50% discount on the Rights Fee an LMM needs to trade 10,000 electronic contracts ADV in its appointment).[7]

The Exchange is not proposing any other changes to the Rights Fee at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly

[6] As is the case today Discount would be applied before the Exchange considered whether the LMM was eligible for the 50% discount on its aggregate Rights Fees across all issues (*i.e.,* if the LMM traded at least 50,000 contracts CADV, of which 10,000 such contracts are in its LMM appointment). *See id. See also* Fee Schedule, Endnote 2, *available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[7] *See supra* note 6.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed modification to the Discount is reasonable, equitable and not unfairly discriminatory for a number of reasons. First, all LMMs trading issues with similar activity levels would be eligible to achieve the discount (*e.g.,* those LMMs trading issues with a CADV of 2,001 or above). The Exchange notes that there is only one LMM per issue, and only LMMs are subject to the Rights Fee. Under the proposal, each month the LMM in an issue would be ranked against non-LMM Market Makers that quote and trade in that LMM's issue. Because the non-LMM Market Makers are not subject to the Rights Fee, the modified Discount would not disadvantage Market Makers. Instead, the proposal would operate to incent each LMM to achieve First, Second, or Third ranking in monthly volume—both total electronic and total posted—for each issue, relative to non-LMM Market Makers, to reduce its own Rights Fee. In addition, the Discount, as modified, would reduce the overhead costs of LMM firms that are most actively trading in the issues, which reduced costs would enhance the ability of LMMs to provide liquidity to the benefit of all market participants.

The Exchange believes that the proposed modification to the Cap is reasonable, equitable and not unfairly discriminatory for a number of reasons. First, all LMMs trading in the First, Second and Third Tier issues would have the same incentive to add the affected issues to their allocation and would, in turn, be eligible to realize the same benefit. Second, the proposal would encourage OTP Firms acting as LMMs to add lower-volume issues to their appointments, which would provide greater opportunities for OTP Firms to achieve volume incentives on the Exchange without adding to their Rights Fees. In turn, the Cap, as modified, would reduce the overhead costs of OTP Firms that are most actively trading in the affected issues, which reduced costs would enhance the ability of LMMs to provide liquidity to the benefit of all market participants. Further, the Exchange believes that having a broader range of products available on the Exchange would benefit all market participants by increasing liquidity on the Exchange and offering more opportunities to trade.

The changes to the Rights Fee Discounts and the changes to the LMM Rights Fee caps are reasonable, equitable and not unfairly discriminatory as they apply to all similarly situated LMMs. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to put a cap on lower tier issues, as it is designed to encourage LMMs to apply for lower volume issues in their LMM appointment. Application of volume based discounts to rights fees in the lower tier issues would not encourage increased business on the Exchange, as there is much less competition amongst Market Makers because of the lower volumes. By providing a cap on fees as an alternative method of reducing the overhead cost of being an LMM in the lower volume issues, the Exchange has proposed an equitable and appropriate method to encourage LMMs to select lower volume issues.

Additionally, applying volume based incentives for higher volume tier issues is reasonable, equitable, and not unfairly discriminatory, because it applies to issues where there is more overall competition, and encourages tighter markets and greater liquidity in the more active issues, which benefits all market participants by attracting more order flow to the Exchange.

The Exchange also believes that the proposed modification [sic] to the Cap are not unfairly discriminatory because they apply solely to LMMs (non-LMMs are not subject to this Fee) and would not disadvantage Market Makers.

Finally, the Exchange is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposal would not impose an unfair burden on competition because the proposed Rights Fees would more closely align with the economic benefit of being LMM in a given issue. Because the non-LMM Market Makers are not subject to the Rights Fee, the proposed Discount and Cap would not disadvantage Market Makers. Instead, the Discount, as modified, would operate to incentivize each LMM to achieve first, second or third ranking in monthly volume for each issue, relative to non-LMM Market Makers [sic] to reduce its own Rights Fee. The Exchange believes that this proposal would encourage LMMs to quote and trade competitively in their issues and would reduce the burden on competition among LMMs in the most actively-traded issues because LMMs that achieve the discounts would have reduced overhead.

The Exchange also believes that the Cap, as modified, would not impose an unfair burden on competition because it would encourage more OTP Firms acting as LMMs to add the lower-volume issues to their allocation, which would increase liquidity and offer more trading opportunities to market participants.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2017–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2017–38, and should be submitted on or before May 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–07752 Filed 4–17–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80439; File No. SR–CBOE–2017–031]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Complex Order Price Protections

April 12, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2017, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend current price protections related to complex orders. The text of the proposed rule change is provided below (additions are *italicized;* deletions are [bracketed]).

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.53C. Complex Orders on the Hybrid System

(a)–(d) No change.

. . . Interpretations and Policies:

.01–.07 No change.

.08 *Price Check Parameters:* On a class-by-class basis, the Exchange may determine (and announce to the Trading Permit Holders via Regulatory Circular) which of the following price check parameters will apply to eligible complex orders. Paragraph (b) will not be applicable to stock-option orders.

For purposes of this Interpretation and Policy .08:

Vertical Spread. A ''vertical'' spread is a two-legged complex order with one leg to buy a number of calls (puts) and one leg to sell the same number of calls (puts) with the same expiration date but different exercise prices.

Butterfly Spread. A ''butterfly'' spread is a three-legged complex order with two legs to buy (sell) the same number of calls (puts) and one leg to sell (buy) twice as many calls (puts), all with the same expiration date but different exercise prices, and the exercise price of the middle leg is between the exercise prices of the other legs. If the exercise price of the middle leg is halfway between the exercise prices of the other legs, it is a ''true'' butterfly; otherwise, it is a ''skewed'' butterfly.

Box Spread. A ''box'' spread is a four-legged complex order with one leg to buy calls and one leg to sell puts with one strike price, and one leg to sell calls and one leg to buy puts with another strike price, all of which have the same expiration date and are for the same number of contracts.

To the extent a price check parameter is applicable, the Exchange will not automatically execute an eligible complex order that is:

(a)–(b) No change.

(c) Debit/Credit Price Reasonability Checks:

(1)–(5) No change.

(6) This check does not apply to multi-class spreads *or to orders routed from a PAR workstation or order management terminal.*

(d) No change.

(e) Acceptable Percentage Range Parameter:

(i) An incoming complex order (including a stock-option order) after the series for all legs of the complex order are open for trading that is marketable and would execute immediately upon submission to the COB or following a COA if the execution would be at a price outside an acceptable percentage range. The ''acceptable percentage range'' is the national spread market (or Exchange spread market if the NBBO in any leg is locked, crossed or unavailable and for pairs of orders submitted to AIM or SAM) that existed when the System received the order or at the start of the COA, as applicable, plus/minus:

(A) the amount equal to a percentage (which may not be less than %) of the national spread market (the ''percentage

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

amount'') if that amount is not less than a minimum amount or greater than a maximum amount (the Exchange will determine the percentage and minimum and maximum amounts *on a class-by-class basis* and announce them to Trading Permit Holders by Regulatory Circular);

(B) the minimum amount, if the percentage amount is less than the minimum amount; or

(C) the maximum amount, if the percentage amount is greater than the maximum amount.

(ii) The System cancels an order (or any remaining size after partial execution of the order) that would execute or rest in the COB at a price outside the acceptable price range.

(iii) If the System rejects either order in a pair of orders submitted to AIM or SAM pursuant to this parameter, then the System also cancels the paired order. Notwithstanding the foregoing, with respect to an AIM Retained (''A:AIR'') order as defined in Interpretation and Policy .09 to Rule 6.74A, if the System rejects the Agency Order pursuant to this check, then the System also rejects the contra-side order; however, if the System rejects the contra-side order pursuant to this check, the System still accepts the Agency Order if it satisfies the check. [To the extent a contra-side order or response is marketable against the Agency Order, the execution price will be capped at the opposite side of the acceptable price range.]

(iv) This parameter applies to auction responses in the same manner as it does orders.

(f)–(g) No change.

.09–.12 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its debit/credit price reasonability check and acceptable percentage range parameter for complex orders.

Debit/Credit Price Reasonability Check

In general, pursuant to the debit/credit price reasonability check in Rule 6.53C, Interpretation and Policy .08(c), the System rejects a limit complex order for a debit strategy with a net credit price, a limit complex order for a credit strategy with a net debit price, or a market order for a credit strategy that would be executed at a net debit price.[5] Currently, the check applies to orders routed from a PAR workstation or order management terminal (''OMT''). The proposed change amends Rule 6.53C, Interpretation and Policy .08(c)(6) to provide the check will not apply to orders routed from a PAR workstation or OMT. These orders are subject to manual handling, so the PAR or OMT operator will have evaluated the price of an order based on then-existing market conditions prior to submitting the order for electronic execution, and thus there is minimal risk of execution at an erroneous price. Other price protections similarly do not apply to these orders.[6]

Acceptable Percentage Range Parameter

In general, pursuant to the acceptable percentage range parameter in Rule 6.53C, Interpretation and Policy .08(e), the System cancels an incoming order that is marketable and would execute immediately upon submission to the complex order book (''COB'') or following a COA if the execution would be at a price outside an acceptable percentage range, which is the national spread market that existed when the System received the order or at the start of COA, as applicable, plus/minus:

- The amount equal to a percentage (which may not be less than 3%) of the national spread market (the ''percentage amount'') if that amount is not less than a minimum amount or greater than a maximum amount (the Exchange will determine the percentage and minimum and maximum amounts and announce them to Trading Permit Holders by Regulatory Circular);
- the minimum amount, if the percentage amount is less than the minimum amount; or
- the maximum amount, if the percentage amount is greater than the maximum amount.

First, the proposed rule change amends Rule 6.53C, Interpretation and Policy .08(e)(i)(A) to provide the Exchange may determine the percentage and the minimum and maximum amounts on a class-by-class basis. Currently, the rule states the percentage and minimum and maximum amounts will be the same for all classes. Because of class differences such as the minimum increment and option prices, the Exchange believes it may be appropriate to set different amounts so the outside of the range is not too close or too far away from the market price for a class and ensure the range creates an effective check for all classes. Therefore, the proposed rule change adds this flexibility to the Rule. Other price protections have similar flexibility.[7]

Second, the proposed rule change adds Rule 6.53C, Interpretation and Policy .08(e)(iv) to provide this parameter will apply to auction responses in the same manner as it does orders. The current parameter does not apply to auction responses. As noted in a recent rule filing enhancing this parameter, even if the parameter does not apply to auction responses, this protection will prevent an order from executing outside the acceptable price range (including against an auction response), and thus responses will not execute against an order outside the acceptable price range.[8] However, cancelling an auction response prior to the end of an auction that would execute outside the acceptable price range may give the submitting Trading Permit Holder an opportunity to submit a new response within the acceptable price range prior to the end of the auction, and thus increase execution opportunities. Therefore, the proposed rule change applies this parameter to auction response. An auction response at a price outside the acceptable price range will not execute regardless of whether this parameter applies to the auction response; applying the parameter to auction responses merely changes the timing of when the response is cancelled.[9] Other price

[5] *See* Rule 6.53C, Interpretation and Policy .08(c). The System determines whether an order is a debit or credit strategy as set forth in that Rule.

[6] *See, e.g.,* Rule 6.12(a)(3) and (4).

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 34–80181 (March 8, 2017), 82 FR 13678, note 26 (March 14, 2017) (SR–CBOE–2017–016).

[9] Paragraph (e)(iii) currently states to the extent a contra-side order or response is marketable against the Agency Order, the execution price will be capped at the opposite side of the acceptable price range. The proposed rule change deletes this rule language, as it is redundant. The price protection will, as proposed, cancel orders and responses (or remaining size after partial execution) that would

Continued

protections similarly apply to auction responses.[10]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to not apply the debit/credit price reasonability check to orders routed from a PAR workstation or OMT would remove impediments to and perfect the mechanism of a free and open market and a national market system, as those orders were subject to manual handling by a PAR or OMT operator who will have evaluated the price of an order based on then-existing market condition [sic] prior to submitted [sic] it for electronic execution, thus minimizing risk of an erroneous execution and reducing the need for application of the additional reasonability check. Other price protections similarly do not apply to these orders.[14]

The proposed rule change to provide the Exchange with flexibility to determine settings for the acceptable percentage range parameter on a class-by-class manner will permit the Exchange to ensure the range is not too close or too far away from the market price for a class based on factors such as minimum increment and premium, and thus ensure the range creates an effective check for all classes. This will protect investors from potentially erroneous executions while removing impediments to and perfecting the mechanism of a free and open market and a national market system by ensuring orders are not inadvertently cancelled due to a range that is too narrow. Other price protections have similar flexibility.[15]

The proposed rule change to apply the acceptable percentage range parameter to auction responses merely changes the time at which responses outside the acceptable price range is cancelled. However, application of the acceptable percentage range parameter to auction responses may permit the submitting Trading Permit Holder to enter a new auction response at a price within the range prior to the end of the auction, which improves execution opportunities and thus protects investors. Other price protections similarly apply to auction responses.[16]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will apply to all complex orders submitted to CBOE in the same manner. The enhancements to the price protection mechanisms applicable to all incoming orders will help further prevent potentially erroneous executions, which benefits all market participants. Additionally, the proposed rule change is substantially similar to other price protections.[17] The proposed rule change will not impose any burden on intermarket competition, as it applies only to CBOE price protection mechanisms that prevent erroneous executions on CBOE.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2017–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2017–031. 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/*

execute outside the acceptable price range. There [sic] is effectively the same as capping an execute [sic] price no wider than the acceptable price range, as no order or response will be able to execute at a price outside the range.

[10] *See, e.g.,* Rule 6.53C, Interpretation and Policy .08(c)(4).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] *See, e.g.,* Rule 6.12(a)(3) and (4).

[15] *Id.*

[16] *See, e.g.,* Rule 6.53C, Interpretation and Policy .08(c)(4).

[17] *See, e.g.,* Rules 6.12(a)(3) and (4) and Rule 6.53C, Interpretation and Policy .08(c)(4).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2017–031 and should be submitted on or before May 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–07751 Filed 4–17–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80437; File No. SR–NASDAQ–2017–035]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees at Rule 7014(f) To Amend the Designated Liquidity Provider Program

April 12, 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 March 31, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Rule 7014(f) to amend the Designated Liquidity Provider (''DLP'') Program (''Program'').

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 3, 2017.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the DLP Program in Rule 7014(f) to eliminate the rebates that are paid pursuant to the New Product Support Incentives (''NPSI''). With the elimination of the NPSI, the Exchange also proposes to amend one of the ''Basic Rebates'' to increase that rebate from $0.0047 per executed share to $0.0070 per executed share. Nasdaq also proposes to amend the manner in which the average daily volume (''ADV'') of an exchange-traded product (''ETP'') is calculated for purposes of determining a DLP's eligibility for the Basic Rebate.

The DLP Program is designed to provide incentives to market makers to make markets in certain ETPs. To achieve this goal, Nasdaq provides credits to a DLP when executing a Qualified Security. As set forth in the Rule, a DLP is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards.[3] A Qualified Security is defined as an exchange-traded product listed on Nasdaq pursuant to Nasdaq Rules 5705 (Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares), 5710 (Securities Linked to the Performance of Indexes and Commodities, Including Currencies), 5720 (Trust Issued Receipts), 5735 (Managed Fund Shares), or 5745 (NextShares), and it must have at least one DLP.

Currently, a DLP may be eligible for three different kinds of rebates under the Program. First, a DLP will qualify for a ''Basic Rebate'' for adding shares of displayed liquidity in the ETP if the DLP is at the National Best Bid and Offer (''NBBO'') at least 20% of the time on average in any given month in a particular assigned ETP. The Basic Rebates vary based on the ETP's ADV in a given month. Specifically, a DLP will receive: (i) A rebate of $0.0047 per executed share of displayed liquidity in an ETP that has less than 500,000 ADV during the month; (ii) a rebate of $0.0042 per executed share of displayed liquidity in an ETP that has between 500,000 and 5 million ADV during the month; and (iii) a rebate of $0.0036 per executed share of displayed liquidity in an ETP that has greater than 5 million ADV during the month. The Basic Rebate will be paid in lieu of other rebates or fees provided under Rules 7018 and 7014.

The second rebate is the NPSI rebate. Like the Basic Rebate, the NPSI rebate will be paid in lieu of other rebates or fees provided under Rules 7018 and 7014, including the Basic Rebate. A DLP will qualify for the NPSI rebate for adding shares of displayed liquidity in the ETP if the DLP is at the NBBO at least 20% of the time in the assigned ETP in any given month. The ETP itself must have a three month ADV of less than 500,000, and the ETP must be less than 36 months old. Assuming the ETP meets the NPSI volume criteria, a rebate of $0.0070 per executed share of displayed liquidity will be paid to DLPs that are assigned to ETPs that are 0–12 months from the ETP's product inception date; a rebate of $0.0065 per executed share of displayed liquidity for ETPs that are 12 to 24 months from the

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Rule also provides that a DLP shall be selected by Nasdaq based on factors including, but not limited to, experience with making markets in exchange-traded products, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. Nasdaq may limit the number of DLPs in a security, or modify a previously established limit, upon prior written notice to members. *See* Rule 7014(f)(2).

ETP's product inception date, and a rebate of $0.0055 per executed share of displayed liquidity for ETPs that are 24 to 36 months from the ETP's product inception date. For purposes of calculating the number of months under the rule, the first partial month an ETP is launched will count as one month.

The third rebate is the Additional Tape C ETP Incentives. This rebate will be paid in addition to other rebates or fees provided under Rules 7018 and 7014, including the Basic Rebate and the NPSI. In order to qualify for the Additional Tape C rebate, the DLP must add displayed liquidity in a Tape C ETP that is listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, 5720, 5735, or 5745.[4] The average time the DLP is at the NBBO for each assigned ETP must average at least 20%, and the average liquidity provided by the DLP for each assigned ETP must average at least 5% of the liquidity provided on Nasdaq in the respective ETP. The amount of the rebate varies according to the minimum monthly average number of ETPs to which a DLP is assigned. A DLP that has a minimum monthly average number of 10 assigned ETPs will receive a rebate of $0.0003 per executed share; a DLP that has a minimum monthly average number of 25 assigned ETPs will receive a rebate of $0.0004 per executed share; and a DLP that has a minimum monthly average number of 50 assigned ETPs will receive a rebate of $0.0005 per executed share.[5]

Currently, only an ETP with a product inception date of 36 months or less is eligible for the NPSI Rebate. Nasdaq has determined that eliminating the time-based eligibility requirement may increase the number of ETPs that may be eligible for a rebate under the DLP Program, and would therefore incentivize the DLPs that are assigned to those ETPs to qualify for a rebate by, among other things, meeting the applicable quoting requirements. This is consistent with the purpose of the DLP Program and may improve the market quality of additional Nasdaq-listed ETPs.

Once the time-based eligibility requirement is removed from the NPSI, the requirements for qualifying for the Basic Rebate tier for ETPs with an ADV of less than 500,000 are virtually identical to the requirements of qualifying for the NPSI rebate. Specifically, both the NPSI and the lowest level of the Basic Rebate tier have a volume requirement of less than 500,000 ADV, and both rebates require the DLP to be at the NBBO at least 20% of the time on average in the assigned ETP. Given the similarities between the NPSI and the lowest tier of the Basic Rebate, and in the interest of simplifying the operation of the Program, the Exchange has therefore determined to eliminate the NPSI rebate in its entirety.[6]

Currently, a DLP will receive a Basic Rebate of $0.0047 per executed share for an ETP with a monthly ADV of less than 500,000 if the DLP is at the NBBO at least 20% of the time on average in the assigned ETP. The Exchange is also proposing to amend this tier to increase the rebate from $0.0047 per executed share to $0.0070 per executed share so that DLPs that are currently receiving the NPSI rebate will continue to receive the same rebate going forward.

Nasdaq believes that it is appropriate to increase the Basic Rebate for an ETP with a monthly ADV of less than 500,000 to $0.0070 per executed share, because DLPs that currently receive an NPSI rebate of $0.0070 per executed share will continue to receive the same rebate even with the elimination of the NPSI rebate. Nasdaq believes that the proposed $0.0070 per executed share rebate is proportionate to the requirements for the Basic Rebate while acting as a sufficient incentive to DLPs in lower-volume ETPs to increase their quoting and trading activity in those securities. Nasdaq believes it is appropriate to raise the Basic Rebate for an ETP with a monthly ADV of less than 500,000, and not for other Basic Rebate tiers, because DLPs need significantly more incentives to quote and trade lower-volume ETPs than higher-volume ETPs.

Finally, Nasdaq is changing the measurement used to calculate an ETP's ADV for purposes of determining a DLP's eligibility for the Basic Rebate. Currently, a DLP will qualify for the Basic Rebate if the ETP's ADV meets the applicable volume threshold, as measured in the same month in which the rebate is being paid. Nasdaq proposes to determine a DLP's eligibility for the Basic Rebate by using the ETP's ADV in the month prior to which the rebate is being paid. Nasdaq believes that adopting a prior month ADV measurement provides greater transparency and certainty to a DLP in determining the Basic Rebate than the current month measurement. Nasdaq is proposing to apply this change to all tiers of the Basic Rebate, as it believes that the basis for this change applies equally to DLPs in all of the Basic Rebate tiers. Nasdaq does not believe that DLPs will significantly alter their trading activity as a result of this change, since the relevant measurement is the ADV of the ETP to which the DLP is assigned, not the ADV of the DLP.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to eliminate the NPSI rebate and to correspondingly increase the amount of the Basic Rebate tier for an ETP with a monthly ADV of less than 500,000. Once the time-based eligibility requirement is removed from the NPSI, the requirements for qualifying for the Basic Rebate tier for ETPs with an ADV of less than 500,000 are virtually identical to the requirements of qualifying for the NPSI rebate. Given the similarities between the NPSI and the lowest tier of the Basic Rebate, and in the interest of simplifying the operation of the Program, the Exchange believes it is reasonable to eliminate the NPSI Rebate in its entirety and concurrently re-number the Additional Tape C ETP Incentives rebate. By eliminating the NPSI rebate and raising the amount of the Basic Rebate for ETPs with an ADV of less than 500,000 to $0.0070 per executed share, Nasdaq will increase the number of ETPs that may be eligible for this rebate, while ensuring that DLPs that currently receive an NPSI rebate of $0.0070 per executed share will continue to have the same opportunity to receive that rebate amount even with the elimination of the NPSI rebate. Increasing the number of ETPs that may be eligible for the $0.0070 rebate will incentivize the DLPs that are assigned to those ETPs to qualify for the rebate by, among other things, meeting the applicable quoting requirements. This is

[4] Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on NYSE, and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

[5] Additionally, if a current DLP has less than 10 DLP assignments, but increases the number of ETPs for which it is a DLP by 100%, the DLP will receive an incremental additional Tape C ETP rebate of $0.0001. A DLP receiving its first assignment will count as a 100% increase. This incremental rebate is only available for the first 100% increase and thus is not available for subsequent increases of 100%.

[6] In eliminating the NPSI rebate, the Additional Tape C ETP Incentives rebate will be re-numbered as Rule 7014(f)(5)(B).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

consistent with the purpose of the DLP Program and may improve the market quality of additional Nasdaq-listed ETPs. Even with the NPSI's time-based requirement removed, Nasdaq believes that the proposed $0.0070 per executed share rebate is proportionate to the requirements for the Basic Rebate while acting as a sufficient incentive to DLPs in lower-volume ETPs to increase their quoting and trading activity in those securities.

Nasdaq believes it is reasonable to change the measurement used to calculate an ETP's ADV for purposes of determining a DLP's eligibility for the Basic Rebate. Nasdaq believes that adopting a prior month ADV measurement provides greater transparency and certainty to a DLP in determining the Basic Rebate than the current month measurement. Nasdaq is proposing to apply this change to all tiers of the Basic Rebate, as it believes that the basis for this change applies equally to DLPs in all of the Basic Rebate tiers.

Nasdaq believes that eliminating the NPSI rebate, and increasing the amount of the Basic Rebate tier for an ETP with a monthly ADV of less than 500,000, is equitable and not unfairly discriminatory. In eliminating the NPSI Rebate and raising the amount of the Basic Rebate for ETPs with an ADV of less than 500,000 to $0.0070 per executed share, all DLPs that currently qualify [sic] NPSI Rebate will continue to have the opportunity to qualify for the same $0.0070 rebate that they currently receive. By raising the amount of the Basic Rebate for ETPs with an ADV of less than 500,000 to $0.0070 per executed share, DLPs that are assigned to such ETPs that are not currently receiving the $0.0070 per executed share rebate will now be eligible to receive this rebate. This will incentivize the DLPs that are assigned to such ETPs to qualify for this rebate by, among other things, meeting the applicable quoting requirements. Moreover, Nasdaq believes it is appropriate to raise the Basic Rebate for an ETP with a monthly ADV of less than 500,000, and not for other Basic Rebate tiers, because DLPs need significantly more incentives to quote and trade lower-volume ETPs than higher-volume ETPs. For these reasons, Nasdaq believes it is reasonable to raise the Basic Rebate for low-volume ETPs in this manner even though the NPSI's time-based requirement will no longer apply.

Nasdaq believes that changing the measurement used to calculate an ETP's ADV for purposes of determining a DLP's eligibility for the Basic Rebate is equitable and not unfairly discriminatory. Nasdaq is proposing to apply this change to all tiers of the Basic Rebate, as it believes that the basis for this change (providing greater transparency and certainty to a DLP in determining the rebate amount) applies equally to DLPs in all of the Basic Rebate tiers. Nasdaq does not believe that DLPs will significantly alter their trading activity as a result of this change, since the relevant measurement is the ADV of the ETP to which the DLP is assigned, not the ADV of the DLP. In addition, this standard will apply to all DLPs that would otherwise qualify for the Basic Rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and rebates in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Here, increasing the Basic Rebate for ETPs with an ADV of less than 500,000 to $0.0070 per executed share, eliminating the NPSI rebate, and changing the measurement of an ETP's ADV for purposes of the Basic Rebate do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. With these proposed changes, all similarly-situated members are equally capable of qualifying for the proposed Basic Rebate for ETPs with an ADV of less than 500,000 if they choose to meet the requirements of the Program and the Basic Rebate, and the same rebate will be paid to all members that qualify for it. In addition, members will continue to have opportunities to qualify for the Tape C Rebate under the Program.

Nasdaq believes that raising the Basic Rebate for an ETP with a monthly ADV of less than 500,000, and not for other Basic Rebate tiers, does not constitute a burden on competition not necessary or appropriate, because DLPs need significantly more incentives to quote and trade lower-volume ETPs than higher-volume ETPs. Eliminating the NPSI Rebate and increasing the proposed Basic Rebate for ETPs with an ADV of less than 500,000 to $0.0070 per executed share will expand the scope of ETPs, and the DLPs that are assigned to them, that are eligible for this rebate, while helping ensure that DLPs that currently qualify for the $0.0070 rebate under the NPSI will continue to qualify for this amount. This change will therefore incentivize the DLPs that are assigned to ETPs with an ADV of less than 500,000, and which do not currently qualify for the NPSI Rebate, to qualify for the rebate by, among other things, meeting the applicable quoting requirements, which may improve the market quality of additional Nasdaq-listed ETPs. Given the competitive nature of the market for listing and trading ETPs, these changes which [sic] may encourage other market venues to make similar changes to improve their market quality. Thus, the Exchange does not believe that the proposed changes will impose any burden on competition, but may rather promote competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

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–NASDAQ–2017–035 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–NASDAQ–2017–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*.) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the 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–NASDAQ–2017–035 and should be submitted on or before May 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–07754 Filed 4–17–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80441; File No. SR–NYSEARCA–2017–35]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

April 12, 2017.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 3, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective April 3, 2017. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule effective April 3, 2017. Specifically, the Exchange proposes to adjust certain fees and to modify certain incentives and qualifications by broadening the base of order flow and trading activity to make the different qualifications more achievable to a variety of market participants.

Currently, the Exchange charges all participants a fee for orders that are executed by taking liquidity from the disseminated market (''Take Liquidity Fee,'' or ''Take Fee''), and offers credits (or reduced fees) for executions resulting from posting trading interest that is included in the disseminated market (''Post Liquidity'' credit). For non-Customers, the Exchange currently charges a per contract Take Fee of $1.08 for executions in non-Penny pilot issues.[4] The Exchange proposes to increase this Take Fee to $1.10 per contract, which is within the range of fees charged by competing option exchanges.[5]

The Exchange also currently provides a Post Liquidity per contract credit of $0.28 to Lead Market Makers (''LMMs'') and NYSE Arca Market Makers for executions in Penny Pilot Issues. The Exchange proposes to increase the Post Liquidity credit for LMMs to $0.32 per contract. The Exchange also proposes that the $0.04 per contract increase in the Post Liquidity credit would also be available to LMMs that are eligible to receive any other posting credits for executions in Penny Pilot Issues—namely eligible volume per the ''Market Maker Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues and SPY'' (the ''MM Posting Tiers''). For instance, if an LMM qualifies for the Super Tier in the MM Posting Tiers, the LMM would receive a total per contract credit for executions in Penny Pilot issues in their LMM appointment of $0.37, plus the $0.04

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that for purposes of this fee filing, ''non-Customers'' include: Lead Market Makers, NYSE Arca Market Makers, Firm and Broker Dealers and Professional Customers.

[5] *See e.g.,* NASDAQ Options Market—Fees and Rebates, *available here, http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing* and Bats BZX Options Exchange Fee Schedule, *available here, https://www.bats.com/us/options/membership/fee_schedule/bzx/.*

Post Liquidity credit, for a combined per contract credit of $0.41.

The Exchange also proposes to offer a $0.02 per contract Take Liquidity Discount for executions in Non-Penny Pilot Issues for non-Customers that achieve at least 0.65% of Total Industry Customer equity and ETF option ADV (''TCADV'') from non-Customer liquidity removing orders in all issues. The proposed discount is similar to the existing discount that is available for executions in Penny Issues and includes transaction volume from the OTP Holder's or OTP Firm's affiliates or its Appointed OFP or Appointed MM.

The Exchange also provides various incentives to OTP Holders and OTP Firms (''OTPs'') to achieve enhanced posted liquidity credits, some of which are based on achieving certain percentages of NYSE Arca Equity daily activity, also known as ''cross-asset pricing.'' The Exchange proposes to replace one of the alternative qualifications for the Super Tier II in the MM Posting Tiers with a new cross-asset pricing credit by achieving a level of options activity and achieving a level of NYSE Arca Equity activity.[6]

Specifically, as proposed, an OTP would qualify for Super Tier II if the OTP achieves at least 0.20% of ICADV from Market Maker posted orders in all issues, plus ETP Holder and Market Maker posted volume in Tape B Securities (''Tape B Adding ADV'') that is at least 1.50% of US Tape B consolidated average daily volume (''CADV'') for the billing month executed on NYSE Arca Equity Market. The credit applicable to Super Tier II would remain the same (*i.e.,* $0.42 per contract).[7] The Exchange believes that by providing the proposed alternative qualification basis for posted orders in Penny Pilot issues from Market Makers would encourage an increased level of activity in all issues, which in turn encourages tighter market spreads and increased liquidity, which benefits all market participants.

Finally, the Exchange proposes to add clarification to Endnote 8, which describes transactions for qualifications for the various credits or discounts. The Exchange proposes to modify the Endnote such that the transactions for qualification referenced in Endnote 8 would be for various credits and discounts. Further, the Exchange proposes to add a clarifying sentence that ''references to Market Maker volumes and executions are inclusive of transactions in issues in the Market Maker's LMM appointment'' and an additional statement that ''references to LMM transactions apply solely to transactions in the LMM's appointment.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee increase is reasonable, equitable, and not unfairly discriminatory because it applies to all non-Customer Take Liquidity transactions in non-Penny Pilot issues and is within the range of fees charged by competing option exchanges.[10]

The Exchange also believes the proposed enhanced credit for posted liquidity for LMMs in Penny Pilot issues is reasonable, equitable, and not unfairly discriminatory because LMMs have heightened obligations for issues in their allocation that do not apply to other market participants. Moreover, LMMs must continue to meet their obligations despite market fluctuations and ebbs and flows in trading activity, while other market participants may rapidly add or drop interest in an issue.

The Exchange believes the proposed Take Fee Discount and modification to Super Tier II of the MM Posting Tiers are reasonable, equitable, and not unfairly discriminatory because the changes would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes the creation of a Take Fee discount in non-Penny Pilot Issues available to Lead Market Makers, Market Makers, Firms, Broker Dealers and Professional Customers is reasonable, equitable, and not unfairly discriminatory because it is applicable to all participants other than Customers, who pay a much lower Take Liquidity Fee.

Modifications to the Market Maker Monthly Posting Credit Tiers and Qualifications for Penny Pilot Issues and SPY are equitable and not unfairly discriminatory because the changes to the Super Tier II for Market Makers and Lead Market Makers would apply to all Market Makers and Lead Market Makers on an equal and non-discriminatory basis. Further, they are not unfairly discriminatory because other non-Customer participants do not have the burden of Market Making obligations.

In addition, the proposed changes are designed to incent market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency to the benefit of all market participants. Further, the proposed modifications are reasonable, equitable, and non-discriminatory because they would allow qualification through activity combined with activity of affiliates or Appointed OFP, including activity on the NYSE Arca Equity Market. Thus, the Exchange believes the proposed modifications are reasonable, equitable and not unfairly discriminatory because they encourage more participants to qualify for the various incentives, including encouraging more participants to have affiliated or appointed order flow directed to the Exchange.

The Exchange believes the proposed modification to Endnote 8 is reasonable, equitable and not unfairly discriminatory because the proposed change is intended to clarify that the calculations for qualifications for monthly posting would be determined for credits and discounts, rather than credits or discounts.

Finally, the Exchange believes the proposed non-substantive change to the alternative qualification basis for achieving Super Tier II is reasonable, equitable, and not unfairly discriminatory because it would add clarity, transparency and internal consistency to the Fee Schedule.[11]

For these reasons, the Exchange believes that the proposal is consistent with the Act.

[6] The Exchange proposes to eliminate the current Super Tier II qualification basis that requires an OTP to achieve at least 1.60% of Total Industry Customer equity and ETF option ADV from Customer and Professional Customer orders in all issues, with at least 1.20% of Total Industry Customer equity and ETF option ADV from Customer and Professional Customer Posted Orders in all issues.

[7] At [sic] The Exchange is not proposing any substantive change to the alternative qualification basis for achieving Super Tier II, which requires at least 1.60% of Total Industry Customer equity and ETF option ADV from Market Maker orders in all issues, with at least 0.90% of Total Industry Customer equity and ETF option ADV from Market Maker Posted Orders in Penny Pilot and Non-Penny Pilot Issues. However, the Exchange proposes to replace reference in this tier to ''Penny Pilot and Non-Penny Pilot Issues'' to ''all Issues,'' which should add clarity, transparency and internal consistency to the Fee Schedule.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See supra* note 5.

[11] *See supra* note 7.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed changes would encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange does not believe that the proposed change would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the incentive would be available to all similarly-situated participants, and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants and may, in fact, encourage competition.

The Exchange believes that the proposed enhanced credits for LMMs would not impose an unfair burden on competition because the LMMs have heightened obligations for issues in their allocation that do not apply to other market participants.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [12] of the Act and subparagraph (f)(2) of Rule 19b–4 [13] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2017–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2017–35, and should be submitted on or before May 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–07753 Filed 4–17–17; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

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, April 20, 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;

Litigation matters; 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: April 13, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–07867 Filed 4–14–17; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80438; File No. SR–ISE–2017–31]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .03 to Rule 713 To Change the Allocation Entitlement for Preferred PMMs

April 12, 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 April 5, 2017, Nasdaq ISE, LLC (''ISE'' or ''Exchange'')[3] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .03 to Rule 713 to change the allocation entitlement for Preferred PMMs.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Supplementary Material .03 to Rule 713 allows an Electronic Access Member (''EAM'') to designate a ''Preferred Market Maker'' on orders it enters into the System (''Preferenced Orders''). A Preferred Market Maker may be the Primary Market Maker (''PMM'') appointed to the options class or any Competitive Market Maker (''CMM'') appointed to the options class.[4] The purpose of the proposed rule change is to amend Supplementary Material .03 to Rule 713 to change the allocation entitlement for PMMs that receive Preferenced Orders (*i.e.,* ''Preferred PMMs''), consistent with allocation entitlements for PMM equivalents on another options exchange.

Currently, a Preferred Market Maker that is quoting at the national best bid of offer (''NBBO'') at the time the Preferenced Order is received,[5] is entitled to participation rights equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price.[6] This allocation entitlement is in lieu of the regular allocation provided in Supplementary Material .01 to Rule 713, and applies regardless of whether the Preferred Market Maker is a PMM or CMM. In some instances where the Preferred Market Maker is the PMM appointed to the options class this results in a preferenced allocation that is worse than the market maker's regular allocation entitlement. Specifically, Supplementary Material .01(c) to Rule 713 provides a small order entitlement whereby orders of five contracts or fewer are executed first by the PMM. A PMM that normally receives an allocation entitlement for orders of five contracts or fewer,[7] would not receive this allocation entitlement if it were designated as the Preferred Market Maker.

The Exchange now proposes to amend the participation rights of Preferred PMMs such that the PMM appointed in an option class will receive participation rights that are consistent with the higher allocation entitlement given to PMM equivalents on the MIAX Options Exchange (''MIAX''). In particular, the Exchange proposes to amend Supplementary Material .03(c) to Rule 713 to provide that, the Preferred Market Maker has participation rights equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote, (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price, or *(iii) the full size of a Preferenced Order for five (5) contracts or fewer if the Primary Market Maker appointed to the options class is designated as the Preferred Market Maker—i.e.,* the small order allocation entitlement contained in Supplementary Material .01(c) to Rule 713. Thus, the PMM appointed to an options class would receive an allocation entitlement for orders of five contracts or fewer, regardless of whether that order is submitted as a Preferenced Order. The Exchange believes that this is appropriate since the PMMs obligations to the market are the same regardless of whether an order happens to be submitted with a preference instruction. PMM equivalents on MIAX currently receive this participation right when preferenced, in addition to the regular 60% or 40% preferenced allocation currently provided in the rule.[8] Preferred CMMs will continue to receive the same allocation entitlement that they receive today.

Pursuant to Supplementary Material .01(c) to Rule 713 the Exchange evaluates on a quarterly basis what percentage of the volume executed on the Exchange is comprised of orders for five (5) contracts or fewer executed by PMMs. The Exchange represents that this review will extend to the small order entitlement for Preferred PMMs.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE was renamed Nasdaq ISE, LLC in a rule change that became operative on April 3, 2017. *See* Securities Exchange Act Release No. 80325 (March 29, 2017) (SR–ISE–2017–25).

[4] *See* Supplementary Material .03(a) to Rule 713.

[5] If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferenced Order is received, the Exchange's regular allocation procedure applies to the execution of the Preferenced Order. *See* Supplementary Material .03(b) to Rule 713.

[6] *See* Supplementary Material .03(c) to Rule 713.

[7] *See* Supplementary Material .01(c) to Rule 713.

[8] *See* MIAX Rule 514(g), (i). The proposed allocation entitlement is also the same as allocation entitlements recently adopted by the Exchange's affiliate, ISE Gemini, LLC. *See* Securities Exchange Act Release No. 80239 (March 14, 2017), 82 FR 14413 (March 20, 2017) (SR–ISEGemini–2017–14).

Thus, consistent with Supplementary Material .01(c) to Rule 713, the Exchange will reduce the size of the orders included in the small order entitlement if such percentage is over forty percent (40%).

Implementation

The proposed rule change will be implemented on the Exchange's new INET trading system, which is scheduled to launch in Q2 2017,[9] provided that the Exchange will provide notice of this change in a circular to be distributed to members prior to implementing the new allocation entitlement on INET. The INET migration will take place on a symbol by symbol basis as specified by the Exchange in a notice to be provided to Members. The Exchange is proposing to implement this rule change on the INET platform as the symbols migrate to that platform. As such, PMMs will begin receiving the small order entitlement in symbols as they migrate to the INET platform.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[11] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms 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 consistent with the protection of investors and the public interest as it will allow EAMs to send Preferenced Orders to the PMM appointed in an options class without inadvertently disadvantaging the PMM compared to if the order was not preferenced. The regular allocation entitlements for PMMs, including the small order entitlement, are designed to balance the obligations that the PMM has to the market with corresponding benefits. The Exchange believes that it is appropriate to provide the small order entitlement also when the PMM is designated as a Preferred Market Maker as the obligations that the PMM has to the market are not diminished when it receives a Preferenced Order. MIAX similarly provides the small order entitlement to the PMM regardless of whether the order is submitted as a Preferenced Order.[12] At the same time, the proposed rule change does not amend the current participation rights for Preferred CMMs, which is also consistent with allocation rules of MIAX. While the Exchange believes that it is appropriate to grant PMMs an allocation entitlement for small sized orders preferenced to them in recognition of the obligations that PMMs have to maintain fair and orderly markets, the Exchange does not believe that it is appropriate at this time to extend this entitlement to CMMs, preferenced or otherwise.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to allow EAMs to send Preferenced Orders to the PMM appointed in an options class without inadvertently disadvantaging the PMM by reducing its participation rights. The proposed allocation entitlements are equivalent to those currently in effect on another options exchange.[14] The proposed rule change is therefore not designed to impose any significant burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2017–31 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–ISE–2017–31. 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

[9] *See* Securities Exchange Act Release No. 80075 (February 21, 2017), 82 FR 11975 (February 27, 2017) (SR–ISE–2017–03).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* supra note 7. [sic]

[13] 15 U.S.C. 78f(b)(8).

[14] *See* supra note 7. [sic]

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2017–31 and should be submitted on or before May 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–07750 Filed 4–17–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80443; File No. SR–CBOE–2017–032]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FLEX Options Pilot Program

April 12, 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 April 4, 2017, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Flexible Exchange Options (''FLEX Options'') pilot program through May 3, 2018.[5] The text of the proposed rule change is provided below (additions are *italicized;* deletions are [bracketed]).

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 24A.4. Terms of FLEX Options

No change.

. . . Interpretations and Policies

.01 FLEX Index Option PM Settlements Pilot Program: Notwithstanding subparagraph (a)(2)(iv) above, for a pilot period ending the earlier of May 3, 201[7]*8* or the date on which the pilot program is approved on a permanent basis, a FLEX Index Option that expires on an Expiration Friday may have any exercise settlement value that is permissible pursuant to subparagraph (b)(3) above.

.02 No change.

* * * * *

Rule 24B.4. Terms of FLEX Options

No change.

. . . Interpretations and Policies

.01 FLEX Index Option PM Settlements Pilot Program: Notwithstanding subparagraph (a)(2)(iv) above, for a pilot period ending the earlier of May 3, 201[7]*8* or the date on which the pilot program is approved on a permanent basis, a FLEX Index Option that expires on an Expiration Friday may have any exercise settlement value that is permissible pursuant to subparagraph (b)(3) above.

.02 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 28, 2010, the Exchange received approval of a rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index Options.[6] The Exchange has extended the pilot period six times, which is currently set to expire on the earlier of May 3, 2017 or the date on which the pilot program is approved on a permanent basis.[7] The purpose of this

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 29.18. The rules governing the trading of FLEX Options on the FLEX Request for Quote (''RFQ'') System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVB.

[6] Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (''Approval Order''). The initial pilot period was set to expire on March 28, 2011, which date was added to the rules in 2010. *See* Securities Exchange Act Release No. 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR–CBOE–2010–026).

[7] *See* Securities Exchange Act Release Nos. 64110 (March 23, 2011), 76 FR 17463 (March 29, 2011) (SR–CBOE–2011–024) (extending the pilot program through the earlier of March 30, 2012 or the date on which the pilot program is approved on the permanent basis); 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR–CBOE–2012–027) (extending the pilot through the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis); 68145 (November 2, 2012), 77 FR 67044 (November 8, 2012) (SR–CBOE–2012–102) (extending the pilot program through the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis); 70752 (October 24, 2013), 78 FR 65023 (October 30, 2013) (SR–CBOE–2013–099) (extending the pilot program through the earlier of November 3, 2014 or the date on which the pilot program is approved on a permanent basis); 73460 (October 29, 2014), 79 FR 65464 (November 4, 2014) (SR–CBOE–2014–080) (extending the pilot program through the earlier of May 3, 2016 or the date on which the pilot program is approved on a permanent basis); and 77742 (April 29, 2016), 81 FR 26857 (May 4, 2016) (SR–CBOE–2016–032) (extending the pilot program through the earlier of May 3, 2017 or the date on which the pilot program is approved on a permanent basis). At the same time the permissible exercise settlement values pilot was established for FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. *See* Approval Order, *supra*

Continued

rule change filing is to extend the pilot program through the earlier of May 3, 2018 or the date on which the pilot program is approved on a permanent basis. This filing simply seeks to extend the operation of the pilot program and does not propose any substantive changes to the pilot program.

Under Rules 24A.4, *Terms of FLEX Options,* and 24B.4, *Terms of FLEX Options,* a FLEX Option may expire on any business day specified as to day, month and year, not to exceed a maximum term of fifteen years. In addition, the exercise settlement value for a FLEX Index Option can be specified as the index value determined by reference to the reported level of the index as derived from the opening or closing prices of the component securities (''a.m. settlement'' or ''p.m. settlement,'' respectively) or as a specified average, provided that the average index value must conform to the averaging parameters established by the Exchange.[8] However, prior to the initiation of the exercise settlement values pilot, only a.m. settlements were permitted if a FLEX Index Option expired on, or within two business days of, a third Friday-of-the-month expiration (''Expiration Friday'').[9]

Under the exercise settlement values pilot, this restriction on p.m. and specified average price settlements in FLEX Index Options was eliminated.[10] The exercise settlement values pilot is currently set to expire on the earlier of May 3, 2017 or the date on which the pilot program is approved on a permanent basis.

CBOE is proposing to extend the pilot program through the earlier of May 3, 2018 or the date on which the pilot program is approved on a permanent basis. CBOE believes the pilot program has been successful and well received by its Trading Permit Holders and the investing public for the period that it has been in operation as a pilot. In support of the proposed extension of the pilot program, and as required by the pilot program's Approval Order, the Exchange has submitted to the Securities and Exchange Commission (the ''Commission'') pilot program reports regarding the pilot, which detail the Exchange's experience with the program. Specifically, the Exchange provided the Commission with annual reports analyzing volume and open interest for each broad-based FLEX Index Options class overlying an Expiration Friday, p.m.-settled FLEX Index Options series.[11] The annual reports also contained information and analysis of FLEX Index Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest. In providing the pilot reports to the Commission, the Exchange has requested confidential treatment of the pilot reports under the Freedom of Information Act (''FOIA'').[12] The confidentiality of the pilot reports is subject to the provisions of FOIA.[13]

The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement (as discussed below).

In that regard, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, CBOE continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.[14] To the contrary, CBOE believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Index Options in accordance with Rules 24A.7, *Position Limits and Reporting Requirements,* 24A.8, *Exercise Limits,* 24B.7, *Position Limits and Reporting Requirements,* and 24B.8, *Exercise Limits.* Additionally, all FLEX Options remain subject to the position

note 6. The pilot program eliminating the minimum value size requirements was extended twice pursuant to the same rule filings that extended the permissible exercise settlement values (for the same extended periods) and was approved on a permanent basis in a separate rule change filing. *See id.* and Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR–CBOE–2012–040).

[8] *See* Rules 24A.4(b)(3) and 24B.4(b)(3); *see also* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–017). The Exchange has determined to limit the averaging parameters to three alternatives: The average of the opening and closing index values on the expiration date; the average of intra-day high and low index values on the expiration date; and the average of the opening, closing, and intra-day high and low index values on the expiration date. Any changes to the averaging parameters established by the Exchange would be announced to Trading Permit Holders via circular.

[9] For example, prior to the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before Expiration Friday could have an a.m., p.m. or specified average settlement. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before Expiration Friday could only have an a.m. settlement.

[10] No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

[11] The annual reports also contained certain pilot period and pre-pilot period analyses of volume and open interest for Expiration Friday, a.m.-settled FLEX Index series and Expiration Friday Non-FLEX Index series overlying the same index as an Expiration Friday, p.m.-settled FLEX Index option.

[12] 5 U.S.C. 552.

[13] *Id.*

[14] In further support, the Exchange also notes that the p.m. and specified average price settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, Expiration Friday. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates addressed under the pilot program). The Exchange is also not aware of any market disruptions or problems caused by the use of customized options in the over-the-counter (''OTC'') markets that expire on or near Expiration Friday and have a p.m. or specified average exercise settlement value. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange (''NYSE'') at the close that are no longer relevant in today's market. Today, the Exchange believes stock exchanges are able to better handle volume. There are multiple primary listing and unlisted trading privilege (''UTP'') markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today, order flow is predominantly electronic and the ability to smooth out openings and closes is greatly reduced (*e.g.,* market-on-close procedures work just as well as openings). Also, other markets, such as the NASDAQ Stock Exchange, do not have the same type of pre-opening imbalance disseminations as NYSE, so many stocks are not subject to the same procedures on Expiration Friday. In addition, the Exchange believes that NYSE has reduced the required time a specialist has to wait after disseminating a pre-opening indication. So, in this respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options (or certain average price settled options related to the closing price) that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange continues to believe that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

reporting requirements in paragraph (a) of CBOE Rule 4.13, *Reports Related to Position Limits.*[15] Moreover, the Exchange and its Trading Permit Holder organizations each have the authority, pursuant to CBOE Rule 12.10, *Margin Required is Minimum,* to impose additional margin as deemed advisable. CBOE continues to believe these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

CBOE is also cognizant of the OTC market, in which similar restrictions on exercise settlement values do not apply. CBOE continues to believe that the pilot program is appropriate and reasonable and provides market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE continues to believe that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened contra-party creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor of FLEX Options.

If, in the future, the Exchange proposes an additional extension of the pilot program, or should the Exchange propose to make the pilot program permanent, the Exchange will submit, along with any filing proposing such amendments to the pilot program, an annual report (addressing the same areas referenced above and consistent with the pilot program's Approval Order) to the Commission at least two months prior to the expiration date of the program. The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot program's Approval Order. All such pilot reports would continue to be provided by the Exchange along with a request for confidential treatment under FOIA.[16] As noted in the pilot program's Approval Order, any positions established under the pilot program would not be impacted by the expiration of the pilot program.[17]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[20] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the pilot program, which permits additional exercise settlement values, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-Flex expirations and use a p.m. settlement. CBOE believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. Therefore, the Exchange does not believe that the

[15] CBOE Rule 4.13(a) provides that ''[i]n a manner and form prescribed by the Exchange, each Trading Permit Holder shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered.'' For purposes of Rule 4.13, the term ''customer'' in respect of any Trading Permit Holder includes ''the Trading Permit Holder, any general or special partner of the Trading Permit Holder, any officer or director of the Trading Permit Holder, or any participant, as such, in any joint, group or syndicate account with the Trading Permit Holder or with any partner, officer or director thereof.'' Rule 4.13(d).

[16] *See supra* notes 12–13 and accompanying text. If the Exchange seeks permanent approval of the pilot program, the Exchange recognizes that certain information in the pilot reports may need to be made available on a public basis.

[17] For example, a position in a p.m.-settled FLEX Index Option series that expires on Expiration Friday in January 2018 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. *See* Approval Order at footnotes 9 and 10, *supra* note 6.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *Id.*

proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to extend the pilot program prior to its expiration on May 3, 2017, and maintain the status quo, thereby reducing market disruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay will allow the Exchange to extend the pilot program prior to its expiration on May 3, 2017, which will ensure that the program continues to operate uninterrupted. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2017–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2017–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2017–032 and should be submitted on or before May 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

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[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12) and (59).

SMALL BUSINESS ADMINISTRATION

[License No. 07/07–0118]

C3 Capital Partners III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that C3 Capital Partners III, L.P., 1511 Baltimore Avenue, Suite 500, Kansas City, MO 64108, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and § 107.730, Financings which constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR part 107). C3 Capital Partners III, L.P., proposes providing subordinated debt financing to Warne Scope Mounts, 9500 SW Tualatin Road, Tualatin, OR 97062, (''WSM''). The financing by C3 Capital Partners III, L.P. will discharge obligations held by C3 Capital Partners II, L.P., LLC.

This financing is brought within the purview of § 107.730 of the regulations because C3 Capital Partners III, L.P. and C3 Capital Partners II, L.P. are Associates and C3 Capital Partners II, L.P., holds over five percent of the equity in WSM therefore this transaction requires prior SBA exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment and Innovation, U.S. Small Business

Administration, 409 Third Street SW., Washington, DC 20416.

A. Joseph Shepard,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2017–07789 Filed 4–17–17; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 36

This document replaces and supersedes ''Line of Succession Designation No. 1–A, Revision 35''.

Line of Succession Designation No. 1–A, Revision 36:

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) In the event of my inability to perform the functions and duties of my position, or my absence from the office, the Deputy Administrator will assume all functions and duties of the Administrator. In the event the Deputy Administrator and I are both unable to perform the functions and duties of the position or are absent from our offices, I designate the officials in listed order below, if they are eligible to act as Administrator under the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d), to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief of Staff;

(2) General Counsel;

(3) Chief Operating Officer;

(4) Associate Administrator, Office of Disaster Assistance; and

(5) Regional Administrator for Region 9.

(b) Notwithstanding the provisions of SBA Standard Operating Procedure 00 01 2, ''absence from the office,'' as used in reference to myself in paragraph (a) above, means the following:

(1) I am not present in the office and cannot be reasonably contacted by phone or other electronic means, and there is an immediate business necessity for the exercise of my authority; or

(2) I am not present in the office and, upon being contacted by phone or other electronic means, I determine that I cannot exercise my authority effectively without being physically present in the office.

(c) An individual serving in an acting capacity in any of the positions listed in subparagraphs (a)(1) through (5), unless designated as such by the Administrator, is not also included in this Line of Succession. Instead, the next non-acting incumbent in the Line of Succession shall serve as Acting Administrator.

(d) This designation shall remain in full force and effect until revoked or superseded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(e) Serving as Acting Administrator has no effect on the officials listed in subparagraphs (a)(1) through (5), above, with respect to their full-time position's authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Dated: April 11, 2017.

Linda E. McMahon,

Administrator.

[FR Doc. 2017–07778 Filed 4–17–17; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2017–0019]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*. Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2017–0019].

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 June 19, 2017. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Promoting Opportunity Demonstration—0960–NEW. Section 823 of the Bipartisan Budget Act of 2015 requires SSA to carry out the Promoting Opportunity Demonstration (POD) to test a new benefit offset formula for Social Security Disability Insurance (SSDI) beneficiaries. Therefore, SSA is undertaking POD, a demonstration to evaluate the affect the new policy will have on SSDI beneficiaries and their families in several critical areas: (1) Employment, (2) benefits, (3) earnings, and (4) income (earnings plus benefits). Under current law, Social Security beneficiaries lose their SSDI benefit if they have earnings or work activity above the threshold of Substantial Gainful Activity (SGA). The POD evaluation will draw on previous lessons from related work incentive experiences, especially SSA's Benefit Offset National Demonstration (BOND), 0960–0785, which tested a different offset formula. POD tests a different policy than BOND in two important ways: (1) A lower threshold at which point the offset is applied—increasing the likelihood of reducing benefit expenditures relative to current law expenditures; and (2) A more immediate adjustment to the benefits—to increase the salience and clarity of the offset policy for beneficiaries. The POD will test a benefit offset that will reduce benefits by $1 for every $2 in participants' earnings above the POD threshold, gradually reducing benefits as earnings increase. The POD threshold will equal the greater of (1) an inflation-adjusted trial work period level ($840 in 2017); or (2) the amount of the participant's itemized impairment-related work expenses up to SGA. The new rules we will test in POD also simplify work incentives and we intend them to promote employment and reduce dependency on benefits.

The design for POD will include implementation and evaluation activities designed to answer seven central research questions:

- What are the impacts of the two POD benefit designs on beneficiaries' earnings, SSDI benefits, and total earnings and benefit income?
- Is POD attractive to beneficiaries? Do they remain engaged over time?
- How were the POD offset policies implemented, and what operational,

systemic, or contextual factors facilitated or posed challenges to administering the offset?

- How successful were POD and SSA in making timely benefit adjustments, and what factors affected timeliness positively or negatively?
- How do the impacts of the POD offset policies vary with beneficiary characteristics?
- What are the costs and benefits of the POD benefit designs relative to current law, and what are the implications for the SSDI trust fund?
- What are the implications of the POD findings for national policy proposals that would include a SSDI benefit offset?

The public survey data collections have four components—a process analysis, a participation analysis, an impact analysis, and a cost-benefit analysis. The data collections are the primary source for data to measure the effects the benefit offset on SSDI beneficiaries' work efforts and earnings. Ultimately, these data will benefit researchers, policy analysts, policy makers, SSA, and the state vocational rehabilitation agencies in a wide range of program areas. There are four targeted outcomes for SSDI beneficiaries under POD: (1) Increased employment and earnings; (2) decreased benefits payments; (3) increased total income; and (4) impacts on other related outcomes (for example, health status and quality of life).

Additionally, four outcomes of interest for system changes include: (1) Reduction in overpayments; (2) enhanced program integrity; (3) stronger culture of self-sufficiency; and (4) improved SSDI trust fund balance. Respondents are SSDI beneficiaries, who will provide written consent before agreeing to participate in the study and before we randomly assign them to one of the study treatment groups.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
Informed Consent Form	16,500	1	16,500	15	4,125
Baseline Survey	16,500	1	16,500	20	5,500
12-Month Follow Up Survey	6,000	1	6,000	30	3,000
24-Month Follow Up Survey	12,000	1	12,000	30	6,000
Interviews with Site Staff	40	4	160	66	176
Onsite Audit of Sample of Case Files	8	2	16	20	5
Semi-Structured Interviews with Treatment Group Subjects	144	1	144	60	144
Monthly Earnings and Impairment-Related Expenses Reporting Form (paper)	1,820	12	21,840	10	3,640
Monthly Earnings and Impairment-Related Expenses Reporting Form (Internet)	780	12	9,360	5	780
End of Year Reporting Form (paper)	945	1	945	15	236
End of Year Reporting Form (Internet)	405	1	405	10	68
Totals	55,142		83,870		23,674

2. Statement Regarding Contributions—20 CFR 404.360–404.366 and 404.736—0960–0020. SSA uses the SSA–783 to collect information regarding a child's current sources of support when determining the child's entitlement to Social Security benefits. We request this information from adults acting on behalf of the child claimants who can provide SSA with any sources of support or substantial contributions for the child. These adults inform the claims representative of these sources as part of the initial benefits process. If the individual capable of providing the information does not accompany the child claimant, we mail the SSA–783 to the individual for completion; or if the person has access to a computer, we will refer them to SSA's Web site. The respondents are individuals providing information about a child's sources of support.

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–783	30,000	1	17	8,500

3. Disability Report—Appeal—20 CFR 404.1512, 416.912, 404.916(c), 416.1416(c), 422.140, 404.1713, 416.1513, 404.1740(b)(4), 416.1540(b)(4), and 405 Subpart C—0960–0144. SSA requires disability applicants who wish to appeal an unfavorable disability determination to complete Form SSA–3441–BK; the associated Electronic Disability Collect System (EDCS) interview; or the Internet application, i3441. This allows claimants to disclose any changes to their disability, or resources, which might influence SSA's unfavorable determination. We may use the information to: (1) Reconsider and review an initial disability determination; (2) review a continuing disability; and (3) evaluate a request for a hearing. This information assists the State Disability Determination Services (DDS) and administrative law judges (ALJ) in preparing for the appeals and hearings, and in issuing a determination or decision on an individual's entitlement (initial or continuing) to disability benefits. In addition, the information we collect on the SSA–3441–BK, or related modalities, facilitates SSA's collection of medical information to support the applicant's request for reconsideration; request for benefits cessation appeal; and request for a hearing before an ALJ. Respondents are individuals who appeal denial, reduction, or cessation of Social Security disability benefits and Supplemental Security Income (SSI)

payments; individuals who wish to request a hearing before an ALJ; or their representatives.

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–3441–BK	2,396	1	45	1,797
Electronic Disability Collect System (EDCS)	476,771	1	45	357,578
i3441 (Internet)	1,046,938	1	28	488,571
Totals	1,526,105			847,946

4. Authorization to Disclose Information to SSA—20 CFR 404.1512 and 416.912, 45 CFR 160 and 164—0960–0623. Sections 223(d)(5)(A) and 1614(a)(3)(H)(i) of the Social Security Act require claimants to provide medical and other evidence the Commissioner of Social Security may require to prove they are disabled. SSA must obtain sufficient evidence to make eligibility determinations for Title II and Title XVI payments. Therefore, the applicant must authorize release of information from various sources to SSA. The applicants use Form SSA–827, or the Internet counterpart, i827, to provide consent for the release of medical records, education records, and other information related to their ability to perform tasks. Once the applicant completes Form SSA–827, or the i827, SSA or the State DDS sends the form to the designated source(s) to obtain pertinent records. The respondents are applicants for Title II and Title XVI 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)
i827 with electronic signature (eAuthorization)	4,189,270	1	9	628,391
SSA–827 with wet signature (paper version)	1,055,807	1	10	175,968
Totals	5,245,077			804,359

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these 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 May 18, 2017. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Supported Employment Demonstration (SED)—0960–NEW. Sponsored by SSA, the SED 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 to 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 are 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 the two treatment groups we can compare. 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 in order to understand the local context in which SED services are embedded; (2) independent fidelity assessments in conjunction with those carried out by state Mental Health/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	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
Competency and CIDI Screener	3,000	1	3,000	40	2,000
Baseline Interview	3,000	1	3,000	45	2,250
Quarterly Interview (Quarters 1, 2, 3, 5, 6, 7, 9, 10, and 11)	3,000	9	27,000	20	9,000
Annual Interview (Quarters 4, 8, and 11)	3,000	3	9,000	30	4,500
Fidelity Assessment Participant Interview	180	4	720	60	720
Fidelity Assessment Family Member Interview	90	4	360	60	360
Key Informant Interview	120	4	480	60	480
Participant Focus Groups	600	2	1,200	60	1,200
Person-Centered Interview	180	4	720	60	720
Totals	13,170	.....	45,480	.....	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 such 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 worked meet the eligibility requirements for student benefits. The data we collect allows SSA to determine student entitlement and whether 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

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
State/Local/Tribal Government	99,850	1	3	4,993
Totals	199,700			18,306

SSA–1372–BK:

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 ALJ's 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

Dated: April 13, 2017.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2017–07796 Filed 4–17–17; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36105]

Genesee & Wyoming Inc.—Acquisition of Control Exemption—Atlantic Western Transportation, Inc. and Heart of Georgia Railroad, Inc.

On February 27, 2017, Genesee & Wyoming Inc. (GWI), a noncarrier holding company, filed a petition under 49 U.S.C. 10502 and 49 CFR part 1121 for exemption from the provisions of 49 U.S.C. 11323–24 to allow GWI to acquire control of Atlantic Western Transportation, Inc. (AWT), a noncarrier holding company, and indirect control of AWT's wholly owned subsidiary Heart of Georgia Railroad, Inc. (HOG), a Class III railroad. The Board will grant GWI's petition for exemption, subject to standard labor protective conditions.

Background

GWI is a publicly traded noncarrier holding company that currently controls, through direct or indirect equity ownership, two Class II carriers and 107 Class III carriers operating in the United States. (Pet. 1.) HOG is a Class III carrier based in Americus, Ga., that leases from the Georgia Department of Transportation (Georgia DOT) and operates approximately 221 miles of rail lines in Georgia and Alabama. (*Id.* at 2.)

GWI states that it seeks to acquire control of HOG through the acquisition of the stock of AWT, the noncarrier parent company of HOG.[1] (*Id.*) Upon consummation, GWI would acquire direct control of AWT, and, because HOG is a wholly owned subsidiary of AWT, GWI would acquire indirect control of HOG. (*Id.*) HOG connects with several railroads, including two GWI subsidiaries: Georgia Southwestern Railroad, Inc. (GSWR) and Georgia Central Railway, L.P. (GC). (*Id.* at 3.) GWI states that, although there are some commonly served cities where the railroads connect, there are no customers that are served by GSWR or GC, on the one hand, and HOG, on the other, and that as such there would be no ''2-to-1 customers'' as a result of the proposed transaction. (*Id.*) GWI further states that the joint line movements (which already currently exist) between HOG and the GWI-affiliated railroads would not be used to foreclose vertical competition over efficient joint line routes with unaffiliated carriers. (*Id.*)

GWI states that it does not contemplate any material changes to HOG's operations, maintenance, or service, and that HOG would continue to operate as a separate railroad, though HOG's senior managers would report to a senior vice president of Genesee & Wyoming Railroad Services, Inc., an affiliate of GWI. (*Id.* at 3, 4.) GWI states that no shippers would lose access to direct or indirect Class I connections, nor to any short line connections, or lose any service options. (*Id.*) GWI states that, as a result of this proposed transaction, HOG and its shippers would benefit from greater coordination and efficiencies, enhanced financial resources, more robust management support for operations and safety, and a broader set of relationships with national customers. (*Id.* at 4.) Georgia DOT does not oppose the transaction and asks the Board to review and approve the transaction expeditiously. (*Id.* at Ex. D.) No shippers have filed comments.

Discussion and Conclusions

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires approval by the Board pursuant to 49 U.S.C. 11323(a)(5). Under section 10502(a), however, the Board must exempt a transaction or service from regulation if it finds that: (1) Regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either the transaction or service is limited in scope, or regulation is not needed to protect shippers from the abuse of market power.

In this case, an exemption from the prior approval requirements of sections 11323–24 is consistent with the standards of section 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under sections 11323–24 is not necessary here to carry out the RTP. Approval of the transaction would result in a change in ownership of AWT and control of HOG with no lessening of competition. An exemption would promote the RTP by: Minimizing the need for federal regulatory control over the transaction, section 10101(2); ensuring the development and continuation of a sound rail transportation system that would continue to meet the needs of the public, section 10101(4); fostering sound economic conditions in transportation, section 10101(5); reducing regulatory barriers to entry, section 10101(7); encouraging efficient management, section 10101(9); and providing for the expeditious resolution of this proceeding, section 10101(15). Other aspects of the RTP would not be adversely affected.

Nor is detailed scrutiny of the proposed transaction necessary to protect shippers from an abuse of market power. According to GWI, no shipper would lose any rail options, and operations would not materially change. (Pet. 9.) Although HOG connects with two GWI-owned carriers (GSWR and GC), GWI states that there would be no 2-to-1 shippers as a result of the acquisition. (*Id.* at 10.) In addition, GWI states that HOG also connects directly with two Class I carriers (CSX Transportation, Inc. and Norfolk Southern Railway Company). (*Id.*) The Board will hold GWI to its statement that existing joint line movements between HOG and the GWI-affiliated railroads would not be used to foreclose vertical competition over efficient joint line routes with unaffiliated carriers. (*See id.* at 3.) Accordingly, based on the record, the Board finds that this transaction does not shift or consolidate market power; therefore, regulation is not necessary to protect shippers from the abuse of market power.[2]

Labor Conditions

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because GWI currently controls two Class II carriers [3] and numerous Class III carriers, any employees adversely affected by this transaction will be protected by the conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern District Terminal* (*New York Dock*), 360 I.C.C. 60 (1979). *See* 49 U.S.C. 11326(a).

GWI, acknowledging that *New York Dock* applies, seeks Board confirmation that neither GWI nor HOG need to commence negotiations or consummate implementing agreements prior to the

[1] GWI states that it and the individual shareholders of AWT have entered into a Stock Purchase Agreement dated February 7, 2017. (Pet. 2.) GWI further states that it expects to consummate the transaction after all of the closing conditions have been satisfied as set forth in the Stock Purchase Agreement, including the grant of this exemption from the Board, and that it hopes to consummate the transaction in the second fiscal quarter of 2017. (*Id.* at 5.)

[2] As there is no evidence that regulation is needed to protect shippers from the abuse of market power, we do not need to determine whether the transaction is limited in scope. *See* 49 U.S.C. 10502(a).

[3] Buffalo & Pittsburgh Railroad, Inc. and Rapid City, Pierre & Eastern Railroad, Inc. (Pet., Ex. A at 1.)

consummation of the control transaction. (Pet. 10–11.) *New York Dock* requires a railroad to give notice of ''proposed changes to be effected by [a] transaction'' when a railroad is ''contemplating a change or changes in its operations, services, facilities, or equipment as a result of a transaction'' that may affect employees. 360 I.C.C. at 77. The requirement under *New York Dock* to provide such notice presumes, however, that the carrier is capable of making a ''full and adequate statement'' of the expected labor changes before the transaction is consummated. *Norfolk S. Ry—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC* (*Pan Am S.*), FD 35147, slip op. at 16–17 (STB served Mar. 10, 2009) (''Because we see no basis for negotiation of an implementing agreement until Applicants decide to implement labor changes that are related to the Transaction, we will not require that Applicants commence negotiations now.'').

GWI states that it has not yet determined whether or which employees may be adversely affected, but acknowledges that it would be required to give 90-days' notice and negotiate before making changes in operations, services, facilities, or equipment,[4] but that it would not immediately terminate or displace any HOG covered employees as a result of the proposed transaction, and that HOG would continue to honor all current employment terms and conditions. (Pet. 10–11.) The Board will hold GWI to these representations. Accordingly, GWI will be required to proceed in good faith under the notification and negotiation provision of Article I, section 4 of the *New York Dock* conditions before implementing employment changes, but it need not commence those negotiations until it is capable of making a full and adequate statement of the expected changes. *See Pan Am S.,* FD 35147, slip op. at 16–17. *See also Genesee & Wyo., Inc.—Acquis. of Control Exemption—Providence & Worcester R.R.,* FD 36064, slip op at 7 (STB served Dec. 16, 2016).

Environmental and Historical Reporting

This transaction is categorically excluded from environmental review under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts GWI's acquisition of control of AWT and HOG from the prior approval requirements of sections 11323–24 subject to the employee protective conditions in *New York Dock Railway—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979).

2. GWI must adhere to its statement that existing joint line movements between HOG and the GWI-affiliated railroads will not be used to foreclose vertical competition over efficient joint line routes with unaffiliated carriers.

3. Notice will be published in the **Federal Register**.

4. This exemption will be effective on May 18, 2017.

Decided: April 12, 2017.

By the Board, Board Members Begeman, Elliott, and Miller.

Rena Laws-Byrum,

Clearance Clerk.

[FR Doc. 2017–07828 Filed 4–17–17; 8:45 am]

BILLING CODE 4915–01–P

[4] GWI states that none of HOG's 15 current employees are subject to collective bargaining agreements, and thus there are no unions with which to negotiate implementing agreements. (*Id.* at 10.) The Board notes that GWI will still be required to complete any *New York Dock* negotiations directly with affected HOG employees.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors meeting.

TIME AND DATE: The meeting will be held on April 28, 2017, from 1:00 p.m. to 4:00 p.m. Eastern Daylight Time.

PLACE: The meetings will be open to the public at the Hampton Inn, 3398 Piedmont Rd. NE., Atlanta, GA 30305, and via conference call. Those not attending the meetings in person may call 1–877–422–1931, passcode 2855443940, to listen and participate in the meetings.

STATUS: Open to the public, however, the Board may vote to close portions of the meeting to the public to deliberate on matters involving confidential commercial or financial information.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: April 14, 2017.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2017–07916 Filed 4–14–17; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2017–0002–N–13]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the proposed information collection activity below. Before submitting this information collection request (ICR) to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than June 19, 2017.

ADDRESSES: Submit written comments on the information collection activities by mail to: Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–XXXX,'' and should also include the title of the ICR. Alternatively, comments may be faxed to (202) 493–6216 or (202) 493–6497, or emailed to Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (This telephone number is not toll free.)

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested parties to comment on the following summary of the proposed information collection activity regarding: (1) Whether the information collection activity is necessary for FRA to properly execute its functions, including whether the activity will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activity, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of the information collection activity on the public by automated, electronic, mechanical, or other technological collection techniques and other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) ensure that it organizes information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the information collection activity FRA will submit for OMB clearance:

Title: Information and Communications Technology Needs Assessment.

OMB Control Number: 2130–XXXX.

Abstract: The purpose of this information collection is to conduct a needs assessment that will provide information about how the railroading worker population uses information and communications technology (ICT). FRA periodically conducts such context assessments of the social, legal, and policy barriers related to its mission. For purposes of this study, ICT is defined as technology and tools that people use to share, distribute, and gather information, and to communicate with one another, one on one, or in groups. FRA uses ICT to disseminate research findings and to increase awareness of safety education programs and other FRA sponsored innovation projects. The data gathered in this study will help FRA and DOT attain the strategic goal of improving safety in transportation by providing information that will improve and inform strategic communication dissemination efforts to reach the railroading population more efficiently and successfully.

The proposed study is a needs assessment designed to understand the current state of railroading industry use and application of ICT. As such, this study asks broad questions about ICT. The information will be useful to FRA's efforts to design how FRA uses ICT. The main objectives in this study are to: (1) Determine how Transportation, Yard, and Engineer railroaders use ICT; (2) identify ways to reach this population with future ICT based education and communication efforts; and (3) develop baseline awareness data for FRA's research, development and technology programs.

Form Number(s): FRA F 6180.169.

Affected Public: Railroad Union Members.

Frequency of Submission: One time.

Reporting Burden:

Maximum number of respondents	Time per response (minutes)	Total annual burden in hours
1,533	20	511

Total Estimated Annual Responses: 1,533.

Total Estimated Annual Burden: 511 hours.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Sarah L. Inderbitzin,

Acting Chief Counsel.

[FR Doc. 2017–07799 Filed 4–17–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13553

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one individual and one entity whose property and interests in property are blocked pursuant to Executive Order 13553 of September 28, 2010, ''Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions.''

DATES: OFAC's actions described in this notice were effective on April 13, 2017.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202–622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490, Assistant Director for Licensing, tel.: 202–622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202–622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Person List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*).

Notice of OFAC Actions

On April 13, 2017, OFAC blocked the property and interests in property of the following persons pursuant to Executive Order 13553:

Individual

1. SOLEIMANI, Sohrab (a.k.a. SOLEYMANI, Sohrab (Arabic: سهراب سلیمانی)), Iran; DOB 1964; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Supervisor of the Office of the Deputy for Security and Law Enforcement of the State Prisons Organization; former Director General of the Tehran Prisons Organization (individual) [IRAN-HR].

Entity

1. TEHRAN PRISONS ORGANIZATION (a.k.a. TEHRAN PRISONS; a.k.a. TEHRAN PRISONS AND SECURITY CORRECTIVE MEASURES DEPARTMENT (Arabic: اداره کل زندانها و اقدامات تامینی و تربیتی استان تهران); a.k.a. TEHRAN PROVINCE PRISONS (Arabic: زندانهای استان تهران); a.k.a. TEHRAN PROVINCE PRISONS DEPARTMENT (Arabic: اداره کل زندانهای استان تهران)), Region 2, Saadat Abad, Kooye Faraz, Tehran Province Prisons Department, Level 3, Tehran 1982846176, Iran; Website Tehranprisons.ir; Additional Sanctions Information - Subject to Secondary Sanctions [IRAN-HR].

Dated: April 13, 2017.

Andrea M. Gacki

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–07814 Filed 4–17–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of 3 individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: OFAC's actions described in this notice were effective on April 13, 2017.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*).

Notice of OFAC Actions

On April 13, 2017, OFAC blocked the property and interests in property of the following 3 individuals pursuant to E.O. 13224, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'':

Individuals

1. AL–SAFRANI, Ali Ahmidah (a.k.a. AL SIFRANI, Ali; a.k.a. AS–SAFRANI, Ali Samida; a.k.a. ZAFRANI, Ali), Libya; DOB 1982; Gender Male (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

2. HAMANI, Hamma (a.k.a. BANA, Hama; a.k.a. HAMANI, Mohammed; a.k.a. ''DJANET, el Hadj Hama''); DOB 1967; POB Illizi, Algeria; nationality Algeria (individual) [SDGT] [LIBYA3] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

3. ZARQUN, Abd al Hadi (a.k.a. AL–WARFALI, Abdelhadi al-Hussain Zargoun; a.k.a. AL–WARFALLI, Abd al-Hadi Zarqun; a.k.a. EL–OUARFALI, Abdelhadi el-Houssein Zirgoune; a.k.a. ZARGON, Abdulhadi; a.k.a. ZARGOON, Al Hadi; a.k.a. ZARGUN, 'Abd Al-Hadi Al-Husayn Al-Shaybani; a.k.a. ZARGUN, Abd-al-Hadi; a.k.a. ZARQUN, 'Abd Al-Hadi Al-Husayn Al-Shaybani; a.k.a. ZARQUN, Abd-al-Hadi Al Husayn Al Shabani), Libya; DOB 1983; POB Sirte, Libya; nationality Libya; Gender Male; Passport H/188292 (Libya); National ID No. 123844 (Libya) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Dated: April 13, 2017.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–07830 Filed 4–17–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Information Reporting Program Advisory Committee (IRPAC); Nominations

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) requests applications of individuals to be considered for selection as members of the Information Reporting Program Advisory Committee (IRPAC). Nominations should describe and document the proposed member's qualifications for IRPAC membership, including the applicant's past or current affiliations and dealings with the particular tax segment or segments of the community that he or she wishes to represent on the committee. In addition to nominations from interested individuals, the IRS is soliciting nominations from professional and public interest groups that wish to have representatives on the IRPAC. IRPAC

will be comprised of 20 members. Nominations are currently being accepted for up to seven appointments that will begin in January 2018. It is important that IRPAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on the applicant's qualifications as well as the taxpayer or stakeholder base the applicant represents.

The IRPAC advises the IRS on information reporting issues of mutual concern to the private sector and the federal government. The committee works with the Commissioner of Internal Revenue and other IRS leadership to provide recommendations on a wide range of information reporting administration issues. Membership is balanced to include representation from the tax professional community, small and large businesses, banks, colleges and universities, and industries such as securities, payroll, finance and software.

DATES: Applications must be received on or before May 21, 2017.

ADDRESSES: Applications should be sent to: IRS National Public Liaison, ATTN: IRPAC Applications CL:NPL:BSRM, Room 7559, 1111 Constitution Avenue NW., Washington, DC 20224. Applications may also be submitted via email at *PublicLiaison@irs.gov.* Application packages are available on the IRS Web site at *http://www.irs.gov/for-tax-pros.* Application packages may also be requested by telephone from National Public Liaison, 202–317–6851 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Tonjua Menefee at 202–317–6851 (not a toll-free number) or *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989, the IRPAC works closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. Conveying the public's perceptions of IRS activities to the Commissioner, the IRPAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds to the Committee's activities.

Each IRPAC member is nominated by the Commissioner with the concurrence of the Secretary of Treasury to serve a three-year term. Working groups address policies and administrative issues specific to information reporting. Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation are reimbursed within prescribed federal travel limitations.

Receipt of applications will be acknowledged, and all individuals will be notified when selections have been made. In accordance with Department of Treasury Directive 21–03, a clearance process including fingerprints, annual tax checks, a Federal Bureau of Investigation criminal check and a practitioner check with the Office of Professional Responsibility will be conducted. Equal opportunity practices will be followed for all appointments to the IRPAC in accordance with the Department of Treasury and IRS policies. The IRS has special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities are welcomed for service on advisory committees and, therefore, extends particular encouragement to nominations from such appropriately qualified candidates.

Dated: April 12, 2017.

B. Wilner

Designated Federal Official, National Public Liaison.

[FR Doc. 2017–07794 Filed 4–17–17; 8:45 am]

BILLING CODE 4830–01–P

TREASURY DEPARTMENT

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. app. 2, section 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW., Washington, DC, on May 2, 2017 at 9:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. app. 2, section 10(d) and Pub. L. 103–202, section 202(c)(1)(B) (31 U.S.C. 3121 note). This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. app. 2, section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Pub. L. 103–202, section 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A).

The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. app. 2, section 3. Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A). Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: April 7, 2017.

Fred Pietrangeli,

Director (for Office of Debt Management).

[FR Doc. 2017–07418 Filed 4–17–17; 8:45 am]

BILLING CODE 4810–25–M

FEDERAL REGISTER

Vol. 82 Tuesday,
No. 73 April 18, 2017

Part II

Department of Health and Human Services

45 CFR Parts 147, 155, and 156
Patient Protection and Affordable Care Act; Market Stabilization; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 147, 155, and 156

[CMS–9929–F]

RIN 0938–AT14

Patient Protection and Affordable Care Act; Market Stabilization

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This rule finalizes changes that will help stabilize the individual and small group markets and affirm the traditional role of State regulators. This final rule amends standards relating to special enrollment periods, guaranteed availability, and the timing of the annual open enrollment period in the individual market for the 2018 plan year; standards related to network adequacy and essential community providers for qualified health plans; and the rules around actuarial value requirements.

DATES: These regulations are effective on June 19, 2017.

FOR FURTHER INFORMATION CONTACT: Jeff Wu, (301) 492–4305, Lindsey Murtagh, (301) 492–4106, or Michelle Koltov, (301) 492–4225, for general information.

Rachel Arguello, (301) 492–4263, for matters related to Exchange special enrollment periods and annual open enrollment periods.

Erika Melman, (301) 492–4348, for matters related to network adequacy, and essential community providers.

Allison Yadsko, (410) 786–1740, for matters related to actuarial value.

David Mlawsky, (410) 786–6851, for matters related to guaranteed availability.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Affordable Health Benefit Exchanges, or ''Exchanges'' are competitive marketplaces through which qualified individuals and qualified employers can purchase health insurance coverage. Many individuals who enroll in qualified health plans (QHPs) through individual market Exchanges are eligible to receive advance payments of the premium tax credit to reduce their costs for health insurance premiums, and receive reductions in cost-sharing payments to reduce out-of-pocket expenses for healthcare services.

The stability and competitiveness of the Exchanges, as well as that of the individual and small group markets in general, have recently been threatened by issuer exits and increasing rates in many geographic areas. Some issuers have had difficulty attracting and retaining the healthy consumers necessary to provide for a stable risk pool that will support stable rates. In particular, some issuers have cited special enrollment periods and grace periods as potential sources of adverse selection that have contributed to this problem. Concerns over the risk pool have led some issuers to cease offering coverage on the Exchanges in particular States and counties, and other issuers have increased their rates.

A stabilized individual and small group insurance market will depend on greater choice to draw consumers to the market and vibrant competition to ensure consumers have access to competitively priced, affordable, and quality coverage. Higher rates, particularly for consumers who are not receiving advance payments of the premium tax credit (APTC) or claiming the premium tax credit, resulting from minimal choice and competition, can cause healthier individuals to drop out of the market, further damaging the risk pool and risking additional issuer attrition from the market. This final rule takes steps to provide needed flexibility to issuers to help attract healthy consumers to enroll in health insurance coverage, improve the risk pool and bring stability and certainty to the individual and small group markets, while increasing the options for patients and providers.

To improve the risk pool and promote stability in the individual insurance markets, we are taking several steps to increase the incentives for individuals to maintain enrollment in health coverage and decrease the incentives for individuals to enroll only after they discover they require medical services. First, we are changing the dates for open enrollment in the individual markets for the benefit year starting January 1, 2018, from November 1, 2017 through January 31, 2018 (the previously established open enrollment period for 2018), to extend from November 1 through December 15, 2017. This change requires individuals to enroll in coverage prior to the beginning of the year, unless eligible for a special enrollment period, and is consistent with the open enrollment period previously established for the benefit years starting January 1, 2019, and beyond. This change will improve individual market risk pools by reducing opportunities for adverse selection by those who learn they will need medical services in late December and January; and will encourage healthier individuals who might have previously enrolled in partial year coverage after December 15th to instead enroll in coverage for the full year.

Second, we are responding to concerns from issuers about potential misuse and abuse of special enrollment periods in the individual market Exchanges that enables individuals who are not entitled to special enrollment periods to enroll in coverage after they realize they will need medical services. We are increasing pre-enrollment verification of all applicable individual market special enrollment periods for all States served by the HealthCare.gov platform from 50 to 100 percent of new consumers who seek to enroll in Exchange coverage through these special enrollment periods. We are also making several additional changes to our regulations regarding special enrollment periods that we believe could improve the risk pool, improve market stability, promote continuous coverage, and increase options for patients.

Third, we are revising our interpretation of the Federal guaranteed availability requirement to allow issuers, subject to applicable State law, to apply a premium payment to an individual's past debt owed for coverage from the same issuer or a different issuer in the same controlled group within the prior 12 months before applying the payment toward a new enrollment. We believe this interpretation will have a positive impact on the risk pool by removing economic incentives individuals may have had to pay premiums only when they were in need of healthcare services, particularly toward the end of the benefit year. We also believe this policy is an important means of encouraging individuals to maintain continuous coverage throughout the year.

Fourth, we are finalizing an increase in the de minimis variation in the actuarial values (AVs) used to determine metal levels of coverage for the 2018 plan year and beyond. This change is intended to allow issuers greater flexibility in designing new plans and to provide additional options for issuers to keep cost sharing the same from year to year, while helping stabilize premiums for consumers.

We believe these changes are critical to improving the risk pool, and will together promote more competitive markets with increased choice for consumers.

We are also finalizing policies intended to affirm the traditional role of States in overseeing their health insurance markets while reducing the regulatory burden of participating in Exchanges for issuers. The modified

approach we are finalizing for network adequacy, which includes deferring to States with sufficient network adequacy review (or relying on accreditation or an access plan), will not only lessen the regulatory burden on issuers, but also will recognize the primary role of States in regulating this area. We are also finalizing changes that will allow issuers to continue to use a write-in process to identify essential community providers (ECPs) who are not on the HHS list of available ECPs for the 2018 plan year; and will lower the ECP standard to 20 percent (rather than 30 percent) for the 2018 plan year, which we believe will make it easier for a QHP issuer to build provider networks that comply with the ECP standard.

Robust issuer participation in the individual and small group markets is critical for ensuring consumers have access to affordable, quality coverage, and have real choice in coverage. Continued uncertainty around the future of the markets and concerns regarding the risk pools are two of the primary reasons issuer participation in some areas around the country has been limited. The changes in this rule are intended to promote issuer participation in these markets and to address concerns raised by issuers, States, and consumers. We believe these changes will result in broader choices and more affordable coverage.

II. Background

A. Legislative and Regulatory Overview

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this final rule, we refer to the two statutes collectively as the ''Patient Protection and Affordable Care Act'' or ''PPACA.''

The PPACA reorganizes, amends, and adds to the provisions of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets.

Section 2702 of the PHS Act, as added by the PPACA, requires health insurance issuers that offer non-grandfathered health insurance coverage in the group or individual market in a State to offer coverage to and accept every employer and individual in the State that applies for such coverage, unless an exception applies.

Section 2703 of the PHS Act, as added by the PPACA, and sections 2712 and 2742 of the PHS Act, as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA),[1] require health insurance issuers that offer health insurance coverage in the group or individual market to renew or continue in force such coverage at the option of the plan sponsor or individual, unless an exception applies.

Section 1302(d) of the PPACA describes the various metal levels of coverage based on AV. Consistent with section 1302(d)(2)(A) of the PPACA, AV is calculated based on the provision of essential health benefits (EHB) to a standard population. Section 1302(d)(3) of the PPACA directs the Secretary to develop guidelines that allow for de minimis variation in AV calculations. Section 2707(a) of the PHS Act directs health insurance issuers that offer non-grandfathered health insurance coverage in the individual or small group market to ensure that such coverage includes the EHB package, which includes the requirement to offer coverage at the metal levels of coverage described in section 1302(d) of the PPACA.

Section 1311(c)(1)(B) of the PPACA requires the Secretary to establish minimum QHP certification criteria for provider network adequacy that a health plan must meet.

Section 1311(c)(1)(C) of the PPACA requires the Secretary to establish minimum QHP certification criteria for the inclusion of essential community providers.

Section 1311(c)(6)(B) of the PPACA states that the Secretary is to set annual open enrollment periods for Exchanges for calendar years after the initial enrollment period.

Section 1311(c)(6)(C) of the PPACA states that the Secretary is to provide for special enrollment periods specified in section 9801 of the Internal Revenue Code of 1986 (the Code) and other special enrollment periods under circumstances similar to such periods under part D of title XVIII of the Social Security Act (the Act) for the Exchanges.

Section 1321(a) of the PPACA provides broad authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, QHPs and other components of title I of the PPACA.

1. Market Rules

A proposed rule relating to the 2014 Health Insurance Market Rules was published in the November 26, 2012 **Federal Register** (77 FR 70584). A final rule implementing the Health Insurance Market Rules was published in the February 27, 2013 **Federal Register** (78 FR 13406) (2014 Market Rules).

A proposed rule relating to Exchanges and Insurance Market Standards for 2015 and Beyond was published in the March 21, 2014 **Federal Register** (79 FR 15808) (2015 Market Standards Proposed Rule). A final rule implementing the Exchange and Insurance Market Standards for 2015 and Beyond was published in the May 27, 2014 **Federal Register** (79 FR 30240) (2015 Market Standards Rule).

2. Exchanges

We published a request for comment relating to Exchanges in the August 3, 2010 **Federal Register** (75 FR 45584). We issued initial guidance to States on Exchanges on November 18, 2010.[2] We issued a proposed rule in the July 15, 2011 **Federal Register** (76 FR 41865) to implement components of the Exchanges, and a proposed rule in the August 17, 2011 **Federal Register** (76 FR 51201) regarding Exchange functions in the individual market, eligibility determinations, and Exchange standards for employers. A final rule implementing components of the Exchanges and setting forth standards for eligibility for Exchanges was published in the March 27, 2012 **Federal Register** (77 FR 18309) (Exchange Establishment Rule).

In the March 8, 2016 **Federal Register** (81 FR 12203), we published the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 final rule (2017 Payment Notice), and established additional Exchange standards, including requirements for network adequacy and essential community providers; and established the timing of annual open enrollment periods.

In the September 6, 2016 **Federal Register** (81 FR 61456), we published the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2018 proposed rule (proposed 2018 Payment Notice). In the December 22, 2016 **Federal Register** (81 FR 94058), we published the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2018 final rule (2018 Payment Notice) and established additional Exchange standards, including requirements for network

[1] The HIPAA requirement for guaranteed renewability, codified in section 2712 of the PHS Act, was renumbered by the PPACA to section 2703 of the PHS Act. HIPAA's guaranteed renewability requirement continues to apply in certain contexts, such as to issuers in the U.S. territories and issuers of expatriate health plans.

[2] Initial Guidance to States on Exchanges (November 10, 2018). Available at *https://www.cms.gov/CCIIO/Resources/Files/guidance_to_states_on_exchanges.html.*

adequacy and essential community providers.

3. Special Enrollment Periods

In the July 15, 2011 **Federal Register** (76 FR 41865), we published a proposed rule establishing special enrollment periods for the Exchange. We implemented these special enrollment periods in the Exchange Establishment Rule (77 FR 18309). In the January 22, 2013 **Federal Register** (78 FR 4594), we published a proposed rule amending certain special enrollment periods, including the special enrollment periods described in § 155.420(d)(3) and (7). We finalized these rules in the July 15, 2013 **Federal Register** (78 FR 42321).

In the June 19, 2013 **Federal Register** (78 FR 37032), we proposed to add a special enrollment period when the Exchange determines that a consumer has been incorrectly or inappropriately enrolled in coverage due to misconduct on the part of a non-Exchange entity. We finalized this proposal in the October 30, 2013 **Federal Register** (78 FR 65095). In the March 21, 2014 **Federal Register** (79 FR 15808), we proposed to amend various special enrollment periods. In particular, we proposed to clarify that later coverage effective dates for birth, adoption, placement for adoption, or placement for foster care would be effective the first of the month. The rule also proposed to clarify that earlier effective dates would be allowed if all issuers in an Exchange agree to effectuate coverage only on the first day of the specified month. Finally, this rule proposed adding that consumers may report a move in advance of the date of the move and established a special enrollment period for individuals losing medically needy coverage under the Medicaid program even if the medically needy coverage is not recognized as minimum essential coverage (individuals losing medically needy coverage that is recognized as minimum essential coverage already were eligible for a special enrollment period under the regulation). We finalized these provisions in the May 27, 2014 **Federal Register** (79 FR 30348). In the October 1, 2014 **Federal Register** (79 FR 59137), we published a correcting amendment related to codifying the coverage effective dates for plan selections made during a special enrollment period and clarifying a consumer's ability to select a plan 60 days before and after a loss of coverage.

In the November 26, 2014 **Federal Register** (79 FR 70673), we proposed to amend effective dates for special enrollment periods, the availability and length of special enrollment periods, the specific types of special enrollment periods, and the option for consumers to choose a coverage effective date of the first of the month following the birth, adoption, placement for adoption, or placement in foster care. We finalized these provisions in the February 27, 2015 **Federal Register** (80 FR 10866). In the July 7, 2015 **Federal Register** (80 FR 38653), we issued a correcting amendment to include those who become newly eligible for a QHP due to a release from incarceration. In the December 2, 2015 **Federal Register** (80 FR 75487) (proposed 2017 Payment Notice), we sought comment and data related to existing special enrollment periods, including data relating to the potential abuse of special enrollment periods. In the 2017 Payment Notice, we stated that in order to review the integrity of special enrollment periods, the Federally-facilitated Exchange (FFE) will conduct an assessment by collecting and reviewing documents from some consumers to confirm their eligibility for the special enrollment periods under which they enrolled.

In an interim final rule with comment published in the May 11, 2016 **Federal Register** (81 FR 29146), we amended the parameters of certain special enrollment periods.

In the 2018 Payment Notice, we established additional Exchange standards, including requirements for certain special enrollments.

4. Actuarial Value

On February 25, 2013, we established the requirements relating to EHBs and AVs in the Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule, which was published in the **Federal Register** (78 FR 12833) (EHB Rule), implementing section 1302 of the PPACA and 2707 of the PHS Act. In the 2018 Payment Notice published in the December 22, 2016 **Federal Register** (81 FR 94058), we finalized a provision that allows an expanded de minimis range for certain bronze plans.

B. Stakeholder Consultation and Input

HHS has consulted with stakeholders on policies related to the operation of Exchanges. We have held a number of listening sessions with consumers, providers, employers, health plans, the actuarial community, and State representatives to gather public input, with a particular focus on risks to the individual and small group markets, and how we can alleviate burdens facing patients and issuers. We consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners, regular contact with States through the Exchange Establishment grant and Exchange Blueprint approval processes, and meetings with Tribal leaders and representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties.

III. Provisions of the Proposed Regulations, and Analysis of and Responses to Public Comments

We published the ''Patient Protection and Affordable Care Act; Market Stabilization'' proposed rule in the February 17, 2017 **Federal Register** (82 FR 10980) (the proposed rule). We received 4,005 timely comments. The comments ranged from general support for or opposition to the proposed provisions to specific questions or comments regarding proposed changes. We received a number of comments and suggestions that were outside the scope of the proposed rule that will not be addressed in this final rule.

In this final rule, we provide a summary of each proposed provision, a summary of those public comments received that directly related to the proposals, our responses to them, and a description of the provisions we are finalizing.

Comment: We received comments stating that the comment period was unreasonably short, making it difficult for stakeholders to provide in-depth analysis and input. Some commenters stated that the short comment period represented a violation of the Administrative Procedure Act, 5 U.S.C. Ch. 5, Subch. II, sec. 551 *et seq.* Commenters suggested that HHS extend the comment period and provide a comment period of 30 or 60 days from the date of publication in the **Federal Register**.

Response: We published the proposed rule in order to promote issuer participation in the individual and small group markets and to address concerns raised by consumers, States, and issuers. While our general practice is to allow 30 to 60 days for comment, doing so is not specifically required by the Administrative Procedure Act. Because the changes directly affect issuers' plan designs and rates for 2018, HHS determined that it was necessary to have a 20-day comment period to finalize the rule in time for issuers to be able to factor the changes into their plans for the 2018 plan year. In addition, we believe that the short comment period was necessary to implement these changes in time to provide flexibility to issuers to help

attract healthy consumers to enroll in health insurance coverage, improving the risk pool and bringing additional stability and certainty to the individual and small group markets for the 2018 plan year. Given the limited number of changes to existing rules contemplated by the proposed rule, we believe that the 20-day comment period provided adequate time for interested stakeholders to participate in the rulemaking process by submitting comments. The submission of more than 4,000 comments, many of which provided thoughtful, complex analyses of the proposals, suggests that the timeframe provided interested stakeholders with time to carefully consider and provide input on the proposals.

Comment: We received a number of comments in support of the proposed rule. Those commenters stated that the rule would stabilize and strengthen the risk pool by preventing gaming and encouraging full-year enrollment. In addition, those commenters stated that the proposals in the rule would benefit consumers by increasing coverage options, increasing consumer choice, and putting downward pressure on premiums, which would make coverage more affordable.

Response: We agree that the policies are expected to have a positive impact on stabilizing the markets, increasing consumer choice, and making coverage more affordable.

Comment: We received a number of comments discouraging HHS from finalizing the proposed rule. Some commenters stated that the rule was designed to benefit health insurance companies and would have an adverse impact on consumers' access to affordable health coverage. Commenters noted that they believed the rule would increase premiums and out-of-pocket costs, limit provider networks, and reduce covered benefits. Commenters also believed that the proposed rule would increase the number of uninsured and under-insured individuals. Furthermore, some commenters stated that the proposed rule would weaken the consumer protections offered under the PPACA, limit consumer choices, and limit patients' access to care. Those commenters also noted that the proposals would place undue administrative burdens on consumers and Exchanges. Many of these commenters suggested that additional changes to the Exchanges would cause further uncertainty and confusion for consumers and providers and encouraged HHS to wait to make any regulatory changes until Congress has passed new healthcare reform legislation.

Response: We appreciate the importance of ensuring that coverage purchased through the Exchanges is affordable to consumers, and believe affordability is critical to the success of the Exchanges. We understand commenters' concerns about loosening consumer protections, limiting patients' access to choices of coverage, and increasing administrative burdens. We note that this rule does not change the majority of standards for certification for QHPs, and agree that it is important to promote patients' access to quality coverage. Furthermore, we believe that this rule will improve the risk pools and help stabilize the individual and small group health insurance markets, which will help protect patients and consumers by encouraging issuers to maintain a presence in those markets and lower premiums, thereby increasing consumers' choices of affordable coverage options. We believe prompt regulatory action is necessary to stabilize the markets for the upcoming plan year, and recognize the importance of clearly communicating these changes in light of confusion and uncertainty for consumers and providers.

A. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

1. Guaranteed Availability of Coverage (§ 147.104)

The guaranteed availability provisions at section 2702 of the PHS Act and § 147.104 require health insurance issuers offering non-grandfathered coverage in the individual or group market to offer coverage to and accept every individual and employer in the State that applies for such coverage, unless an exception applies.[3] Individuals and employers typically are required to pay the first month's premium (sometimes referred to as a binder payment) before coverage is effectuated.

We have previously interpreted the guaranteed availability requirement to mean that an issuer is prohibited from applying a binder payment made for a new enrollment to past-due premiums [4] owed from any previous coverage and then refusing to effectuate the enrollment based on failure to pay premiums.[5] However, should the individual seek to renew existing coverage, the issuer could attribute the enrollee's forthcoming premium payments to any past-due premiums.

In prior rulemaking related to the 2014 Market Rules, HHS received public comments expressing concerns about the potential for individuals with a history of non-payment to take unfair advantage of the guaranteed availability rules by declining to make premium payments, for example, at the end of a benefit year, yet being able to immediately sign up for new coverage for the next benefit year during the individual market open enrollment period.[6] In the preamble to the 2014 Market Rules, HHS encouraged States to consider approaches to discourage gaming and adverse selection while upholding consumers' guaranteed availability rights, and indicated an intention to address this issue in future guidance.

To address the concern about potential misuse of grace periods, we proposed to modify our interpretation of the guaranteed availability rules with respect to non-payment of premiums. Under the proposed rule, an issuer would not be considered to violate the guaranteed availability requirements if the issuer attributes a premium payment for coverage under the same or a different product to premiums due to the same issuer within the prior 12 months and refuses to effectuate new coverage for failure to pay premiums. To the extent permitted by applicable State law, this would permit an issuer to require an individual or employer to pay all past-due premiums owed to that issuer for coverage in the prior 12-month period in order to effectuate new coverage from that issuer. Under the proposed rule, an issuer choosing to adopt a policy of attributing payments in this way would be required to apply its premium payment policy uniformly to all employers or individuals in similar circumstances in the applicable market regardless of health status, and consistent with applicable non-discrimination requirements.[7] The

[3] Similar provisions in § 146.150 apply to health insurance issuers offering grandfathered and non-grandfathered coverage in the small group market.

[4] For purposes of this rulemaking, the term ''past-due premiums'' refers to premiums that have not been paid by the applicable due date as established by the issuer in accordance with applicable Federal and State law. It does not include premiums for months in which individuals were not enrolled in coverage.

[5] Federally-facilitated Marketplace (FFM) and Federally-facilitated Small Business Health Options Program Enrollment Manual, Section 6.3 Terminations for Non-Payment of Premiums, available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/ENR_FFMSHOP_Manual_080916.pdf.*

[6] *See* summary of comments at 78 FR 13416 (Feb. 27, 2013).

[7] Issuers may also have obligations under other applicable Federal laws prohibiting discrimination, and issuers are responsible for ensuring compliance with all applicable laws and regulations. There may

Continued

proposal would not permit an issuer to condition the effectuation of new coverage on payment of premiums owed to a different issuer, or permit an issuer to condition the effectuation of new coverage on payment of past-due premiums by any individual other than the person contractually responsible for the payment of premium, as we do not believe it is reasonable to hold persons responsible for payments they were not contractually responsible for making. We stated that if the proposal were to be finalized, we would encourage States to adopt a similar approach, with respect to any State laws that might otherwise prohibit this practice.

Because of rules regarding grace periods and termination of coverage, individuals with past-due premiums would generally owe no more than 3 months of premiums.[8] Furthermore, for individuals on whose behalf the issuer received APTC, their past-due premiums would be net of any APTC that was paid on the individual's behalf to the issuer, with respect to any months for which the individual is paying past-due premiums.

We noted that due to operational constraints, the Federally-facilitated Small Business Health Options Program (FF–SHOP) would be unable to offer issuers this flexibility at this time. We solicited comments on the proposal, including on whether issuers that choose to adopt this type of premium payment policy should be permitted to implement it with a premium payment threshold policy, under which the issuer can consider an individual to have paid all amounts due, if the individual pays an amount, as determined by the issuer, that is less than the total past-due premiums. We also solicited comments on whether issuers should be required to provide notice to individuals regarding whether they have adopted a premium payment policy permitted under this proposal.

We are finalizing this proposal as follows. To the extent permitted by applicable State law, an issuer may attribute to any past-due premium amounts owed to that issuer the initial premium payment made in accordance with the terms of the health insurance policy to effectuate coverage. If the issuer is a member of a controlled group, the issuer may attribute any past-due premium amounts owed to any other issuer that is a member of such controlled group, for coverage in the 12-month period preceding the effective date of the new coverage when determining whether an individual or employer has made an initial premium payment to effectuate new coverage. Consistent with the scope of the guaranteed availability provision and subject to applicable State law, this policy applies both inside and outside of the Exchanges in the individual, small group, and large group markets,[9] and during applicable open enrollment or special enrollment periods. This policy does not permit a different issuer (other than one in the same controlled group as the issuer to which past-due premiums are owed) to condition the effectuation of new coverage on payment of past-due premiums or permit any issuer to condition the effectuation of new coverage on payment of past-due premiums by any individual other than the person contractually responsible for the payment of premiums.[10] As further described later in this preamble, for this purpose, the term controlled group means a group of two or more persons that is treated as a single employer under sections 52(a), 52(b), 414(m), or 414(o) of the Code. We also specify that issuers adopting this premium payment policy, as well as any issuers that do not adopt the policy but are within an adopting issuer's controlled group, must clearly describe in any enrollment application materials, and in any notice that is provided regarding non-payment of premiums, in paper or electronic form, the consequences of non-payment on future enrollment. We encourage States to adopt a similar approach; however, States may narrow the circumstances and conditions under which an issuer may apply a premium payment policy to past-due premiums before effectuating coverage or may prohibit the practice altogether.

The following is a summary of the public comments we received on this proposal, and our responses.

Comment: Many commenters supported the proposal, suggesting that this approach is common in other industries such as housing, utilities, or telecommunications, where past-due payment for prior services must be made prior to restarting the same service. However, many other commenters objected to the proposal, stating that there is no statutory authority for the policy, that there is insufficient evidence of misuse of the grace period, and that individuals fail to make payments for a variety of other reasons, including poor or changing financial situations, poor health, or issuer or Exchange error. One commenter stated that the individual shared responsibility payment that is imposed for months in which non-exempt individuals do not have minimum essential coverage, as well as the fact that individuals have to pay for all of their healthcare expenses during any uninsured period, address any concerns about deliberate misuse of the grace period.

Other commenters who objected to the proposal stated that issuers have other ways, including collection actions, for recovering past-due premiums. Some of these commenters suggested that the individuals most likely to miss their premium payments are younger, healthier individuals, who could help balance the individual market risk pool. A few commenters stated that forcing individuals to pay retroactively for premiums covering months in which they did not seek healthcare will be a disincentive to signing up for coverage.

Response: We believe this interpretation of the guaranteed availability requirement will have a positive impact on the risk pool by removing economic incentives individuals may have had to pay premiums only when they were in need of healthcare services. We also believe this policy is an important means of encouraging individuals to maintain continuous coverage throughout the year and preventing abuses. While the guaranteed availability provision in section 2702 of the PHS Act does not explicitly refer to premium payment, it is clear from reading this provision together with the guaranteed renewability provision in section 2703 of the PHS Act that an issuer's sale and continuation in force of an insurance policy is contingent upon payment of premiums. We do not believe that the guaranteed availability provision is

also be separate, independent non-discrimination obligations under State law.

[8] Section 156.270(d) requires issuers to observe a 3-consecutive month grace period before terminating coverage for those enrollees who upon failing to timely pay their premiums are receiving APTC. Section 155.430(d)(4) requires that when coverage is terminated following this grace period, the last day of enrollment in a QHP through the Exchange is the last day of the first month of the grace period. Therefore, individuals whose coverage is terminated at the conclusion of a grace period would owe at most 1 month of premiums, net of any APTC paid on their behalf to the issuer. Individuals who attempt to enroll in new coverage while in a grace period (and whose coverage has not yet been terminated) could owe up to 3 months of premium, net of any APTC paid on their behalf to the issuer.

[9] As discussed below, the FF–SHOP is unable to offer issuers this flexibility at this time.

[10] For example, a subscriber of an individual policy or an employer that purchases a group policy is typically responsible for payment of the premiums. Thus, an issuer cannot refuse to effectuate new coverage purchased by a dependent because the subscriber owes past-due premiums or new coverage purchased by a current or former employee (or his or her dependent) because the employee's employer owes past-due premiums.

intended to require issuers to provide coverage to applicants who have not paid for such coverage. To the extent an individual or employer makes payment in the amount required to effectuate new coverage, but the issuer lawfully credits all or part of that amount toward past-due premiums, the consumer has not made sufficient initial payment for the new coverage.

With respect to individuals experiencing poor financial circumstances, we note that the PPACA provides for APTC and cost-sharing reductions (CSRs) for low-income individuals, and that increased APTC and CSRs are available as income decreases. We also note that consumers who experience a change in household income during a policy year are instructed to submit updated financial information to an Exchange and may potentially gain new, or additional, APTC or CSRs.

We disagree that the individual shared responsibility payment and paying for healthcare in the absence of coverage are sufficient to prevent abuses of the grace period, given that individuals may qualify for the short coverage gap exemption from the individual shared responsibility payment, and that individuals who misuse the grace period are likely to be individuals in good health who do not wish to make premium payments for periods of time during which they anticipate that they will not incur significant health expenses.

We acknowledge that issuers have ways of collecting debt other than by applying premium payments to past-due premiums. However, the policy in this regulation is intended to achieve a broader purpose than simply assisting issuers in collecting past-due premiums; rather this policy is intended to encourage individuals to maintain continuous coverage (and thereby avoid incurring past-due premiums) in order to help stabilize the risk pool for all participants, and prevent abuse of grace periods.

We believe the notice requirements discussed below, which will inform individuals of the consequences of missing their premium payments, will encourage younger, healthier individuals to maintain continuous coverage. Further, we disagree that requiring individuals to pay premiums owed for the months of prior coverage in which they did not seek healthcare will be a disincentive to signing up for coverage. We believe that with sufficient notice of having to pay past-due premiums before enrolling in new coverage, many individuals will instead opt to keep their coverage by making regular monthly premium payments.

Comment: Several commenters supported expanding the proposal. Some commenters stated that an issuer other than the specific licensed entity to which past-due premiums are owed, such as successors, assignees, commonly owned entities, other issuers within an Exchange, or any other issuer, should be permitted to refuse to effectuate new coverage as a result of unpaid past-due premiums. One commenter stated that limiting the proposal only to the specific licensed entity to which past-due premiums are owed will merely cause consumers to seek coverage from another issuer, thus limiting the policy's intended effect. Although several commenters agreed that the policy should not affect the ability of any individual other than the person contractually responsible for the payment of premiums to purchase coverage (such as the dependent of a policyholder, or an employee, when their employer has past-due premiums), several others commented that the policy should apply to the policyholder and to all covered dependents. For example, if a covered dependent of a former policyholder applies for new coverage, the issuer could refuse to effectuate new coverage for any individual in the enrollment group, unless past-due premiums are paid. Several commenters stated that the policy should permit issuers to collect all past-due premiums before effectuating coverage, even those for coverage beyond the past 12 months. Other commenters, however, suggested that a 12-month look-back is excessively punitive.

Response: In response to comments received, we believe that it will further the goals of this interpretation of guaranteed availability to allow the issuer to which past-due premiums are owed, and any other issuer that is a member of the same controlled group, to refuse to effectuate coverage unless the past-due premiums are paid. For this purpose, the term controlled group means a group of two or more persons that is treated as a single employer under sections 52(a), 52(b), 414(m), or 414(o) of the Code, which is the same definition used for other purposes related to the guaranteed renewability provision.[11] We believe this approach strikes a balance between comments suggesting a broad approach when premiums are owed to any issuer and comments favoring a narrow approach specific to premiums owed to the licensed entity. For now, we leave open the question of whether a successor or assignee issuer may take advantage of this flexibility to State interpretation, including in States where HHS is directly enforcing the guaranteed availability requirements. We believe that permitting an issuer to apply the policy to the dependent of a previous policyholder, when that dependent was covered under that previous policyholder's policy, or to an employee, when his or her employer was the previous policyholder, would be unreasonable, as it would require an individual or entity to pay a debt it has no legal obligation to pay. We also believe that a look-back period of 12 months (as opposed to a longer or shorter period) appropriately balances the objectives of the policy, without being unduly burdensome for consumers or carrying forward a debt owed for months beyond the previous year of coverage. We note that, although the look-back period is for 12 months, individuals with past-due premiums would generally owe no more than 1 to 3 months of premiums; they would not owe premiums for months in which they were not covered.

Comment: One commenter stated that Exchange assisters should inform consumers that if they wish to terminate their coverage, they should do so proactively, rather than simply fail to pay premiums.

Response: We encourage all entities and persons providing enrollment assistance, such as issuers, agents and brokers, Navigators, and other assisters, to educate consumers about how to terminate coverage so that it will not affect their ability to sign up for new coverage.

Comment: Many commenters stated that there should be a hardship exemption from the policy for individuals who are delinquent in their premiums for reasons other than gaming (such as domestic violence, falling victim to a crime, or issuer or Exchange error), and an appeals process for consumers to demonstrate hardship. A few commenters stated that any appeals process should include external review, or HHS review.

Response: States and issuers have the flexibility to create exemptions for extenuating circumstances, and appeals processes by which individuals and employers may demonstrate that they qualify for any such exemptions, as long as the policy is applied uniformly to individuals in similar circumstances in the applicable market within the State and not based on health status and consistent with applicable non-

[11] *See* 45 CFR 147.106(d)(4). States adopting the policy may use a narrower definition of ''controlled group.''

discrimination requirements. To the extent a State mandates an appeal or review process, it may also determine the logistics of that process.

Comment: Several commenters requested clarification that if an issuer collects past-due premiums, the issuer should be required to pay claims submitted for that individual during the grace period. They also stated that issuers should be required to immediately notify providers when an enrollee enters the grace period, so the providers could determine whether the providers would be penalized for furnishing non-urgent care, if past-due premiums are not paid. Another commenter stated that when past-due premiums are paid in full during a grace period, issuers should be required to pay all pended claims without the need for the provider to resubmit the claim or claims within 30 days of the enrollee's account becoming current. One commenter stated that if an issuer authorizes care and a provider provides care in reliance on that authorization, the issuer should be responsible for the claim, even if the claim would not otherwise be paid pursuant to the policy in this regulation.

Response: We clarify that issuers are required to pay all appropriate claims for services rendered to the enrollee during any months of coverage for which past-due premiums are collected. In the case of enrollees in the 3 consecutive month grace period, a QHP issuer must pay all appropriate claims for services rendered to the enrollee during the first month of the grace period, regardless of whether past-due premiums are paid, and must notify providers of the possibility for denied claims when an enrollee is in the second and third months of the grace period, as specified in § 156.270(d). We are not modifying the rules regarding grace periods in this final rule. However, we will consider whether to make changes regarding provider notification requirements in the future.

Comment: We received several comments specific to loss of APTC. Several commenters stated that when individuals lose APTC for a period and then regain it, they have the right to choose whether they would like the APTC to be applied prospectively or retroactively. These commenters stated that Exchanges should be required to confirm with consumers if they would like the APTC to be applied retroactively, to reduce the amount of past-due premiums.

Response: Individuals generally must have their APTCs applied prospectively, and do not have a right to choose to have the APTC applied retroactively. Only in limited circumstances, such as when an eligibility appeal determines that an Exchange erred in its determination of eligibility for APTC, are individuals permitted to have APTC applied retroactively. Where an individual's coverage through the Exchange has been terminated for non-payment of premiums, APTC is not available during any resulting coverage gap. While individuals may reapply for APTC to be applied prospectively, APTC cannot be applied retroactively to periods during which the individual's coverage through the Exchange was terminated for non-payment of premiums. We note that individuals whose coverage is terminated at the conclusion of a grace period would owe premiums for the first month of the grace period, net of any APTC paid on their behalf to the issuer, but would not owe for the second and third months of the grace period, because the last day of enrollment in a QHP through the Exchange is the last day of the first month of the 3-month grace period, as outlined in § 155.430(d)(4). Additionally, the individuals would not owe premiums for the months following termination.

Comment: Many commenters stated that issuers should be required to allow individuals to pay past-due premiums in installments, while the issuer sells them new coverage. One commenter stated that, during the installment period, consumers should be permitted to report any income changes, changes in household, or hardships, in order to make adjustments to the repayment plan.

Response: The policy in this final rule permits but does not require issuers to collect past-due premiums before effectuating new coverage. However, we are not requiring issuers that adopt the policy to accept installment payments in this final rule, although State law permitting or requiring issuers to accept such installment payments, as well as any requirements relating to notice of an adjustment to installment periods, would apply, provided the amount of installment payments an issuer will accept, and its decision whether or not to accept installment payments is applied uniformly to individuals or employers in similar circumstances in the applicable market within the State and not based on health status, and consistent with applicable non-discrimination requirements.

Comment: All commenters who commented on whether issuers should be permitted to accept a threshold amount of past-due premiums as payment in full supported this approach. One commenter stated that issuers that have a premium threshold for the binder and monthly premiums should not be required to do so for past-due premiums, and vice-versa. Another commenter stated that HHS should set a threshold that issuers should be required to accept. With respect to the disclosure of whether an issuer will accept a threshold, and the threshold amount, many commenters stated that issuers applying a payment threshold should be required to disclose the amount of the threshold either before purchase of the insurance policy, or at the time of enrollment. One commenter, however, stated that issuers should not be required to provide notice of a threshold, as such notice would incentivize partial payments.

Response: We decline to set a premium payment threshold or mandate that issuers set and apply one, or for those that do, require that they provide any such notice. Rather, issuers may set and apply a threshold to the extent permitted by applicable State law, provided that the issuer does so uniformly for individuals or employers in similar circumstances in the applicable market within the State and without regard to health status, and consistent with applicable non-discrimination requirements. Also, in accordance with the premium payment threshold regulation at § 155.400(g) and guidance, issuers on an FFE, and on the State-based Exchanges on the Federal platform (SBE–FPs), that choose to apply a payment threshold policy must apply the policy in a uniform manner to all enrollees, and are expected to do so for the entire plan year.[12] Additionally under that regulation and guidance, if the issuer adopts such a policy, it is expected to apply the policy uniformly to the initial premium payment and any subsequent premium payments, and to any amount outstanding at the end of a grace period for non-payment of premium.

Comment: With respect to the comment solicitation regarding whether notice should be provided by issuers that adopt the premium payment policy, many commenters stated that such notice should be required. However, several commenters stated that no separate notice document is necessary. Rather, commenters stated that notice of the policy could be included on billing statements, any general payment policy notices, on the application, prior to purchase, or on issuers' Web sites. Commenters in favor of requiring notice stated that it should include the consequences of delinquent payment on

[12] *FFM and FFM–SHOP Enrollment Manual* (Section 6.1).

the ability to purchase new coverage from the issuer, and other relevant information. Some commenters recommended this information appear in Plan Compare and in the Exchange eligibility determination notice.

Response: We agree that notice is important, but do not believe that a separate document is necessary, as issuers already have effective ways of communicating with consumers about premium payment. Therefore, we specify that issuers adopting a premium payment policy permitted under this section, as well as any other issuers that do not adopt the policy but are within an adopting issuer's controlled group, are required to clearly describe, in any enrollment application materials, and in any notice that is provided regarding non-payment of premiums, in paper or electronic form, the consequences of non-payment on future enrollment. We believe this notice is sufficient to inform consumers of their obligations to pay past-due premiums, and are not specifying additional notice in Plan Compare or in the Exchange eligibility determination at this time.

Comment: We received a few comments related to operationalizing the policy. One commenter stated that it would require information technology enhancements for an Exchange to process and store the industry standard code received from issuers that is sent when a consumer does not pay premiums. This would allow the issuer's system and enrollee's account to reflect the enrollment status with the issuer that elected to use their premium payment to satisfy past-due premiums. Due to the new interface requirements, the changes would be a large project and would consume a large amount of resources at considerable expense. Another commenter stated that the policy would require coordination between the Exchanges and issuers, and might require development in Exchanges' billing systems that would require time and resources for deployment. One commenter stated that the policy should be made optional because it is burdensome for issuers to reconcile 60 days of claims in order to reenroll individuals. One commenter asked for confirmation that the FFEs would operationalize the new policy by requiring issuers to send the Exchange a cancellation transaction for an enrollment of an individual who did not pay the outstanding balance by the applicable due date.

Response: As regards technical and operational challenges described by commenters related to permitting issuers to collect past-due premiums before effectuating new coverage, we note that nothing in this rule requires an issuer or Exchange to implement this type of premium payment policy before effectuating new coverage. We also note that these challenges are only applicable to Exchanges that perform premium collection on behalf of issuers, such as the FF–SHOP, which due to operational limitations, is not able to implement the policy at this time. As regards comments about processing enrollment-related transactions, we note that QHP issuers are currently required to communicate to the FFE and to SBE–FPs whether an enrollment is effectuated or cancelled, such as when the individual fails to make sufficient payment to effectuate new coverage.[13]

Comment: One commenter stated that the policy should apply only to individuals who enter the grace period, and to past-due premiums accrued, after the effective date of the final rule.

Response: For issuers that choose to adopt the premium payment policy, and for other issuers in such an issuer's controlled group, the requirement to provide notice of the policy will become effective beginning with notices provided 60 days after publication of the final rule. Beginning on or after that date, issuers will not be considered to violate Federal guaranteed availability requirements if they attribute payments toward past-due premiums consistent with this section and then deny enrollment for failure to pay the initial payment for a new enrollment to individuals to whom such notice was provided prior to their failure to pay premiums that become past-due premiums.

In addition to the policy on past-due premiums, we proposed to amend § 147.104(b)(2)(i) to conform to proposed changes to special enrollment periods discussed in greater detail in section III.B.2. of the proposed rule (82 FR 10984). Because the proposed changes to § 155.420(a)(4) and (5) applied to special enrollment periods in the individual market, both inside and outside of an Exchange, we proposed to amend § 147.104(b)(2)(i) to specify that these paragraphs apply to special enrollment periods throughout the individual market. We solicited comments on how these changes would be operationalized outside of the Exchanges.

A summary of those comments are found in section III.B.3. of this final rule. Instead of the proposed changes at § 147.104(b)(2)(i), we are finalizing a new paragraph (b)(2)(iii) of § 147.104 to reflect our decision that the changes in § 155.420(a)(4) in this final rule apply only within the individual market Exchanges.

B. Part 155—Exchange Establishment Standards and Other Related Standards Under the Patient Protection and Affordable Care Act

1. Enrollment of Qualified Individuals Into QHPs (§ 155.400)

We are finalizing an amendment to § 155.400 to address binder payment requirements that apply when a consumer whose enrollment was delayed due to an eligibility verification opts to delay the coverage start date under § 155.420(b)(5). A more detailed discussion of the pre-enrollment verification procedures for special enrollment periods and the related changes that we are finalizing in § 155.400 are provided in section III.B.3 of this final rule.

2. Initial and Annual Open Enrollment Periods (§ 155.410)

We proposed to amend paragraph (e) of § 155.410, which provides the dates for the annual Exchange open enrollment period in which qualified individuals and enrollees may apply for or change coverage in a QHP. The Exchange open enrollment period is extended by cross-reference to non-grandfathered plans in the individual market, both inside and outside of an Exchange, under guaranteed availability regulations at § 147.104(b)(1)(ii). In prior rulemaking, we established that the open enrollment period for the benefit year beginning on January 1, 2018, would begin on November 1, 2017 and extend through January 31, 2018; and that the open enrollment period for the benefit years beginning on January 1, 2019 and beyond would begin on November 1 and extend through December 15 of the calendar year preceding the benefit year.[14] We noted at the time that we believe that, as the Exchanges continue, a month-and-a-half open enrollment period provides sufficient time for consumers to enroll in or change QHPs for the upcoming benefit year. Furthermore, this timeframe would achieve our goals of shifting to an earlier open enrollment end date, so that all consumers who enroll during this time will receive a full year of coverage, which will increase access for patients and simplify operational processes for issuers and the Exchanges. In addition, we noted that we also believe that this shorter open enrollment period may have a positive

[13] For example, *see* Section 6.1 of the *FFM and FF–SHOP Enrollment Manual* (revised July 19, 2016).

[14] 81 FR 12203, 12273.

impact on the risk pool because it will reduce opportunities for adverse selection by those who learn that they will need healthcare services in late December or January. Although we originally thought a longer transition period was needed before moving to this shorter open enrollment period, in the proposed rule, we stated that we believe that the market and issuers are now ready for this adjustment sooner. Therefore, we proposed to amend § 155.410(e) to change the open enrollment period for benefit year 2018 so that it begins on November 1, 2017 and runs through December 15, 2017. All consumers who select plans on or before December 15, 2017 would receive an enrollment effective date of January 1, 2018, as already required by § 155.410(f)(2)(i). We noted that we believe that this open enrollment period would align better with many open enrollment periods for employer-based coverage, as well as the open enrollment period for Medicare Advantage.

We solicited comments on this proposal, in particular on the capacity of State Exchanges (SBEs) to shift to the shorter open enrollment period for the 2018 benefit year, on the effect of the shorter enrollment period on issuers' ability to enroll healthy consumers, and any difficulties agents, brokers, Navigators, and other assisters may have in serving consumers seeking to enroll during this shorter time period.

We are finalizing this provision as proposed.

Comment: Many commenters supported our proposal to shift the open enrollment period end date to December 15, 2017 for the 2018 benefit year. These commenters noted that this change will improve the risk pool by encouraging people to maintain coverage and preventing adverse selection from partial-year enrollments, as well as eliminate operational complexity for issuers. Several of these commenters stated that a uniform January 1 coverage start date is an important element in promoting continuous, full-year coverage, and will help prevent gaming by healthy individuals who wait until the end of open enrollment to enroll in coverage with a later effective date, which would help issuers manage risk and develop appropriate rates with consumers enrolled for the full year.

A large number of commenters expressed concerns with our proposal. Among these commenters, many worried that a shorter open enrollment period would reduce enrollment overall. These commenters disagreed that a shorter open enrollment period would reduce premiums or improve the health of the risk pool. Instead, they were concerned that it would discourage enrollment by young and healthy consumers, who typically wait until the end of open enrollment to enroll. Others disagreed with the proposal that it was important that the open enrollment timeframe mirror employer-sponsored insurance, pointing out that the enrollees in employer-sponsored insurance have different characteristics from Exchange enrollees and the process for enrolling in health coverage is markedly different.

Response: After consideration of the comments received, we are finalizing an open enrollment period for the 2018 benefit year that begins on November 1, 2017 and runs through December 15, 2017. We had already planned to implement a consistent month-and-a-half open enrollment period beginning with open enrollment for the 2019 benefit year; therefore, we believe that implementing the same open enrollment timeframe 1 year earlier will not increase the burden on consumers or make it harder to enroll. As we have previously stated, shifting to an earlier open enrollment period closing date ensures that consumers who enroll during this time will receive a full year of coverage, which will reduce adverse selection risk for issuers.[15] We agree with commenters who noted that ending the open enrollment period on December 15, 2017, for the 2018 benefit year will decrease operational complexity and cost for issuers, since the coverage start date for all enrollments (other than those pursuant to a special enrollment period) will be on the same day (January 1, 2018), and the Exchange open enrollment period will align better with that for employer-based and Medicare Advantage plans. We intend to conduct outreach to consumers to ensure that they are aware that the deadline for enrolling in coverage during the open enrollment period has changed and recognize the importance of targeting young and healthy individuals who, as commenters noted, often wait until close to the deadline to enroll.

Comment: Commenters both in favor of and opposed to the proposed timeframe expressed concern about the burden a shortened open enrollment period could create on the Exchanges and on other resources. These commenters warned that because a greater number of people will be trying to enroll at the same time, Exchanges must increase technology infrastructure and capacity to accommodate this shorter open enrollment period. Commenters stated that implementing this shorter timeframe a year earlier than previously planned does not allow Exchanges sufficient time to work out glitches and fix errors. Some commenters were concerned that agents, brokers, Navigators, and other assisters would be overwhelmed with such a short period of time to assist consumers. Among these commenters, some recommended enhanced funding for Navigators and other assisters, so that they could produce the same quality of assistance in a shorter timeframe. Some commenters worried that the overlap of the Exchange open enrollment period with the Medicare Advantage open enrollment period may confuse consumers, or strain the capacity of agents and brokers. Other commenters expressed concern that a compressed open enrollment period would increase the administrative and marketing burden on issuers, resulting in an increase in administrative costs. Several commenters were concerned that State budgets could not accommodate additional outreach or technology expenditures for the next open enrollment period.

Many commenters worried that the proposed timeframe would cause confusion and hardship for consumers, particularly during the winter holidays and towards the end of school semesters. Some commenters worried that consumers would not have sufficient time to respond to outreach and advertising, review and compare plans and make informed decisions about their coverage, or have their documentation ready and their information verified by an Exchange. Many commenters stated that younger populations, consumers with limited English proficiency, low-income communities, rural communities, and first-time enrollees need more time to process and understand coverage options. Many commenters sought greater specificity on HHS's outreach plans, and encouraged additional education and marketing efforts to ensure that consumers are aware of the shortened open enrollment period.

Response: We believe that shifting the open enrollment period end date to December 15, 2017, for the 2018 benefit year provides sufficient time for all entities involved in the annual open enrollment process to conduct outreach, provide assistance, or enroll in coverage. We intend to conduct outreach to consumers to ensure that they are aware of the newly shortened open enrollment period in advance of the November 1, 2017, start date and are prepared to enroll or re-enroll in 2018 coverage.

[15] See 81 FR 12274.

We agree with commenters that, because of the compressed timeframe, consumers may require additional assistance with submitting requested documents and choosing the plan that works best for them. We note that many Navigators already focus on the populations who may require this additional help, such as consumers with limited English proficiency and low-income and rural communities.

Comment: Many commenters recommended providing State flexibility to determine open enrollment period timeframes. Other commenters recommended alternative open enrollment period timeframes. Among these commenters, some recommended maintaining the current open enrollment period from November 1 through January 31. Other commenters proposed alternative open enrollment periods lasting from November 1 through December 31, from October 1 through December 15, from January 1 through February 15, or from November 1 to April 15 to align with the tax season. Some commenters recommended structuring open enrollment periods around consumers' birth month, similar to traditional Medicare enrollment, or by consumers' last name. Lastly, other commenters recommended that we allow enrollment year-round.

Response: We believe that a consistent, nationwide, individual market open enrollment period will help prevent consumer confusion and reduce administrative complexity for issuers, agents, brokers, Navigators and other assisters who serve States with FFEs and States with SBEs. Shifting the start date of open enrollment prior to November 1 for the 2018 benefit year would not allow Exchanges, issuers, or assisters adequate time to prepare for open enrollment. Instead, we believe implementing the same open enrollment timeframe for the 2018 benefit year as we will implement for the 2019 benefit year and beyond will help promote stability in the Exchanges and consistency across benefit years. However, we recognize that some SBEs may have operational difficulties this year in transitioning to this shorter open enrollment period. Under their existing regulatory authority, those Exchanges may elect to supplement the open enrollment period with a special enrollment period, as a transitional measure, to account for those operational difficulties.

We intend to closely monitor the implementation of this open enrollment period and will consider whether we should shift to an earlier open enrollment period start date of either October 1 or October 15 for future open enrollment periods.

3. Special Enrollment Periods (§ 155.420)

Section 1311(c)(6) of the PPACA establishes enrollment periods, including special enrollment periods, for qualified individuals for enrollment in QHPs through an Exchange. Section 1311(c)(6)(C) of the PPACA states that the Secretary is to provide for special enrollment periods specified in section 9801 of the Code and other special enrollment periods under circumstances similar to such periods under part D of title XVIII of the Act. Section 2702(b)(3) of the PHS Act also directs the Secretary to provide for market-wide special enrollment periods for qualifying events under section 603 of the Employee Retirement Income Security Act of 1974.

Special enrollment periods are a longstanding feature of employer-sponsored coverage. They exist to ensure that people who lose health coverage during the year (for example, through non-voluntary loss of minimum essential coverage provided through an employer), or who experience other qualifying events, such as marriage or the birth or adoption of a child, have the opportunity to enroll in new coverage or make changes to their existing coverage. In the individual market, while the annual open enrollment period allows previously uninsured individuals to enroll in new coverage, special enrollment periods are intended, in part, to promote continuous enrollment in health coverage during the benefit year by allowing those who were previously enrolled in coverage to obtain new coverage without a lapse or gap in coverage.

Our past practice, in many cases, was to permit individuals seeking coverage through the Exchanges to self-attest to their eligibility for most special enrollment periods and to enroll in coverage without further verification of their eligibility or without submitting proof of prior coverage. This practice had the virtue of minimizing barriers to obtaining coverage for consumers, which can, in particular, deter enrollment by healthy individuals. However, as the Government Accountability Office noted in a November 2016 report, relying on self-attestation without verifying documents submitted to show a special enrollment period triggering event could allow applicants to obtain subsidized coverage for which they would otherwise not qualify.[16] In addition, allowing previously uninsured individuals who elected not to enroll in coverage during the annual open enrollment period to instead enroll in coverage through a special enrollment period for which they would not otherwise qualify during the benefit year, undermines the incentive for enrolling in a full year of coverage through the annual open enrollment period and increases the risk of adverse selection from individuals who wait to enroll until they are sick. Such behaviors can create a sicker risk pool, leading to higher rates and reduced availability of coverage.

a. Pre-Enrollment Verification of Special Enrollment Period Eligibility

In an effort to curb abuses of special enrollment periods, in 2016 we added warnings on HealthCare.gov regarding inappropriate use of special enrollment periods. We also eliminated several special enrollment periods and tightened certain eligibility rules.[17] Also in 2016, we announced retrospective audits of a random sampling of enrollments through loss of minimum essential coverage and permanent move special enrollment periods, 2 commonly used special enrollment periods. Additionally, we created a special enrollment confirmation process under which consumers enrolling through common special enrollment periods were directed to provide documentation to confirm their eligibility.[18] Finally, we proposed to implement (beginning in June 2017) a pilot program for conducting pre-enrollment verification of eligibility for certain special enrollment periods.[19]

As discussed in the 2018 Payment Notice, the impact of special enrollment period verification on risk pools may be complex. Some commenters suggested that additional steps to determine special enrollment period eligibility worsen the problem by creating new barriers to enrollment, with healthier, less motivated individuals, the most likely to be deterred. The pilot was initially planned to sample 50 percent of consumers who were attempting to newly enroll in Exchange coverage

[16] November 2016, *Results of Enrollment Testing for the 2016 Special Enrollment Period,* GAO–17–78, US Government Accountability Office.

[17] February 25, 2016, Fact Sheet: Special Enrollment Confirmation Process. Available online at *https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-02-24.html.*

[18] Ibid.

[19] December 14, 2016, Fact Sheet: Pre-Enrollment Verification for Special Enrollment Periods, available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Pre-Enrollment-SEP-fact-sheet-FINAL.PDF.*

through certain special enrollment periods in order to provide a statistically sound method to compare the claims experience in the second half of 2017 between individuals subject to pre-enrollment verification with those who were not.

However, based on strong issuer feedback and the potential to help stabilize the market for 2018 coverage, we proposed to increase the scope of pre-enrollment verification of special enrollment periods to all applicable special enrollment periods in order to ensure complete verification of eligibility. We proposed to begin to implement this expanded pre-enrollment verification starting in June 2017. We have consistently heard from issuers and other stakeholders that pre-enrollment verification of special enrollment periods is critical to promote continuous coverage, protect the risk pool, and stabilize rates. We agree that policies and practices that allow individuals to remain uninsured and wait to enroll in coverage through a special enrollment period only after becoming sick can contribute to market destabilization and reduced issuer participation, which can reduce the availability of coverage for individuals.

Therefore, we proposed that HHS conduct pre-enrollment verification of eligibility for Exchange coverage for applicable categories of special enrollment periods for all new consumers in all States served by the HealthCare.gov platform, which includes FFEs and SBE–FPs.

Under pre-enrollment verification, HHS would verify eligibility for new consumers who seek to enroll in Exchange coverage through applicable special enrollment periods. Consumers would be able to submit their applications and select a QHP; then, as is the current practice for most special enrollment periods, the start date of that coverage would be determined by the date of QHP selection. However, the consumers' enrollment would be ''pended'' until the Exchange completes verification of their special enrollment period eligibility. In this context, ''pending'' means the Exchange will hold the information regarding QHP selection and coverage start date until special enrollment period eligibility is confirmed, and only then release the enrollment information to the relevant issuer. Consumers would have 30 days from the date of QHP selection to provide documentation, and could either upload documents into their account on HealthCare.gov or send their documents in the mail.

When possible, we intend to make every effort to verify an individual's eligibility for the applicable special enrollment period through automated electronic means instead of through consumer-submitted documentation. For example, we would verify a birth by confirming the baby's existence through existing electronic verifications or electronically verify that a consumer was denied Medicaid or CHIP coverage, where such information is available. Otherwise, we intend to seek documentation from the individual applying for coverage through the special enrollment period. We noted that, even though we do not currently perform verification for all consumers new to the Exchange, we already require all consumers to provide documentation if they are applying for coverage through a special enrollment period based on certain qualifying events. As proposed, we anticipate approximately the same amount of documentation under the rule that is currently required, and therefore, would not anticipate an increased burden on consumers. We solicited comments on the impact on consumers. We also solicited comments on our proposed method for pre-enrollment verification and whether we should retain a small percentage of enrollees outside of the pre-enrollment verification process to conduct the study discussed above. We noted that if we do not, HHS would continue to monitor other indicators of risk where available, in lieu of the statistical comparison. Recognizing that pre-enrollment verification could have the unintended consequence of deterring healthier individuals from purchasing Exchange coverage, we also solicited comments on what strategies HHS should take to increase the chances that these individuals complete the verification process.

In addition, we recommended that SBEs that do not currently conduct pre-enrollment verification of special enrollment period eligibility consider following this approach as well, and requested comment on whether SBEs should also be required to conduct pre-enrollment verification, with an appropriate amount of time to implement such a process, and how long that transition period should be.

We are moving forward with a pre-enrollment verification of eligibility for applicable special enrollment periods as proposed. This initiative will include all States served by the HealthCare.gov platform, which includes FFEs and SBE–FPs. We note that implementation of pre-enrollment verification of special enrollment periods in these States will be phased in, focusing first on the categories with the highest volume and of most concern—such as loss of minimum essential coverage, permanent move, Medicaid/CHIP denial, marriage, and adoption. We intend to closely monitor the effectiveness of pre-enrollment verification methods for those categories of special enrollment periods and will continue to adjust and improve our verification processes in order to ensure accurate determinations of eligibility for all special enrollment periods.

SBEs maintain flexibility to determine whether and how to implement a pre-enrollment verification of eligibility for special enrollment periods. For example, an SBE could consider allowing issuers to conduct the verification, if the SBE itself is unable to implement pre-enrollment verification.

Comment: Commenters expressed concern about the proposal to conduct pre-enrollment verification of eligibility for special enrollment periods, which they fear will increase barriers to enrollment and deter consumers, especially young and healthy consumers, from enrolling in coverage, which will worsen the risk pool. Commenters stated that consumers with ongoing medical needs will spend the time and effort needed to submit documentation, but those without a current or ongoing need for healthcare services or who do not have documents readily available or easily accessible, will be more likely to forgo verifying their eligibility for a special enrollment period. Citing a study that estimated that only 5 percent of eligible consumers enroll through special enrollment periods during the year,[20] commenters expressed concern that special enrollment periods are already underutilized and expressed fear that instituting a pre-enrollment verification of eligibility will further reduce the percentage of eligible consumers enrolling through special enrollment periods. Commenters cited early results from a 2016 HHS study of post-enrollment verification of special enrollment periods, which reported a 20 percent decrease in special enrollment period enrollments compared to the same time period in 2015, and found that applications with younger household contacts were less likely to verify their special enrollment periods.[21] These commenters warned

[20] Stan Dorn, Enrollment Periods in 2015 and Beyond: Potential Effects on Enrollment and Program Administration (Washington, DC: Urban Institute, February 2015), available online at *http://www.urban.org/sites/default/files/publication/41616/2000104-Enrollment-Periods-in-2015-and-Beyond.pdf.*

[21] Centers for Medicare and Medicaid Services (CMS), Pre-Enrollment Verification for Special

that pre-enrollment verification of special enrollment period eligibility could have a greater impact across both of these measures.

In addition to consumers opting not to submit documents, commenters noted that other groups of consumers, such as those in rural areas, low-income workers, immigrants, and those with limited English proficiency, will likely be disproportionately impacted by a pre-enrollment verification and may experience difficulty submitting their documents, even if qualifying for a special enrollment period and being motivated to enroll in and start new health coverage. These commenters noted that external variables, such as the distance to the nearest assister, agent, or broker; difficulty taking time off work; difficulty obtaining needed documents; or confusion about which documents to submit and how, all affect consumers' ability to submit documents. For example, commenters maintained that farm workers often have difficulty documenting that they moved and consumers living in rural areas may be unable to easily copy or upload documents. For the special enrollment periods for loss of minimum essential coverage and permanent move, commenters raised concerns that even though consumers may be enrolled or recently enrolled in coverage, they may still have difficulty submitting documents due to the fact that issuers and health plans are no longer required to send enrollees certificates of credible coverage (commenters requested that this prior HIPAA requirement be reinstated) and due to printing and re-printing delays at State Medicaid agencies. Other commenters mentioned that the event that qualifies the consumer for a special enrollment period, such as a permanent move, may itself impair the consumer's ability to submit required documentation on time. Therefore, several commenters requested that the document submission deadline be extended from 30 to 60 or 90 days, and that consumers be able to request a deadline extension if they are having difficulty gathering documents.

In addition to concerns about consumers' ability to gather and submit needed documents, commenters expressed concerns about possible delays in enrollment due to system issues, processing backlogs, and long wait times, confusion, or lack of information at the Exchange call center. Commenters were concerned that these delays could have serious negative health consequences for consumers, especially children. Several commenters requested that the FFE exclude from pre-enrollment verification any special enrollment periods that are often used to enroll children, such as the special enrollment periods for birth, adoption, foster care placement, court order, and Medicaid or CHIP denial.

Commenters noted that there are still many unknowns about the consumers who enroll in coverage through special enrollment periods, including a lack of evidence demonstrating misuse and abuse. In addition, commenters observed, that to the extent that misuse and abuse exist, it is unclear whether requiring pre-enrollment verification will serve as an effective deterrent. Some commenters requested that we share this data before proceeding with pre-enrollment verification or that we continue to collect data about consumer behavior by continuing with post-enrollment verification of eligibility for special enrollment periods. Other commenters stated that, if the FFE is to proceed with pre-enrollment verification of eligibility for special enrollment periods, it should proceed with caution by rolling it out slowly, in order to permit sufficient education of stakeholders and other entities involved, to address any unanticipated technical or other issues that may arise, and to collect robust data about impacted consumers. Many of these commenters recommended that the FFE start with a randomly selected pilot that would subject 50 percent of applicants attempting to enroll through a special enrollment period to pre-enrollment verification, as originally planned, while other commenters recommended proceeding with a 90 percent pilot, assuming the remaining 10 percent constitute a statistically significant control group.

In contrast, other commenters support conducting a pre-enrollment verification of eligibility for all applicants attempting to enroll through a special enrollment period. These commenters noted that pre-enrollment verification is the existing standard in the small group market, so it makes sense to apply the same standard to the individual market. Commenters requested that HHS establish consistent standards for verifying eligibility both across special enrollment periods and across markets, so that consumers are treated the same. Several issuers requested that the FFE agree to share collected documents with issuers at their request in order to assist with verifying enrollments outside of the Exchange. These commenters stated that performing pre-enrollment verification of eligibility for all special enrollment periods is a necessary next step to deter bad actors and prevent misuse and abuse of special enrollment periods. Doing so, commenters stated, will drive down premium costs in the future, which will benefit consumers across the individual market.

Commenters who supported robust pre-enrollment verification of eligibility for special enrollment periods stated that it was not necessary to exclude any consumers from being subject to pre-enrollment verification and urged us to proceed with verifying 100 percent of consumers attempting to enroll in coverage through a special enrollment period. Some commenters stated that we could use enrollment data from the past 2 years as a control group for the purpose of measuring any potential consumer impact of a pre-enrollment verification of eligibility.

Response: We appreciate commenters' concerns about the potential impact that pre-enrollment verification may have on young and healthy consumers, and their decision about whether to complete the steps needed to verify their eligibility. We are acutely aware of the importance of attracting healthy consumers to the individual market, and Exchanges in particular, in order to stabilize and improve the risk pool. As we implement pre-enrollment verification, we will seek to monitor enrollments by different groups of individuals affected by this process to determine its impact. In addition, we appreciate the concerns that certain consumers, especially vulnerable populations, may face barriers to gathering and timely submitting documents, and that delays in enrollment can have a negative impact on consumers', especially children's, health. We plan to conduct trainings for both internal and external stakeholders, so that they understand what the new pre-enrollment verification requirements are, what information will be available, and how to successfully prove one's eligibility for each special enrollment period where documentation will be required. We are also committed to expediting review of these documents to minimize any delay, and will be equipping our call center with frequent status updates in order to assist in answering questions that may arise.

We understand that consumers may not currently possess or may require time to gather the necessary documents to verify their eligibility, and intend to exercise reasonable flexibility with respect to the documentation required under this policy. We believe that documentation is likely to be most difficult for consumers who qualify for

Enrollment Periods (Dec. 14, 2016), available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Pre-Enrollment-SEP-fact-sheet-FINAL.PDF.*

the loss of minimum essential coverage, permanent move, or Medicaid or CHIP denial special enrollment periods. Therefore, we will permit consumers to send us the details about their qualifying event with an explanation of why they are unable to submit requested documentation, and we will take their letters into consideration when deciding whether to exercise reasonable flexibility. In addition, in response to the comments regarding certificates of credible coverage, we note that under sections 1502 and 1514 of the PPACA and section 6055 of the Code, enrollees have proof of previous year health coverage via their tax statements, which may be helpful in some circumstances. We also note that the Exchanges will accept many other types of documentation from consumers seeking to verify their prior coverage, including letters from insurers, employers, and government health programs.

Despite the concerns raised, we believe that in order to help stabilize the individual market, we must implement a robust pre-enrollment verification of eligibility for special enrollment periods where new consumers will have their eligibility verified. This will help ensure that consumers are not misusing special enrollment periods, which we anticipate will both improve the risk pool and reduce premiums for all Exchange enrollees. Therefore, we are proceeding as proposed to implement pre-enrollment verification of eligibility for special enrollment periods beginning in June 2017. Stakeholders will receive additional updates from us in the coming months.

Comment: Commenters supported using electronic verification, to the extent possible, to verify eligibility for special enrollment periods. Commenters stated that using electronic data sources will minimize any potential burden on consumers seeking to enroll and any delays in starting their coverage. A few commenters requested that the FFE wait to begin a pre-enrollment verification of eligibility until methods for electronically verifying eligibility for all special enrollment periods were in place. Other commenters requested that we continue to explore the use of additional electronic data sources, and several issuers offered to work with us on this effort. Absent a streamlined method for electronic verification of all special enrollment periods, commenters expressed concerns about the lack of Federal staff and resources available to adjudicate documents in a timely manner, especially when the work is layered on top of ongoing post-enrollment documentation verification for inconsistencies. Commenters noted the increased costs to the Federal government due to increased staffing needs and secure storage of submitted documents, and the additional time both consumers and assisters will need to spend to adhere to these new requirements. A few commenters indicated that a pre-enrollment verification of special enrollment period eligibility may also affect other entities, such as issuers and medical providers who would incur costs in re-submitting or refiling claims, processing retroactive claims, and effectuating retroactive enrollments. One commenter suggested that HHS's cost analysis include these costs, as well as the consumer cost of spending time requesting that claims be re-billed.

Response: We appreciate commenters' support for using electronic data sources, to the extent possible, to verify eligibility for special enrollment periods, and agree that the use of electronic data sources will minimize the burden on consumers and facilitate faster verifications. For these reasons, we intend to make every effort to verify an individual's eligibility for the applicable special enrollment period through automated electronic means when possible. Furthermore, we are exploring ways to enhance and expand our use of electronic verification to other special enrollment periods in the near future. We hope to minimize any burden on other stakeholders by swiftly reviewing any verification documents received and releasing pended enrollments as quickly as possible.

We appreciate the concerns about the increased burden and cost that a documentation requirement for pre-enrollment verification of eligibility for special enrollment periods will have on all entities involved. We are dedicated to reviewing all special enrollment period documents received as quickly as possible in order to minimize delays. Although we recognize that gathering and submitting these documents can be difficult and time consuming, we do not believe that this places a new burden on consumers and those providing enrollment assistance since consumers are already required to submit documentation to prove their eligibility after enrollment for 5 common special enrollment periods. Because of our plans for timely document review, we do not believe that new costs will be incurred by issuers, medical providers, or consumers needing to re-submit, refile, or re-bill for claims for services received due to this new requirement.

Comment: Many commenters requested that States be provided flexibility on whether and how to implement a pre-enrollment verification of eligibility for special enrollment periods. Several States commented that they already have procedures and policies in place to verify eligibility for special enrollment periods, and would prefer to continue using methods that make sense for their State. Commenters also expressed concern about the technical build that would be required for SBEs to mirror the proposed process for FFEs and SBE–FPs, and several States commented that they do not think they could be ready for a June 2017 implementation date. Commenters who supported requiring SBEs to conduct a pre-enrollment verification of eligibility for enrollment through special enrollment periods expressed an interest in standardizing requirements and processes across Exchanges, so that all consumers are held to the same standards and treated the same.

Response: While we appreciate the benefits of consistency across Exchanges and markets to ensure fair and equal treatment of consumers, we believe it is important to provide States with flexibility to adopt policies that fit the needs of their State, and will not require a State to conduct pre-enrollment verification. However, we encourage SBEs to implement pre-enrollment verification as soon as possible, and hope that they will utilize creative and innovative methods to do so, including allowing issuers to perform the verification on behalf of the SBE. In addition, we recognize that several SBEs have already made progress in developing methods for verifying eligibility for special enrollment periods.

b. Special Enrollment Period Limitations for Existing Enrollees

As noted above, the pre-enrollment verification of special enrollment period eligibility is intended to address concerns about potential adverse selection among qualified individuals who are new to the Exchanges. However, we have heard concerns that existing Exchange enrollees are utilizing special enrollment periods to change plan metal levels based on health needs that emerge during the benefit year, and that this is having a negative impact on the risk pool. As discussed in the proposed rule, we have concerns about pending a new enrollment until pre-enrollment verification is conducted for current Exchange enrollees, who would still have an active policy. We believe the potential overlap of current, active policies and pended new enrollments would cause significant confusion for consumers and create burdens on issuers with respect to managing the potential operational issues. For

example, if a current enrollee seeks to add a new spouse under the marriage special enrollment period, the current coverage would generally remain in force until the consumer submits documentation to verify the marriage. At that time, the pended new enrollment for both individuals would be released, potentially with a retroactive coverage effective date based on the date of the plan selection, and the current coverage with the single enrollee would be retroactively terminated to when the new policy begins. If the new plan selection is with a new issuer, any claims incurred during the time period the new enrollment is pended would need to be reconciled across the issuers.

As an alternative to performing pre-enrollment verification of special enrollment period eligibility for existing Exchange enrollees, we proposed to limit the ability of existing Exchange enrollees to change plan metal levels during the benefit year. This proposed change was reflected in regulatory text by proposed revisions to the introductory text of § 155.420(d), and the proposed additions of paragraphs (a)(3) and (4) to § 155.420. We proposed that paragraph (a)(4) would also apply in the individual market outside the Exchanges, but would not apply in the group market. We proposed changes to §§ 147.104(b)(2)(i) and 155.725(j)(2)(i) to specify this. We solicited comments on all aspects of the proposal, including whether it would be preferable to address adverse selection concerns for existing enrollees by applying the approach of pending plan selections until pre-enrollment verification is completed based on document reviews instead of the proposed restrictions based on current plan and metal level. We also solicited comments on any alternative strategies for addressing potential adverse selection issues for existing enrollees who are eligible for a special enrollment period.

We understand that SBEs may not be able to implement these changes starting in 2017, and sought comments on an appropriate transitional period for SBEs, or whether these changes should be optional for SBEs.

Under new paragraph (a)(4)(i) of § 155.420, we proposed to require that, if an enrollee qualifies for a special enrollment period due to gaining a dependent as described in paragraph (d)(2)(i), the Exchange may allow him or her to add the new dependent to his or her current QHP (subject to the ability to enroll in silver level coverage in certain circumstances as discussed in the next paragraph). Alternatively, if the QHP's business rules do not allow the new dependent to enroll (for example, because the QHP is only available as self-only coverage), the Exchange may allow the enrollee and his or her new dependent to enroll in another QHP within the same level of coverage (or an ''adjacent'' level of coverage, if no such plans are available), as defined in § 156.140(b). Alternatively, new dependents may enroll by themselves in a separate QHP at any metal level. This proposal sought to ensure that enrollees who qualify for the special enrollment period due to gaining a dependent are using this special enrollment period for its primary purpose of enrolling the new dependent in coverage. We stated in the proposed rule that, if finalized, we intended to implement this policy for the FFEs and SBE–FPs as soon as practicable.

Section 155.420(a)(4)(ii) proposed to require that if an enrollee or his or her dependent is not enrolled in a silver level QHP and becomes newly eligible for cost-sharing reductions and qualifies for the special enrollment periods in paragraphs (d)(6)(i) and (ii) of § 155.420, the Exchange may allow the enrollee and dependent to enroll in a QHP at the silver level, as specified in § 156.140(b)(2), if they choose to change their QHP enrollment. We solicited comments on this proposal, including with respect to whether individuals newly eligible for APTC who qualify for the special enrollment periods at § 155.420(d)(6)(i) and (ii) should also be able to enroll in a silver level QHP, or QHPs at other metal levels.

Paragraph (a)(4)(iii) of § 155.420 proposed that, for an enrollee who qualifies for the remaining special enrollment periods specified in paragraph (d), the Exchange generally need only allow the enrollee and his or her dependents to make changes to their enrollment in the same QHP or to change to another QHP within the same level of coverage, as defined in § 156.140(b), if other QHPs at that metal level are available. This restriction would extend to enrollees who are on an application where a new applicant is enrolling in coverage through a special enrollment period. As proposed, this rule would ensure that enrollees who qualify for a special enrollment period or are on an application where an applicant qualifies for a special enrollment period to newly enroll in coverage are not using this special enrollment period to simply switch levels of coverage during the benefit year. This policy would apply to most Exchange enrollees who qualify for a special enrollment period during the benefit year, further protecting issuers from adverse selection. Affected special enrollment periods include special enrollment periods for enrollees who lost minimum essential coverage through the Exchange during the benefit year in accordance with paragraph (d)(1); demonstrated to the Exchange that the QHP into which they have enrolled has violated a material provision of its contract in accordance with paragraph (d)(5); gained access to a new QHP due to a permanent move in accordance with paragraph (d)(7); or were affected by material plan or benefit display errors in accordance with paragraph (d)(12). Enrollees who qualify for the special enrollment periods in paragraphs (d)(4), (d)(9), and (d)(10) would be excluded from this new requirement because the qualifying events that enable them to qualify for these special enrollment periods may also result in an inability to enroll in their desired plan during the annual open enrollment period. In addition, we proposed to exclude the special enrollment period in paragraph (d)(8) for Indians and their dependents from this requirement. We solicited comments on the proposal, and whether other special enrollment periods should be excluded. We also solicited comments on the appropriate transitional period to enable SBEs to build these capacities, or whether the proposals in paragraph (a)(4) should be at the option of the Exchanges. Lastly, we solicited comments on how this proposal would be operationalized in the individual market outside of the Exchanges.

For Exchanges, we are finalizing these provisions largely as proposed, with slight changes to make it clearer that the new paragraph (a)(3) of § 155.420 is applicable, in all circumstances, except for the circumstances specified in paragraph (a)(4) (relating to restrictions limiting the plans into which current enrollees may enroll through certain special enrollment periods). Paragraph (a)(3) applies to qualified individuals who are not current enrollees, as well as current enrollees other than current enrollees covered by paragraph (a)(4), such as Exchange enrollees who are eligible for a special enrollment period under paragraph (d)(4), as this special enrollment period is excepted from new paragraph (a)(4)(iii). We are also modifying proposed paragraph (a)(4)(iii) of § 155.420 to clarify that this new requirement applies to current enrollees, whether the current enrollee qualifies for a special enrollment period or whether a new qualified individual being added to the current enrollee's QHP qualifies for a special enrollment period, as discussed earlier in this final

rule, and to allow these individuals to enroll in an ''adjacent'' level of coverage, if no other plans are available at their current metal level.

We are also modifying the proposed policy in light of comments received, such that new paragraph (a)(4) will not apply to the individual market outside of the Exchanges because we recognize that requiring issuers outside of the Exchanges to implement this provision would significantly increase issuer burden by requiring the creation of new enrollment systems that would use information that the issuer may not currently possess about the metal level of a consumer's prior coverage. We also recognize that outside of the Exchanges, issuers can perform pre-enrollment verification of special enrollment period eligibility, which mitigates concerns about misuse of special enrollment periods by current enrollees outside of the Exchanges. Accordingly, we are finalizing a new paragraph (b)(2)(iii) in § 147.104, rather than the proposed amendments to § 147.104(b)(2)(i). Lastly, we are making a technical correction by finalizing new text at § 155.725(j)(7), rather than the proposed amendment to § 155.725(j)(2)(i), to clearly reflect that § 155.420(a)(4) will not apply in the group markets outside of the Exchanges or in the SHOP.

Comment: Many commenters expressed concerns about our proposal to limit current Exchange enrollees' ability to change plans or metal levels in new proposed § 155.420(a)(4). Commenters primarily noted that limiting consumer choice with regard to QHP enrollment is prohibited by section 1311(c)(6)(C) of the PPACA and violates the guaranteed issue provision at 42 U.S.C. 300gg–1, in addition to being inconsistent with current industry practice for employer-sponsored coverage, HIPAA, and Medicare Part D. Commenters noted that that the events that qualify these Exchange enrollees for special enrollment periods midyear may also impact the type of coverage they qualify for, the amount of coverage they can afford, and the level of coverage they need. Commenters also observed that special enrollment periods are natural times for households to re-evaluate their healthcare spending. In addition, commenters expressed concerns that this policy would disadvantage consumers who enroll in coverage through the Exchanges during the annual open enrollment period and subsequently experience a qualifying event and want to change their QHP enrollment, as opposed to those who are enrolled in off-Exchange coverage at the beginning of the benefit year and then, upon experiencing a qualifying event, decide to enroll in QHP coverage through the Exchanges. The latter group would be able to view and select among all QHPs for which they are qualified, while the former group would not. For young and healthy consumers, commenters warned that this lack of choice may incentivize them to drop coverage midyear, rather than maintain coverage in a QHP or at a metal level they no longer want. Some commenters requested clarification on the issue that HHS is trying to solve with this proposed policy and requested data to justify implementing these restrictions. One commenter expressed doubt that this policy, if finalized, would be an effective method to protect issuers from gaming and other misuse of special enrollment periods.

In contrast, several commenters supported restricting enrollees' ability to change metal levels during the year, which they believe will increase the integrity of the Exchange markets and improve the risk pool by reducing adverse selection and preventing households from re-evaluating healthcare needs midyear, as opposed to during open enrollment like the rest of the individual market. Several commenters expressed general support for this policy, but requested that HHS permit consumers who qualify for any of these special enrollment periods to be able to change their QHP enrollment to a different QHP at the same metal level or a lower metal level. In addition, one commenter supports this proposal as a short-term strategy to reduce misuse and abuse of special enrollment periods, but would prefer that we move toward verification of eligibility for special enrollment periods for existing Exchange enrollees in the future, and another commenter preferred that the agency require verification of eligibility for special enrollment periods right away.

Response: We understand commenters' concerns about limiting enrollees' choice when they qualify for a special enrollment period during the benefit year and appreciate the fact that households' health coverage needs may change throughout the year. However, we believe putting these restrictions in place is necessary in order to stabilize the Exchanges, which will benefit all Exchange enrollees moving forward. We continue to encourage enrollees to explore all available QHPs during open enrollment and to change plans if another QHP better meets their or their family's needs.

We considered the concerns regarding conflicts with the statute, but believe that limiting enrollees' ability to change QHPs or metal levels is consistent with the requirements in section 1311(c)(6)(C) of the PPACA directing the Secretary to require Exchanges to establish special enrollment periods as specified in section 9801 of the Code and under circumstances similar to such periods under Part D of title XVIII of the Act, as well as the Secretary's authority under section 2702(b)(3) of the PHS Act to promulgate regulations for the individual market with respect to special enrollment periods for qualifying events under section 603 of the Employee Retirement Income Security Act of 1974. Given that the PPACA itself called for one annual open enrollment period and additional enrollment opportunities only in the case of special circumstances, we believe it is reasonable to interpret the special enrollment period and guaranteed issue provisions of the PPACA in this manner.

Comment: Commenters expressed concerns about our proposal at § 155.420(a)(4)(i) to limit the ability of existing enrollees to change QHPs when enrolling a new dependent. Commenters stated that this restriction may negatively affect the healthcare access and health of babies and children, especially if their parents' current coverage is not well suited to their needs, for example, if it does not cover their needed pediatric doctors or medication or other services for a specific health condition. Several commenters supported restricting the ability of new parents or any applicable existing enrollees to change their QHP enrollment, but many disagreed with placing the same restrictions on new minor dependents, especially babies, for whom the family is unable to anticipate their healthcare needs in advance. Several commenters requested that we establish an exceptions process for babies who have increased healthcare needs that would not be covered under their parents' existing plan. Commenters also noted that changes in household size, which are likely the case for all consumers qualifying for one of the gain a dependent special enrollment periods at § 155.420(d)(2)(i), may impact a household's ability to qualify for new, more cost-effective QHPs or to newly qualify for, or qualify for more, financial assistance.

Some commenters requested that in addition to implementing this new restriction on enrollees' ability to change their QHP, HHS clarify that the special enrollment periods at § 155.420(d)(2)(i) are only intended for the new dependent and that other members of the household may not enroll in or change coverage through this special enrollment period.

Response: We appreciate the concerns raised by commenters about potential impacts of this policy on new dependents, especially babies and children, and would like to clarify that, under this policy, new dependents could enroll in a new QHP at any metal level, if they enroll in a separate QHP from other existing enrollees. The restrictions on changing QHPs only applies when the new dependent is enrolling in the same QHP with those who are already QHP enrollees. We also remind commenters that the special enrollment period at § 155.420(d)(2)(i) as currently written is intended for both those who have gained a dependent or become a dependent through marriage, birth, adoption, placement for adoption, placement in foster care, or through a child support or other court order. Therefore, both the dependent and the individual who gained a dependent are entitled to newly enroll in a QHP, or, if current enrollees, change to a new QHP at the same metal level if the new dependent cannot be added to the existing QHP because of applicable business rules. Alternatively, the dependent can enroll in a new policy at any metal level.

Comment: Commenters raised concerns about § 155.420(a)(4)(ii) negatively affecting consumers who, despite newly qualifying for cost-sharing reductions, would prefer to enroll in a QHP at a different metal level and forgo those cost-sharing reductions. Commenters were divided on the anticipated impact of this proposal, with some commenters stating that most enrollees in this situation are likely to already be enrolled in a silver plan or that this is likely the level of coverage they will want given their change in circumstance, so there would be minimal impact of this restriction.

Response: We understand commenters' concerns about limiting the ability of these consumers to change to the QHP metal level that they believe will be most beneficial. However, the rationale behind this particular special enrollment period is to allow individuals newly eligible for cost-sharing reductions to enroll in a plan through which they could receive cost-sharing reductions.

Comment: Commenters supported excluding members of Federally recognized tribes or Alaska Native Claims Settlement Act Corporation Shareholders from the new requirements at § 155.420(a)(4)(iii). Several commenters expressed concern about the metal level restrictions in paragraph (a)(4)(iii) if an existing enrollee qualifies for a special enrollment period and there are no other QHPs at their current metal level into which he or she could enroll. Commenters stated that this provision would prevent this consumer from utilizing that special enrollment period.

Response: We agree that members of Federally recognized tribes or Alaska Native Claims Settlement Act Corporation Shareholders should not be subject to these new requirements and are finalizing their exclusion as proposed. We also agree that, in the event that an enrollee qualifies for a special enrollment period or is adding an individual to his or her existing QHP during the year through a special enrollment period and there are no other QHPs at the enrollee's current metal level into which he or she can enroll, he or she should be permitted to enroll in an adjacent level of coverage. We have amended paragraph (a)(4)(iii) to reflect this flexibility.

Comment: Commenters expressed concern that the complexity of these proposals will lead to consumer confusion, as well as confusion by assisters and others providing enrollment assistance. The level of complexity of these requirements also raised concerns for commenters about SBEs' ability to both build for and comply with these requirements, and the commenters requested that States be given flexibility with respect to implementation. One commenter also questioned how these requirements could be implemented outside of the Exchange, where issuers do not currently receive information about consumers' prior coverage. To that end, commenters noted that these provisions would be burdensome to implement, requiring significant technical builds by Exchanges and stakeholder trainings.

Response: We acknowledge the complexity of these provisions and are taking time to properly plan for their implementation, including developing needed resources for consumers, agents, brokers, Navigators, and other assisters so that they will understand available options. While we encourage SBEs to implement these provisions as quickly as possible, we also appreciate that it will require time for them to make sure that the provisions are implemented correctly. We agree that it would be difficult to implement these requirements outside of the Exchanges, where issuers do not currently receive information about consumers' prior coverage, and therefore are not finalizing our proposal to apply the requirements in new § 155.420(a)(4) outside of the individual market Exchanges, and are finalizing revised language in § 147.104 to reflect this.

c. Special Enrollment Period Coverage Effective Dates

In the 2018 Payment Notice, HHS finalized paragraph (b)(5) to allow a consumer to request a later coverage effective date than originally assigned if his or her enrollment was delayed due to an eligibility verification and the consumer would be required to pay 2 or more months of retroactive premium in order to effectuate coverage or avoid cancellation. When finalizing this amendment, we did not limit how much later the coverage effective date could be. After further consideration of concerns raised by stakeholders regarding potential adverse selection impacts, we proposed modifying that option and instead allowing consumers to start their coverage no more than 1 month later than their effective date would ordinarily have been, if the special enrollment period verification process delays their enrollment such that they would be required to pay 2 or more months of retroactive premium to effectuate coverage or avoid cancellation. We interpret 2 or more months of retroactive premium to mean that, at the time that the enrollment transaction is sent by the FFE to the issuer, no less than 2 months has elapsed from the date that the consumer's coverage was originally scheduled to begin. As proposed, a consumer who was originally scheduled to begin coverage on March 1, may elect to have coverage start on (and premiums payable for) April 1, if at the end of the document verification process, the enrollment transaction was sent to the issuer at such a time that would require retroactive payment of premiums for March and April. We noted that we do not anticipate that many consumers would be eligible to request a later effective date under this paragraph, as we do not expect the pre-enrollment verification processes to result in such delays. However, we recognized that there may be unforeseen challenges as we implement the verification process and believe it is important to offer this flexibility in the event of such delays. We also noted that we believe the option to have a later effective date could help keep healthier individuals in the market, who otherwise might be deterred by the prospect of paying for 2 or more months of retroactive coverage that they did not use. We solicited comments on this proposal, and the appropriate coverage effective date for these consumers.

We are finalizing this policy as proposed, but are making a technical correction to clarify that these consumers would be required to pay

retroactive premiums in order to avoid cancellation in accordance with § 155.430(e)(2), as opposed to termination. Additionally, in response to comments and to ensure that there is no conflict or confusion with existing binder payment rules we are revising our existing binder payment regulation in new § 155.400(e)(1)(iv) to specify that, in the case of a pended enrollment due to special enrollment period eligibility verification, the consumer's binder payment must consist of the premiums due for all months of retroactive coverage through the first prospective month of coverage consistent with the consumer's coverage start date, as described in § 155.420(b)(1), (2) and (3) or, if elected, (b)(5), and that the deadline set by the issuer for making this binder payment must be no earlier than 30 calendar days from the date that the issuer receives the enrollment transaction.

Comment: Commenters were divided in their response to the proposal to modify § 155.420(b)(5) to allow consumers whose enrollment was delayed due to verification of their eligibility for special enrollment periods and owe 2 or more months of retroactive premium to push their coverage start date forward 1 month, at the option of the consumer. Some commenters supported this proposal and stated that it balanced the needs of different stakeholders. Other commenters supported this proposal for providing consumer flexibility. They maintained that consumers should not have to pay premiums for several months of retroactive coverage caused by processing delays beyond the consumer's control. Other commenters opposed the proposal because it would limit existing consumer flexibility. They contended that, if verification of special enrollment periods was delayed by more than 2 months, then consumers should have the flexibility to select an appropriate coverage effective date in accordance with the current § 155.420(b)(5), and not be limited to a coverage effective date only 1 month later than the date originally assigned. Additional commenters raised concerns about the fact that consumers might be in this situation due to delays at an Exchange and recommended that our policy instead be that if consumers' verification is delayed by 5 or more days (other commenters suggested by 15 or more days) due to delays at an Exchange, then the Exchange should release their pended enrollment, so that they may start using their coverage.

Other commenters opposed the proposal because they stated it could promote adverse selection. They contended that healthy consumers would be incentivized to delay their coverage effective date by 1 month, while sicker consumers would not. They recommended that, if the rule is finalized, consumers should be required to select their coverage effective date at the time of QHP selection. The appropriate coverage effective date should then be sent to the issuer through the consumer's enrollment transaction. In addition, a few commenters recommended that this paragraph be amended to limit this flexibility to delays caused by the Exchanges, as opposed to including consumer delays in submitting documentation.

Several commenters expressed the need for State flexibility in adopting and implementing this proposal. Finally, a few commenters questioned how the proposal would coordinate with a continuous coverage requirement and urged HHS to consider that when crafting future policy around continuous coverage. Specifically, commenters were concerned that delays in verification could result in coverage lapses for which consumers could be penalized if policies requiring continuous coverage or the imposition of a waiting period or premium surcharge were adopted.

Response: We appreciate the variety of perspectives received on this proposal and agree with commenters that this provision strikes a balance of providing consumer flexibility while protecting from adverse selection. We clarify that consumers who qualify for a special enrollment period due to adoption, placement for adoption, placement in foster care, or through a child support or other court order at § 155.420(d)(2)(i), are still entitled to the alternative coverage effective date options as described in paragraphs § 155.420(b)(2)(i) and (v), at the option of the Exchange. In addition, any SBE conducting a pre-enrollment verification of eligibility for special enrollment periods must also provide this flexibility for consumers. For the FFEs and SBE–FPs, we plan to implement this provision initially through a manual process, and will explore ways to automate such a date shift in the future. SBEs are encouraged to do the same.

d. Tightening Other Special Enrollment Periods

As part of our enhanced verification efforts for special enrollment periods, we proposed to take additional steps to strengthen and streamline the parameters of several existing special enrollment periods and ensure consumers are adhering to existing and new eligibility parameters to further promote continuity of coverage and market stability.

First, in order to ensure that a special enrollment period for loss of minimum essential coverage in paragraph (d)(1) is not granted in cases where an individual was terminated for non-payment of premium, as described in paragraph (e)(1), we proposed that FFE (and SBE–FPs) will permit the issuer to reject an enrollment for which the issuer has a record of termination due to non-payment of premiums by the individual, unless the individual fulfills obligations for premiums due for previous coverage, consistent with the guaranteed availability approach discussed in the preamble of this final rule for § 147.104. We noted that we believe that verifying that consumers are not attempting to enroll in coverage through the special enrollment period for loss of minimum essential coverage when the reason for their loss of coverage is due to non-payment of premiums is an important measure to prevent instances of gaming related to individuals only paying premiums and maintaining coverage for months in which they seek services.

Further, HHS intends to explore options for verifying that a consumer's coverage was not terminated due to non-payment of premiums for coverage within the FFEs as a precursor for being eligible for the loss of minimum essential coverage special enrollment period. We proposed to allow Exchanges to collect and store information from issuers about whether consumers have been terminated from Exchange coverage due to nonpayment of premiums, so that the Exchange may automatically prevent these consumers from qualifying for the special enrollment period due to a loss of minimum essential coverage, if the consumer attempts to renew his or her Exchange coverage within 60 days of being terminated. We noted that we are focused on the 60 days following termination because if the consumer attempts to renew his or her Exchange coverage more than 60 days after being terminated due to nonpayment of premiums, the Exchange would continue to find the consumer ineligible for a special enrollment period because the loss of minimum essential coverage would be more than 60 days prior, and therefore the individual would not be eligible for the loss of minimum essential coverage special enrollment period.

We are finalizing these provisions as proposed, and we additionally clarify that the FFE (and SBE–FPs) will permit the issuers in the same controlled group

as the issuer that has a record of termination due to non-payment of premiums to refuse to effectuate new coverage, unless the individual pays sufficient premiums to fulfill his or her obligations for past-due premiums and to make the required binder payment, consistent with the guaranteed availability approach discussed in the preamble for § 147.104, and the binder payment requirements in § 155.400(e).

Comment: Commenters had mixed reactions to our proposals to allow issuers to reject enrollments from consumers previously terminated from coverage due to nonpayment of premiums, and our proposal to allow the FFE to store this information from issuers in order to prevent these consumers from qualifying for a special enrollment due to loss of minimum essential coverage due to termination for nonpayment of premiums.

Commenters in support of these proposals stated that they are necessary to prevent misuse of the special enrollment period for loss of minimum essential coverage. Some stated that the proposals help support continuous coverage by ensuring that consumers do not stop paying their premiums in order to be terminated from coverage for a portion of the year only to re-enroll in coverage when health needs arise. Encouraging both proper use of special enrollment periods and continuous coverage, commenters stated, will improve the risk pool moving forward.

Commenters opposing these proposals cautioned that there are legitimate reasons why consumers might stop paying their premiums midyear that are unrelated to a desire to game the system, such as a reduction in household income, other pressing needs that affect household finances, or technical issues in making premium payments. In addition, some commenters observed that some consumers who want to terminate their coverage experience difficulty or confusion over how to end it, resulting in termination due to nonpayment of premiums. Commenters expressed concern that giving issuers the authority to reject enrollments received through the Exchange is a slippery slope towards allowing issuers to make eligibility determinations for coverage, and asked that HHS ensure that Exchanges continue to make eligibility determinations. Finally, commenters expressed concern that HHS may be making it too difficult for consumers to enroll in coverage with these proposals, leading to consumers getting caught in a cycle of being uninsurable.

Response: We appreciate commenters' concerns about our proposals to prevent consumers who were terminated from coverage due to nonpayment of premium from enrolling in coverage midyear through a special enrollment period due to loss of minimum essential coverage, but believe that these provisions are an important step to ensuring that consumers are not obtaining Exchange coverage through special enrollment periods only when healthcare needs arise. We believe that it is important for consumers to maintain continuous coverage both as protection against unforeseen health needs and to create stability in the individual market, and therefore are finalizing these provisions as proposed, with a modification to reflect the revised interpretation of guaranteed availability discussed in the preamble for § 147.104.

Second, in response to concerns that consumers are opting not to enroll in QHP coverage during the annual open enrollment period and are instead newly enrolling in coverage during the benefit year through the special enrollment period for marriage, we proposed to add new paragraph (d)(2)(i)(A) to require that, if consumers are newly enrolling in QHP coverage through the Exchange through the special enrollment period for marriage, at least one spouse must demonstrate having had minimum essential coverage as described in 26 CFR 1.5000A–1(b) for 1 or more days during the 60 days preceding the date of marriage. However, we noted that we recognize that individuals who were previously living in a foreign country or in a U.S. territory may not have had access to coverage that is considered minimum essential coverage in accordance with 26 CFR 1.5000A–1(b) prior to moving to the U.S. Therefore, we proposed new paragraph (a)(5), to allow that, when consumers are newly enrolling in coverage during the benefit year through the special enrollment period for marriage, at least one spouse must either demonstrate that they had minimum essential coverage or that they lived in a foreign country or in a U.S. territory for 1 or more days during the 60 days preceding the date of the marriage. We proposed this change for the individual market only.

We are finalizing this provision for the individual market as proposed, with minor modifications to § 155.420(a)(5) to: (1) Clarify that by those living outside of the U.S, we mean those living in a foreign country; and (2) exempt Indians, as defined by section 4 of the Indian Health Care Improvement Act, from this requirement due to the fact that the Indian Health Service has not been designated as minimum essential coverage.

Comment: Some commenters supported the proposal to add a new prior coverage requirement for at least one spouse applying for coverage through the special enrollment period for marriage at § 155.420(d)(2)(i)(A) because they believed this new requirement will deter abuse and adverse risk selection and is similar to current special enrollment period eligibility processes for small group plans. Commenters stated that this requirement supports continuous coverage and should also be extended to all applicable special enrollment periods. One commenter requested that it be extended to both spouses. Commenters requested that any prior coverage standards and verification methods be standardized across markets.

However, many commenters opposed this proposal and expressed concern that requiring a prior coverage requirement for the special enrollment period for marriage is prohibited by section 1311(c)(6)(C) of the PPACA and violates guaranteed issue provisions at 42 U.S.C. 300gg–1, in addition to being inconsistent with current industry practice for employer sponsored coverage, HIPAA, and Medicare Part D. Commenters stated that the existing individual shared responsibility provision is a sufficient deterrent to prevent these consumers from avoiding coverage prior to marriage, if otherwise eligible. Of particular concern to these commenters was that one or both spouses may have been ineligible for affordable coverage prior to marriage due to the gap in insurance affordability program eligibility for individuals under the poverty line in States that did not expand their Medicaid program.

Some commenters also expressed concern that this requirement and any onerous verification process will discourage participation of newly married individuals, who are more likely to be part of the young and healthy population needed to balance the risk pool. Commenters also expressed concern that consumers who qualify for this special enrollment period may have had prior coverage but may not have documentation to submit due to the elimination of the prior HIPAA requirement for issuers and health plans to send enrollees certificates of credible coverage, and requested that, in the event that this provision is finalized, that this requirement be reinstated.

In addition, commenters requested that SBEs be given flexibility on the effective date of this provision,

recognizing the resources needed to comply, and to allow for adequate time for implementation.

Response: We agree with comments noting the potential for this provision to reduce adverse selection and promote continuous coverage. The proposed rule aims to stabilize the individual market, such that coverage will be more accessible and affordable for all potential enrollees.

We considered the concerns regarding conflicts with the statute, but believe that the additional requirement for marriage special enrollment period eligibility is consistent with the requirement in section 1311(c)(6)(C) of the PPACA directing the Secretary to require Exchanges to establish special enrollment periods as specified in section 9801 of the Code and under circumstances similar to such periods under Part D of title XVIII of the Act and the Secretary's authority under section 2702(b)(3) of the PHS Act to promulgate regulations for the individual market with respect to special enrollment periods for qualifying events under section 603 of the Employee Retirement Income Security Act of 1974. The PPACA itself called for one annual open enrollment period and additional opportunities for enrollment only in the case of special circumstances. Section 155.420(d) provides each of the special enrollment periods required by section 1311(c)(6)(C) of the PPACA and section 2702(b)(3) of the PHS Act. Section 1321(a) of the PPACA grants the Secretary broad discretion to issue regulations setting standards with respect to the operation of the Exchange program and other requirements the Secretary determines are appropriate to support its viability. Given that there is nothing in section 1311(c)(6)(C) of the PPACA that otherwise limits the Secretary's broad discretion under section 1321(a) of the PPACA, we believe we may place reasonable limits on access to special enrollment periods that promote the overall goal of the PPACA to ensure continuous health coverage and the viability of Exchanges.

We are also sensitive to commenter concerns regarding the coverage gap that might prevent some consumers from having access to affordable coverage prior to marriage. However, if the married couple's combined income makes them newly eligible for APTC then that couple would be able to qualify for the special enrollment period for consumers in this situation at § 155.420(d)(6)(iv), and would not need to enroll through the marriage special enrollment period.

We appreciate commenters' concerns that adding a prior coverage requirement to the marriage special enrollment period would discourage enrollment by this population, but we believe that this requirement is important to ensure that previously uninsured individuals do not negatively impact the risk pool. In response to the comments regarding certificates of credible coverage, we note that per sections 1502 and 1514 of the PPACA and section 6055 of the Code, enrollees have proof of previous year health coverage via their tax statements that may help in certain circumstances. We also note that the FFEs and SBE–FPs will accept other types of documentation from consumers to verify their prior coverage, including letters from insurers, employers, and government health programs. We will also exercise reasonable flexibility with respect to the documentation required under this policy.

While we are not adjusting the effective date of the regulation, we understand that the prior coverage requirement may require system changes that take additional time for some SBEs and expect that Exchanges will implement the requirement as soon as technically feasible.

Comment: Commenters requested that members of Federally recognized tribes and Alaska Claims Settlement Act Corporation Shareholders be excluded from this requirement because the Indian Health Service, a major provider of healthcare services for members of Federally recognized tribes, is not designated as minimum essential coverage, thus individuals moving off of tribal land after a marriage and seeking to enroll in Exchange coverage will not be able to prove prior coverage.

Response: We agree with commenters that members of Federally recognized tribes and Alaska Claims Settlement Act Corporation Shareholders should be excluded from this prior coverage requirement, in addition to the prior coverage requirement for permanent move at § 155.420(d)(7), and finalize a modification to our proposed regulation at § 155.420(a)(5) accordingly.

To streamline our regulations regarding special enrollment periods that require consumers to demonstrate prior coverage, we proposed to add new paragraph (a)(5) to clarify that qualified individuals who are required to demonstrate prior coverage can either demonstrate that they had minimum essential coverage as described in 26 CFR 1.5000A–1(b) for 1 or more days during the 60 days preceding the date of the qualifying event or that they lived in a foreign country or in a U.S. territory for 1 or more days during the 60 days preceding the date of the qualifying event. Paragraph (a)(5) would apply to paragraph (d)(2)(i)(A) for marriage (discussed above) and paragraph (d)(7)(i) for permanent move and paragraph (a)(5) would replace current paragraph (d)(7)(ii).

We did not receive comment on this proposal and are finalizing it as proposed, with minor modifications: (1) To clarify that by those living outside of the U.S. we mean those living in a foreign country; and (2) to exempt Indians, as defined by section 4 of the Indian Health Care Improvement Act, from this requirement due to the fact that the Indian Health Service is not designated as minimum essential coverage. Additionally, the finalized amendments to § 155.725(j) include a change to the proposed text to reflect that the new prior coverage requirement for the marriage special enrollment period under § 155.420(d)(2) does not apply outside of the individual market. The proposed rule had incorrectly cross-referenced § 155.420(a)(5), which describes how the prior coverage requirement may be satisfied. We had not intended in the proposed rule to prevent individuals applying for special enrollment periods under § 155.420(d)(7) in the SHOP from satisfying the prior coverage requirement as specified under § 155.420(a)(5). We note that § 155.420(a)(5) is already incorporated through the cross-references to revised § 155.420(d) in § 155.725(j)(2)(i). Similarly, we note that we are finalizing that § 155.420(a)(5), specifying how an individual can demonstrate prior coverage, applies in the individual market outside of the Exchange, but determined that the proposed change to § 147.104(b)(2)(i), which would have specified this, is not necessary because § 155.420(a)(5) is already incorporated through the cross-reference to revised § 155.420(d) in § 147.104(b)(2).

We acknowledge that the proposed rule included changes for special enrollment periods in the individual market that differ from the rules regarding special enrollment periods in the group market. For example, the proposed rule included changes that would require consumers to demonstrate prior coverage to qualify for the special enrollment period for marriage in proposed paragraph (d)(2)(i)(A) and would generally limit plan selection to the same plan or level of coverage when an enrollee qualifies for a special enrollment period during the benefit year in proposed paragraph (a)(4). However, we noted that we believe that the differences in the markets—and the impacts of those differences on the risk pool—warrant an

approach in the individual market that diverges from long-standing rules and norms in the group market. Employer-sponsored coverage is generally a more stable risk pool and less susceptible to gaming because the coverage is tied to employment and often substantially subsidized by the employer. Thus, we noted that we believe taking an approach in the individual market that imposes tighter restrictions on special enrollment periods and the ability to change plans for current enrollees better addresses the unique challenges faced in the individual market. We also noted that this approach is consistent with the requirement in section 1311(c)(6)(C) of the PPACA directing the Secretary to require Exchanges to establish special enrollment periods as specified in section 9801 of the Code and under circumstances similar to such periods under Part D of title XVIII of the Act and the Secretary's authority under section 2702(b)(3) of the PHS Act to promulgate regulations for the individual market with respect to special enrollment periods for qualifying events under section 603 of the Employee Retirement Income Security Act of 1974. We interpret section 1311 of the PPACA and section 2702 of the PHS Act to require the Secretary to implement special enrollment periods with the same triggering events as in the group market, but to provide the Secretary with flexibility in the specific parameters as to how those special enrollment periods are implemented in the individual market, due to the unique dynamics of the individual market.

Third, we proposed to expand the verification requirements related to the special enrollment period for a permanent move in paragraph (d)(7). This special enrollment period is only available to a qualified individual or enrollee who has gained access to new QHPs as a result of a permanent move *and* had coverage for 1 or more days in the 60 days preceding the move, unless he or she is moving to the U.S. from a foreign country or a U.S. territory. (Following finalization of the changes discussed above to paragraph (a)(5), individuals will also be exempt from demonstrating prior coverage if they demonstrate they are Indians.) Currently, we require documentation to show a move occurred, and accept an attestation regarding having had prior coverage or moving from a foreign country or a U.S. territory. To ensure that consumers meet all the requirements for this special enrollment period, we proposed to require that new applicants applying for coverage through this special enrollment period submit acceptable documentation to the FFEs and SBE–FPs to prove both their move and evidence of prior coverage, if applicable, through the pre-enrollment verification process.

We are finalizing this provision as proposed and intend to release guidance on what documentation would be acceptable.

Comment: Comments were mixed regarding our proposal to expand the verification requirements for individuals seeking a permanent move special enrollment period. Commenters who supported this proposal stated that requiring and verifying prior coverage is necessary to prevent misuse and abuse of this special enrollment period, which will protect the risk pool.

Commenters who opposed this proposal expressed concerns that some individuals may have been ineligible for affordable coverage where they were previously living or may experience barriers to providing proof of prior coverage. Commenters expressed concerns about consumer capacity to procure needed documents, especially if the consumer was formerly enrolled in Medicaid. Others expressed specific concerns about the ability of vulnerable low-income workers who often move for work to produce documentation, since their employers often do not provide documentation and insurance companies are no longer required to do so via certificates of credible coverage.

In addition, several commenters supported using electronic methods to verify both prior coverage and the permanent move, when able, to decrease the burden on consumers.

Response: We appreciate commenters' input on the merits and drawbacks of requiring consumers to submit evidence of prior coverage or evidence that they are exempt from the requirement to show prior coverage. Although we agree that some consumers may have legitimate reasons for not obtaining coverage prior to their move, we established in prior rulemaking that prior coverage is generally a requirement to qualify for the permanent move special enrollment period, and we did not propose to change this requirement in the proposed rule. We agree with those commenters who believed that the proposed additional verification steps were necessary to prevent abuse and misuse of this special enrollment period, and therefore, we will finalize our proposal to verify prior coverage for this special enrollment period, when applicable. As mentioned earlier in this section, we will also exercise reasonable flexibility with respect to the documentation required under this policy.

We agree with comments regarding use of electronic verification where available and are investigating our ability to expand our use of electronic verification and encourage SBEs to do the same. We also clarify that these changes only apply in the individual market.

Fourth, for the remainder of 2017 and for future plan years, we proposed to significantly limit the use of the exceptional circumstances special enrollment period described in paragraph (d)(9). In previous years, this special enrollment period has been used to address eligibility or enrollment issues that affected large cohorts of individuals where they had made reasonable efforts to enroll but were hindered by outside events. For example, in past years, the FFEs have offered exceptional circumstances special enrollment periods to groups of consumers who were enrolled in coverage that they believed was minimum essential coverage at the time of enrollment, but was not. We proposed to apply a more rigorous test for future uses of the exceptional circumstances special enrollment period, including requiring supporting documentation where practicable, under which we would only grant this special enrollment period if provided with sufficient evidence to conclude that the consumer's situation was highly exceptional and in instances where it is verifiable that consumers were directly impacted by the circumstance, as practicable. We would provide guidance on examples of situations that we believe meet this more rigorous text and what corresponding documentation consumers would be required to provide, if requested by the FFE.

We are finalizing this provision as proposed.

Comment: We received comments both supporting and opposing our proposal to limit the use of the special enrollment period for exceptional circumstances. One commenter supported this proposal because of a belief that this special enrollment should only be used for truly exceptional circumstances and should not be used to provide a pathway to coverage for large categories of consumers.

Commenters opposing the proposal generally expressed concern that Exchanges have already imposed sufficient constraints with regard to granting eligibility for this special enrollment period and expressed concern that this proposal would prevent eligible consumers experiencing situations outside of their control from enrolling in coverage. Commenters also

questioned whether HHS would be able to adequately establish guidelines for this special enrollment period because it is used for situations that are unanticipated and unpredictable. Several commenters requested that HHS publish more guidance either in the final rule or guidance as to what qualifies as an exceptional circumstance for the purposes of this special enrollment period.

A few commenters noted the importance of allowing SBEs flexibility to determine what constitutes an exceptional circumstance.

Response: The exceptional circumstances special enrollment period provides an important avenue to coverage for consumers who experience or are affected by unanticipated events, often outside of their control. We agree that this special enrollment period should be granted as consistently as possible based on established criteria, while still allowing enough flexibility to account for the inherent unpredictability of exceptional circumstances. Currently, the vast majority of exceptional circumstances special enrollment periods granted through the FFEs are reviewed in detail by HHS staff and evaluated based on standardized protocols. We believe this process balances the need for standardization and flexibility while ensuring that claims of exceptional circumstances can be verified. HHS expects to continue using this process as it applies a more rigorous test for future uses of the exceptional circumstances special enrollment period. We believe SBEs should retain the flexibility to determine what constitutes an exceptional circumstance, but we urge them to establish a similar process to grant such special enrollment periods consistently and, to help in this effort, as we mentioned in the proposed rule, we expect to provide additional guidance on what constitutes an exceptional circumstance for the purposes of qualifying for this special enrollment period and clarify that this change only applies to the individual market.

Previously, the Exchanges have, at times, offered special enrollment periods for a variety of circumstances related to errors that occurred more frequently in the early years of operations. As the Exchanges continue to mature, HHS has previously evaluated, and will continue to evaluate, these existing special enrollment periods to determine their continued utility and necessity. For the purposes of clarity and in response to confusion by stakeholders about whether certain of these special enrollment periods previously made available through guidance are still available to consumers, we proposed to formalize previous guidance [22] from HHS that the following special enrollment periods are no longer available:

- Consumers who enrolled with APTC that is too large because of a redundant or duplicate policy;
- Consumers who were affected by a temporary error in the treatment of Social Security Income for tax dependents;
- Lawfully present non-citizens that were affected by a temporary error in the determination of their eligibility for APTC;
- Lawfully present non-citizens with incomes below 100 percent of Federal Poverty Level (FPL) who experienced certain processing delays; and
- Consumers who were eligible for or enrolled in COBRA and not sufficiently informed about their coverage options.

We are finalizing this provision as proposed.

Comment: A few commenters expressed concern about our proposal to codify the elimination of several special enrollment periods that were eliminated through prior guidance due to fear that we are cutting off the availability of special enrollment periods to vulnerable populations that need a pathway to coverage.

Response: The special enrollment periods listed for elimination in this rule have not been available to consumers since 2016; they were originally eliminated in subregulatory guidance because all consumers in the situations described had already been provided with a pathway to coverage. Codifying the elimination of these special enrollment periods will not affect vulnerable consumers' ability to access coverage in the future.

4. Continuous Coverage

Because of the challenges in the individual market related to adverse selection, HHS believes it is especially important in this market to adopt policies that promote continuous enrollment in health coverage and to encourage individuals to enroll and remain in coverage for the full year.

While the provisions in this rule relating to guaranteed availability, the annual open enrollment period, and special enrollment periods encourage individuals to maintain coverage throughout the year, we noted in the proposed rule that we are also actively exploring additional policies in the individual market that would promote continuous coverage and sought input on which policies would effectively do so, consistent with existing legal authorities. For example, with respect to special enrollment periods that require evidence of prior coverage, we are considering policies for the individual market that would require that individuals show evidence of prior coverage for a longer ''look back'' period. Individuals could be required to provide proof of prior coverage for 6 to 12 months, except that an individual with a small gap in coverage (such as up to 60 days), could be considered to have had prior coverage. Alternatively, for individuals who are not able to provide evidence of prior coverage during such a look back period, an exception could allow them to enroll in coverage if they otherwise qualify for a special enrollment period, but impose a waiting period of at least 90 days before effectuating enrollment, or assess a late enrollment penalty. These policies could encourage individuals to maintain coverage throughout the year, thus promoting continuous coverage.

HHS is also interested in whether policies are needed for the individual market similar to those that existed under HIPAA, which in the group market required maintenance of continuous, creditable coverage without a 63-day break if individuals wished to avoid the pre-existing condition exclusions, and allowed waiting periods to be imposed under certain circumstances. Although the HIPAA rules did not require that individuals maintain coverage, the rules were designed to provide an important incentive for individuals to enroll in coverage for the full year, not just when in need of healthcare services; reduce adverse selection; and help prevent premiums from climbing to levels that would keep most healthy individuals from purchasing coverage.

We are interested in policies that not only encourage uninsured individuals to enroll in coverage during the open enrollment period, but also encourage those with coverage to maintain continuous coverage throughout the year.

We solicited comments on additional policies that would promote continuous coverage, but did not propose any of the policies described in this section III.B.3. of this final rule. The following is a summary of the public comments received on the discussed continuous coverage policies and our responses:

[22] HHS, *Clarifying, Eliminating and Enforcing Special Enrollment Periods* (January 19, 2016), available at *http://wayback.archive-it.org/2744/20170118130449/https://blog.cms.gov/2016/01/19/clarifying-eliminating-and-enforcing-special-enrollment-periods/*.

Comment: A minority of commenters, primarily issuers, supported the policies discussed in the proposed rule, or the general concept of policies to promote continuous coverage. Many of these commenters emphasized the need for policies like continuous coverage requirements, waiting periods or late enrollment penalties, if the individual shared responsibility provision is eliminated. These commenters recommended imposing longer look-back periods of varying lengths for special enrollment periods; a few recommended late enrollment surcharges of specific amounts (for example, 150 percent, lasting for at least 18 months); and one commenter expressed a preference for premium penalties over making prior coverage an eligibility requirement for special enrollment periods. Several of these commenters cautioned HHS against re-introducing waiting periods, noting the operational burden, consumer harm, or perceived limited effectiveness as compared to other penalties for having a coverage lapse. Several commenters noted the importance of clearly communicating continuous coverage requirements to consumers.

Some commenters believed continuous coverage policies should apply during open enrollment. One commenter recommended that if a continuous coverage policy were adopted that applied only to special enrollment periods, an exemption from the look-back period should be provided to anyone who enrolled during the most recent open enrollment period. That commenter also believed that the longer the look-back period is, the stronger the incentive to remain insured and the less opportunity to game the system; and commented that the discussed policies could result in reduced usage of special enrollment periods and higher out-of-pocket costs for consumers. Some commenters opposed applying continuous coverage requirements to special enrollment periods. A few commenters specifically urged HHS to exempt the monthly special enrollment period for Indians and their dependents from any continuous coverage requirements. Some commenters observed that some of the changes being finalized in this rule, particularly those related to verification of eligibility for special enrollment periods, could result in more people experiencing coverage lapses.

The majority of commenters opposed the adoption of the continuous coverage policies discussed in this section. Many commenters believed the discussed policies would deter individuals from purchasing coverage in the individual market, would have a negative impact on the risk pool, or increase premiums. Many commenters urged HHS not to adopt policies that would penalize people who have coverage lapses for legitimate reasons. Commenters questioned the premise that coverage lapses were primarily due to gaming behavior. Commenters observed that people often experience coverage gaps for reasons unrelated to gaming behavior, such as financial difficulties paying their premiums, challenges associated with mental or chronic illnesses, job loss, changes in family circumstances (for example, death, divorce or moves), mix-ups with insurance companies or the Exchanges, lack of awareness about the individual shared responsibility provision, and losing APTC. Many of these commenters suggested that the continuous coverage policies discussed in the proposed rule are unlikely to encourage these individuals to maintain coverage, particularly those who are healthy and leaving for economic reasons. Some commenters recommended exceptions be included in any adopted continuous coverage policies to account for individuals who have legitimate reasons not to maintain coverage, or who have received an exemption from the individual shared responsibility provision. Some commenters observed that the people most likely to have gaps in coverage are also the least likely to be able to pay higher premiums, and could thus be locked out of the market after a coverage lapse. Some commenters predicted such policies would increase the uninsured rate. Commenters urged HHS not to adopt policies that would make insurance less affordable.

Many commenters expressed concern that the continuous coverage policies discussed in the proposed rule would hurt consumers, particularly vulnerable populations, including low- and middle-income individuals; seasonal or migratory workers; and individuals with chronic diseases, disabilities, or other pre-existing conditions. Many commenters believed policies that include longer look-back periods, waiting periods, late enrollment penalties, or HIPAA-style rules could disrupt patients' care or cause people to delay or go without care, resulting in increased costs in the future and worse health outcomes. One commenter raised concerns that issuers could game continuous coverage requirements to avoid covering sicker individuals. One commenter also expressed concern that such policies could result in other unintended consequences like increased crime or homelessness. Many commenters were concerned that HHS's interest in policies promoting continuous coverage presaged an end to the prohibitions against pre-existing condition exclusions, medical underwriting, or rescissions (except in limited circumstances). Some commenters expressed a belief that such policies are immoral. Many commenters stated it was unfair to penalize people once they obtain coverage, or believed it was unfair to apply both the individual shared responsibility provision and penalties associated with continuous coverage requirements.

One commenter noted that it believes HHS has significant authority to impose continuous coverage requirements on all special enrollment periods, although that commenter also recommended exempting several special enrollment periods from continuous coverage requirements. Another commenter noted that they believed current law precludes imposing continuous coverage requirements during open enrollment periods, but not for special enrollment periods. However, many commenters stated that the discussed policies, and pre-existing condition exclusions, were counter to the PPACA's guaranteed availability protections, and that assessing a late enrollment penalty or surcharge was also counter to the requirements regarding rating variations.

Commenters raised concerns related to applying continuous coverage requirements in the individual market, including a concern about applying rules similar to the HIPAA rules outside of the employment context, and a concern about adopting continuous coverage requirements in the individual market that differ from rules for other markets. One commenter strongly opposed requiring SBEs to adopt continuous coverage policies.

Many commenters believed that the individual shared responsibility provision promotes continuous coverage better than the policies discussed in the proposed rule. Some recommended increasing the amount of the individual shared responsibility payment. A few commenters encouraged the Administration to communicate that it intended to enforce the individual shared responsibility provision as a way to stabilize the individual market. Some commenters recommended helping people understand their responsibility under the individual shared responsibility provision as a means to promote continuous coverage.

Some commenters provided suggestions for alternative approaches to promote continuous coverage, including minimizing barriers to enrollment,

providing more support to people as they enroll, ensuring plans provide adequate value to consumers, making plans more affordable, increasing subsidies, and creating incentives for multi-year enrollments. One commenter recommended enrollees be contractually bound to pay premiums for a full year, with insurers having a mechanism to recover unpaid premiums. Multiple commenters recommended a form of universal healthcare as a way to achieve continuous coverage.

Response: We thank commenters for their input. We continue to explore policies that would promote continuous coverage and that are within HHS's legal authority, and will not take action in this final rule.

5. Enrollment Periods Under SHOP

Because the proposed changes to restrict enrollment options though special enrollment periods for current enrollees and to require a demonstration of prior coverage in order to qualify for the marriage special enrollment period were proposed for special enrollment periods in the individual market only, we proposed to amend § 155.725(j)(2)(i) to specify that § 155.420(a)(3) through (5) do not apply to special enrollment periods under the Small Business Health Options Program (SHOP). We are finalizing the proposal that the change to restrict enrollment options though special enrollment periods for current enrollees in § 155.420(a)(4) and the change to require a demonstration of prior coverage in order to qualify for the marriage special enrollment period these paragraphs do not apply to special enrollment periods under SHOP. However, instead of finalizing the proposed amendment to § 155.725(j)(2)(i), we are finalizing a new § 155.725(j)(7). This change more clearly reflects that § 155.420(a)(4) and the requirement to demonstrate prior coverage to qualify for the marriage special enrollment period do not apply to the SHOP. We note that under the finalized language, § 155.420(a)(5) would be applicable to the SHOP. Although the requirement to show prior coverage is not applicable in the SHOP for the marriage special enrollment period, it is applicable for the permanent move special enrollment period under § 155.420(d)(7). We had not intended the proposed rule to prevent individuals applying for special enrollment periods under § 155.420(d)(7) in the SHOP from satisfying the prior coverage requirement as specified under § 155.420(a)(5). A more detailed discussion of the proposed and finalized changes in § 155.420(a) is provided in section III.B.3. of this final rule.

The following is a summary of the public comments received on the enrollment periods under the SHOP proposed provisions and our responses:

Comment: Commenters expressed concern about applying different rules for special enrollment periods in the small group and individual markets, noting the potential for confusion among consumers or assisters, and operational challenges; or questioning the need for different rules. One commenter opposed creating a different set of special enrollment period rules between the individual and small group markets because the commenter's State has a merged market such that its qualified health plans are offered in both the individual and small group markets. Some commenters supported not applying the proposed changes to special enrollment periods to the SHOP, and one requested clarification that the changes also not apply to the small group in the off-Exchange market.

Response: We appreciate the comments. We note that there are other rules relating to special enrollment periods where the rules differ for the individual Exchanges and the SHOPs. The finalized rules regarding special enrollment periods in § 155.420(a)(4) and (d)(2)(i)(A) do not apply to the small group market.

6. Exchange Functions: Certification of Qualified Health Plans (Part 155, Subpart K)

In light of the need for issuers to make modifications to their products and applications to accommodate the changes finalized in this rule, we are concurrently issuing separate guidance to update the QHP certification calendar and the rate review submission deadlines to give additional time for issuers to develop, and States to review, form and rate filings for the 2018 plan year that reflect these changes.[23]

C. Part 156—Health Insurance Issuer Standards Under the Patient Protection and Affordable Care Act, Including Standards Related to Exchanges

1. Levels of Coverage (Actuarial Value) (§ 156.140)

Section 2707(a) of the PHS Act and section 1302 of the PPACA direct issuers of non-grandfathered individual and small group health insurance plans, including QHPs, to ensure that these plans adhere to the levels of coverage specified in section 1302(d)(1) of the PPACA. A plan's coverage level, or AV, is determined based on its coverage of the EHB for a standard population. Section 1302(d)(1) of the PPACA requires a bronze plan to have an AV of 60 percent, a silver plan to have an AV of 70 percent, a gold plan to have an AV of 80 percent, and a platinum plan to have an AV of 90 percent. Section 1302(d)(2) of the PPACA directs the Secretary to issue regulations on the calculation of AV and its application to the levels of coverage. Section 1302(d)(3) of the PPACA authorizes the Secretary to develop guidelines to provide for a de minimis variation in the actuarial valuations used in determining the level of coverage of a plan to account for differences in actuarial estimates.

As stated in the proposed rule, we believe that further flexibility is needed for the AV de minimis range for metal levels to help issuers design new plans for future plan years, thereby promoting competition in the market. In addition, we noted that we believe that changing the de minimis range will allow more plans to keep their cost sharing the same from year to year. More specifically, we noted that as established at § 156.135(a), to calculate the AV of a health plan, the issuer must use the AV Calculator developed and made available by HHS for the given benefit year, and that we made several key updates to the AV Calculator for 2018. Due to the scope and number of these updates in the 2018 AV Calculator, the impact on current plans' AVs will vary. Therefore, we proposed to amend the definition of de minimis included in § 156.140(c), to a variation of −4/+2 percentage points, rather than +/− 2 percentage points for all non-grandfathered individual and small group market plans (other than bronze plans meeting certain conditions) that are required to comply with AV. As proposed, for example, a silver plan could have an AV between 66 and 72 percent. We believe a broader de minimis range will provide additional flexibility for issuers to make adjustments to their plans within the same metal level.

While we proposed to modify the de minimis range for the metal level plans (bronze, silver, gold, and platinum), we did not propose to modify the de minimis range for the silver plan variations (the plans with an AV of 73, 87 and 94 percent) under §§ 156.400 and 156.420. The de minimis variation for a silver plan variation of a single percentage point would still apply. In the Actuarial Value and Cost-Sharing

[23] Key Dates for Calendar Year 2017: Qualified Health Plan Certification in the Federally-facilitated Exchanges; Rate Review; Risk Adjustment and Reinsurance, (April 2017), available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/index.html#*.

Reductions Bulletin (2012 Bulletin) we issued on February 24, 2012,[24] we explained why we did not intend to require issuers to offer a cost-sharing reduction (CSR) silver plan variation with an AV of 70 percent. However, we proposed to consider whether the ability for an issuer to offer a standard silver plan at an AV of 66 percent would require a silver plan variation to be offered at an AV of 70 percent or would require some other mechanism to provide for CSR silver plan variations for eligible individuals with household incomes that are more than 250 percent but not more than 400 percent of the FPL.

We proposed to maintain the bronze plan de minimis range policy finalized in the 2018 Payment Notice at § 156.140(c) with one modification. We proposed to change the de minimis range for the expanded bronze plans from −2/+5 percentage points to −4/+5 percentage points to align with the proposed policy. Therefore, for those bronze plans that either cover and pay for at least one major service, other than preventive services, before the deductible or meet the requirements to be a high deductible health plan within the meaning of 26 U.S.C. 223(c)(2), we proposed the allowable variation in AV would be −4 percentage points and +5 percentage points.[25]

We solicited comments on the proposal, including on the appropriate de minimis values for metal level plans and silver plan variations, and on whether those values should differ when increasing or decreasing AV. We proposed the policy for 2018, but we also considered proposing that the change be effective for the 2019 plan year. We noted that, if finalized for 2018, we would update the 2018 AV Calculator in accordance with this policy.

We are finalizing the policy as proposed and are adding regulation text to reflect that the policy applies to plan years beginning on or after January 1, 2018. The following is a summary of the public comments received on the levels of coverage (actuarial value) (§ 156.140) proposed provisions and our responses:

Comment: Some commenters supported the proposed policy as generally increasing issuer flexibility by allowing issuers to offer more innovative plans, to assist with premium impact and to stabilize the market. Others supported the policy for similar reasoning, but recommended a different range or combination, such as +/−4 percent, as AVs typically go up each year (and not down). Other commenters did not support the proposed range, wanting to keep the current range to ensure consumers can meaningfully compare plan designs. Some commenters stated that the proposed de minimis range was unlawful under section 1302(d)(3) of the PPACA as the de minimis range is to account for differences in actuarial estimates only and not for the reasoning provided in the proposed rule. Some commenters were concerned that the distinction, transparency, and variation between and within metal levels would create consumer confusion and could lead to enrollment issues, with some commenters particularly concerned about the proposed 1 percent difference between bronze and silver levels of coverage and the distinction between those metal levels. A commenter also noted that the policy would allow plan designs that are simultaneously compliant with bronze and silver metal tiers in the Final 2018 AV Calculator (due to the induced demand between metal levels). Other commenters wanted to ensure State AV-related flexibility. Some commenters wanted HHS to engage with stakeholders to consider the impact of the proposal before finalizing the policy. Commenters generally supported retaining the current de minimis range for the CSR silver plan variations.

Response: As discussed in the proposed rule, the health and competitiveness of the Exchanges, as well as the individual and small group markets in general, have recently been threatened by issuer exit and increasing rates in many geographic areas. Therefore, while we recognize the importance of consumers being able to compare plan designs, we are committed to providing issuers increased AV flexibility to improve the health and competitiveness of the markets. For these reasons, we believe that a de minimis range of −4/+2 percentage points provides the flexibility necessary for issuers to design new plans while ensuring comparability of plans within each metal level. Through our authority under section 1302(d)(3) of the PPACA, which directs the Secretary to develop guidelines to provide for a de minimis variance in the actuarial valuations used in determining the level of coverage of a plan to account for differences in actuarial estimates, and section 1321(a)(1)(A) and (D) of the PPACA, which requires the Secretary to issue regulations setting standards for meeting the requirements for the establishment and operation of Exchanges, as well as such other requirements as the Secretary determines appropriate, we are finalizing the definition of the AV de minimis range included in § 156.140(c) to be a variation of −4/+2 percentage points for all non-grandfathered individual and small group market insurance plans (other than bronze plans meeting certain conditions) that are required to comply with AV, starting with plan years beginning in 2018. Because of the urgent need to stabilize the market and attract and retain issuers to ensure that consumers have options for coverage in the 2018 Exchanges, we do not believe that consulting stakeholders in advance of finalizing the rule is necessary at this time, but we hope to engage stakeholders on what, if any, modifications are needed to publicly available data as a result of this change.

Furthermore, we are also finalizing the de minimis range change for bronze plans that either cover and pay for at least one major service, other than preventive services, before the deductible or meet the requirements to be a high deductible health plan within the meaning of 26 U.S.C. 223(c)(2) from −2/+5 percentage points to −4/+5 percentage points to align with the policy in this rule, starting in plan year 2018. We recognize that the difference between the bronze and silver plans under this de minimis range is only 1 percent and that AVs typically increase each year; therefore, we may consider further changes to the de minimis ranges in the future as we intend to monitor the effects in 2018. We also recognize that States are the enforcers of AV policy and nothing under this policy precludes States from applying stricter standards, consistent with Federal law. For example, a State may apply a +/−2 percent for the AV de minimis range for metal level plans, which would be tied to the metal level definitions under section 1302(d)(1) of the PPACA, would be within the Federal de minimis range, and would be considered a stricter standard than the Federal requirements. However, a State cannot require issuers to design plans that apply an AV range that is not consistent with our implementation of section 1302(d)(1) and (d)(3) of the PPACA (which defines the metal level definitions). Also, it is the responsibility of the State to enforce implementation of a de minimis range using the Federal AV Calculator or an

[24] Available at *https://www.cms.gov/CCIIO/Resources/Files/Downloads/Av-csr-bulletin.pdf*.

[25] Although we proposed to expand the de minimis range for bronze plans to −4 percentage points, we also recognized that achieving an AV below 58 percent is difficult with the claims distribution underlying the current AV Calculator.

AV Calculator that utilizes State-specific data under § 156.135(e).[26]

Comment: Many commenters were opposed to the proposed policy or were concerned about the potential impact on increasing cost sharing for consumers, especially in the form of higher deductibles, an area where commenters noted consumers, are already struggling. These commenters were also concerned about potential decreases in the amount of APTCs [27] that most Exchange consumers use to purchase coverage, particularly for those consumers between 250 and 400 percent of FPL who are not eligible for the current CSR silver plan variations. Many commenters generally believed that the proposed policy would reduce the value of coverage by making it less affordable; for example, a decrease in APTC could affect current enrollees' ability to stay in their current plan without having to pay more in premiums, or could affect consumers' use of services due to higher cost sharing and the associated financial implications. Some commenters commented on the lack of value of coverage for enrollees who do not receive APTCs given the high cost of coverage. Some commenters stated that a silver plan is defined in the statute as a plan with a 70 percent AV plan and supported requiring that the second lowest cost silver plan (the benchmark plan), which is used to calculate APTCs, have an AV of at least 70 percent. Some commenters recommended finalizing a de minimis range that ensures that a change in de minimis range does not impact AV for silver plans that are used to calculate the benchmark plan for PTCs, or recommended increasing the de minimis range on only bronze plans. Other commenters noted that the proposed policy would not affect bronze plans due to the annual limitation on cost sharing, limiting the ability of a bronze plan to have a lower AV. Some commenters supported a silver plan variation eligible for CSRs at the 70 percent AV level, with some commenters believing that a 66 percent AV does not meet the statutory requirements at section 1402 of the PPACA, with some recommending that HHS establish a 70 percent plan or ensure that plans with a 70 percent AV are available, and some commenters wanted further details on the proposal to establish a 70 percent AV silver plan variation. Other commenters did not support requiring an additional silver plan variation eligible for CSRs at the 70 percent AV level due to administrative and cost burden to issuers and the absence of regulations that support an additional silver variation, and also because the reasoning in the 2012 Bulletin still applies, given that the reduction in the out-of-pocket limit would cause increases in other cost sharing. Some commented on the policy's impact on enrollees in CSR plans and on enrollees in zero cost share plans that typically use APTCs to enroll in bronze plans.

Response: In response to comments, we considered limiting this policy to the bronze level of coverage or excluding the silver level of coverage to ensure that this policy does not affect APTCs. However, we believe that limiting the policy in either way would significantly blunt the impact of the policy. As discussed in the preamble of the proposed 2018 Payment Notice, all plans subject to the annual limitation on cost sharing under section 1302(c) of the PPACA have a minimum level of generosity that limits the lowest AV that a plan can achieve, which means that issuers would not receive much additional flexibility if the expanded de minimis range were only applied to bronze plans. Because of the annual limitation on cost sharing, issuers have limited ability to design a bronze plan with an AV lower than 58.54 percent.[28] Therefore, we believe that if this policy was limited to bronze plans, the policy would likely not affect the market. Also, if the policy did not apply to silver plans, the policy would have limited impact because it would only provide issuers with significant flexibility for plans with gold and platinum levels of coverage. Based on the Exchange plan and enrollment numbers from 2016 and 2017, there are significantly more plans and more enrollees in the silver and bronze tiers than in the gold and platinum tiers. Additionally, we do not believe that gold and platinum plans are the levels of coverage most likely to attract healthy enrollees to enter the risk pool.

In finalizing the −4/+2 percent for the de minimis range for all metal levels (other than bronze plans meeting certain conditions), we recognize that, in the short run, this change would generate a transfer of costs from consumers to issuers, but believe the additional flexibility for issuers will have positive effects for consumers over the longer term. Similar to the −2 percent de minimis range flexibility that we have previously provided for AV, the change to allow for −4 percent de minimis range could reduce the value of coverage for consumers compared to a narrower de minimis range, which could lead to more consumers facing increases in out-of-pocket expenses, thus increasing their exposure to financial risks associated with high medical costs. However, providing issuers with additional flexibility could help stabilize premiums over time, increase issuer participation, and ultimately provide consumers with more coverage options at the silver level and above, thereby attracting more young and healthy enrollees into plans at these levels.

In the short term, the benchmark plans used to calculate the amount of APTCs available to consumers below 400 percent of FPL could be based on a plan at the lower end of the new de minimis range that has lower premiums, meaning that a lower APTC amount could be available to all consumers eligible for APTC to retain current coverage. The impact of the policy is dependent on which plans consumers choose to enroll in and the plans that are available in the market. Consumers whose APTC decreases could instead choose a plan with lower premiums to mitigate an increase in the amount of premium they owe, but that plan may have higher cost sharing to offset the decrease in premium. Specifically, enrollees who choose to use their APTC amounts to purchase coverage for lower priced plans, such as bronze or lowest cost silver, could also be negatively impacted. Assuming issuers offer silver metal tier plans at the lower end of the new de minimis range, when individuals who are eligible for CSRs choose the silver plan variations, there could be an increase of CSRs for the lower AV plan to reach the plan variation's AV. Individuals with a household income up to 250 percent of FPL, who enroll in a CSR silver plan variation, will receive additional CSRs to make up the difference between the lower AV of the standard silver plan and the CSR silver plan variation. Individuals with a household income in the range of 250 to 400 percent of FPL do not currently receive CSRs and cannot choose to enroll in a silver plan variation will experience greater out of

[26] As of the 2018 plan year, no State has an AV Calculator that utilizes state-specific data under § 156.135(e); therefore, an AV Calculator that utilizes State-specific data is intended for plan years beyond 2018.

[27] For the purposes of this section of the rule, references to decreases in APTCs also reflect the possibility of decreases in premium tax credits not paid in advance.

[28] A plan with a deductible of $7,350 that is equal to the annual limitation on cost sharing of $7,350 for 2018 with no services covered until the deductible and annual limitation on cost sharing are met, other than preventive services required to be covered without cost sharing under section 2713 of the PHS Act and § 147.130, has an AV of 58.54 percent based on the 2018 AV Calculator. 81 FR 61455. September 6, 2016.

pocket expenses. Previously, providing a reduced maximum annual limitation on cost sharing for a 70 percent AV plan would have resulted in an AV of the standard silver plan being outside of the de minimis range unless substantive increases to other cost-sharing parameters are made. These individuals in the range of 250 to 400 percent of FPL may be affected by the policy finalized in this rule because they will not have the choice to enroll in CSR silver plan variations to cover the difference from the increased cost sharing from the standard silver plan.

As discussed in the proposed rule, we considered creating a new 70 percent silver plan variation for enrollees between 250 and 400 percent of FPL. In response to comments, we analyzed the effect of reducing the maximum annual limitation on cost sharing based on how we calculated the 2018 reduced maximum annual limitation on cost sharing. We found that it is possible to design plans at 66 percent AV and still be below 70 percent AV when the maximum annual limitation on cost sharing is reduced. However, we are not certain what the AV spread of plan designs will be under the finalized policy, whether issuers will in fact reduce the AVs of their base silver plans to the lower end of the de minimis range, and whether issuers will retain plan designs above the 70 percent AV range. Therefore, we intend to monitor 2018 standard silver plan designs to consider whether to require a 70 percent silver plan variation or explore other potential means of mitigating the effect on affordability for enrollees. For this reason, we are not changing the CSR silver plan variation policy for enrollees with incomes between 250 to 400 percent of FPL or coordinating with IRS to change the way the benchmark plans are determined for 2018, but we may explore whether we can do so in the future.

Comment: Some commenters supported the policy for 2018, and some commenters did not support applying the policy in 2018. Some commenters noted concerns about 2018 State filing deadlines. Some commenters requested a revised AV Calculator as soon as possible, and some commenters noted that the policy could help plans affected by the AV Calculator changes.

Response: As discussed in the proposed rule, we believe that changing the AV de minimis range will help retain and attract issuers to the non-grandfathered individual and small group markets, which will increase competition and choice for consumers, and therefore believe it is important to finalize the change for 2018. We agree with commenters that increased flexibility in the de minimis range could be helpful for plans affected by AV Calculator changes. Furthermore, while we recognize that AVs typically increase each year, flexibility in the de minimis range will give these plans greater flexibility to grow in future years. We appreciate the importance of releasing a revised AV Calculator, and are releasing the revised AV Calculator concurrently with this rule.[29] Because the AV range is widening and not narrowing, we believe that the policy will not create difficulties in meeting the State filing deadlines.

Comment: Some commenters commented on the potential impact of the proposed policy on plan competition, on whether the proposed policy would increase or decrease enrollment or premiums including among consumers that may receive a decreased APTC amount, or on whether the issuer or the consumer would ultimately benefit under the proposed policy with some commenters raising concerns about the purpose and impact of the policy discussed in the proposed rule. Some commenters questioned the impact of the proposed policy on risk adjustment and on current plans being considered the same plan. Other commenters commented on applying a de minimis range similar to the proposed policy to dental plans, and others submitted comments beyond the scope of the proposed rule.

Response: The risk adjustment model uses metal level specific simulated plan liability to predict estimated plan expenditures. The model plan designs used to derive plan liability are based on representative plans offered by issuers in each metal tier. Given that the risk adjustment model estimates relative differences in plan liability to calculate risk adjustment transfers and payments based on plan risk that may not have been incorporated in rate setting, we believe the risk adjustment methodology will continue to function as intended to compensate issuers based on relative differences in health risk of enrollees. However, in instances where the AV gap between two metal tiers is smaller than previously allowed, it is possible that the simulated plan liability expenditure differences between metal tiers may not be representative of plans offered. Additionally, although issuers may offer plans at the lower end of the updated de minimis range to obtain competitive advantage, because the risk adjustment transfer formula is based on relative plan level differences, and incorporates metal level AV, it will continue to preserve the calculation of transfers based on relative differences in health risk of enrollees across plans. Similarly, the induced utilization factors in the current risk adjustment transfer formula represent relative differences between the plans and we do not believe the relative differences will be affected by the changes in the de minimis range. Therefore, we are not making any changes to the risk adjustment methodology to accommodate the changes to the de minimis range at this time. We intend to monitor the impact of asymmetric changes to the de minimis range on plan benefit designs offered, and any impacts on risk adjustment methodology and transfer formula calculations. Additionally, as we have noted in the 2018 Payment Notice, we anticipate reexamining the induced utilization factors in the future as the enrollee-level data from the risk adjustment program becomes available.

Under the exceptions to guaranteed renewability for uniform modification of coverage under § 147.106(e), an issuer may, only at the time of coverage renewal, modify the health insurance coverage for a product offered in the individual market or small group market if the modification is consistent with State law and is effective uniformly for all individuals or group health plans with that product. To be considered a uniform modification of coverage, among other things, each plan within the product that has been modified must have the same cost-sharing structure as before the modification, except any variation in cost sharing solely related to changes in cost and utilization of medical care, or to maintain the same metal tier level described in sections 1302(d) and (e) of the PPACA. States have flexibility to broaden what cost-sharing changes are considered within the scope of a uniform modification of coverage and may, for example, consider uniform cost-sharing changes that result in plans having the same metal level based on the expanded de minimis range to be uniform modifications.

We intend to monitor the impact of this policy on plan design and by extension, Exchange enrollment to consider whether further changes are needed. We may also consider similar changes for dental plans in the future.

2. Network Adequacy (§ 156.230)

In recognition of the traditional role States have in developing and enforcing network adequacy standards, we proposed to rely on State reviews for

[29] A Revised Final 2018 AV Calculator, User Guide and Methodology are posted on CCIIO's Web site under ''Plan Management'' at *https://www.cms.gov/cciio/resources/regulations-and-guidance/#Plan* Management.

network adequacy in States in which an FFE is operating, provided the State has a sufficient network adequacy review process. For the 2018 plan year, we proposed to defer to the States' reviews in States with the authority that is at least equal to the ''reasonable access standard'' identified in § 156.230 and means to assess issuer network adequacy.

We also proposed a change to our approach to reviewing network adequacy in States that do not have the authority and means to conduct sufficient network adequacy reviews. In those States, we would, for the 2018 plan year, apply a standard similar to the one used in the 2014 plan year.[30] As HHS did in 2014, in States without the authority or means to conduct sufficient network adequacy reviews, we proposed for 2018 to rely on an issuer's accreditation (commercial, Medicaid, or Exchange) from an HHS-recognized accrediting entity. HHS has previously recognized three accrediting entities for the accreditation of QHPs: The National Committee for Quality Assurance, URAC, and Accreditation Association for Ambulatory Health Care.[31] We proposed to utilize these same three accrediting entities for network adequacy reviews for the 2018 plan year. Unaccredited issuers would be required to submit an access plan as part of the QHP Application. To show that the QHP's network meets the requirement in § 156.230(a)(2), the access plan would need to demonstrate that an issuer has standards and procedures in place to maintain an adequate network consistent with the National Association of Insurance Commissioners' (NAIC's) Health Benefit Plan Network Access and Adequacy Model Act.[32]

We proposed that we would further coordinate with States to monitor network adequacy, for example, through complaint tracking. We also noted that we intended to release an updated timeline for the QHP certification process for plan year 2018 that would provide issuers with additional time to implement changes that are finalized prior to the 2018 coverage year. This new timeline was released on February 17, 2017,[33] with a version that includes finalized dates for rate review being released concurrently with this rule.

We are finalizing the changes as proposed. The following is a summary of the public comments received on the network adequacy proposed provisions and our responses:

Comment: Many commenters supported the proposal to rely on States with a sufficient network adequacy review process, to rely on an issuer's accreditation in States without a sufficient network adequacy review process, and the submission of access plans in States without sufficient review for issuers that are unaccredited. Many commenters also supported HHS no longer employing the time and distance standard. Some commenters recommended that all compliance and complaint tracking should be handled solely by States to avoid duplicative oversight and stated that States are better positioned to monitor networks.

Response: We appreciate commenters' support of our proposed policy and are finalizing the proposals as proposed. We believe this approach affirms the traditional role of States in overseeing network adequacy standards.

Comment: One commenter recommended that HHS rely on State review of network adequacy for SADPs in all States, rather than applying an accreditation standard to SADPs in States that do not have network adequacy review authority, because dental issuers do not get accredited.

Response: In States that are determined to not have sufficient network adequacy review, HHS will require SADPs to submit an access plan that demonstrates that the issuer has standards and procedures in place to maintain an adequate network consistent with NAIC's Health Benefit Plan Network Access and Adequacy Model Act (NAIC Model Act).

Comment: Many other commenters opposed the proposed change to rely primarily on State review of network adequacy and raised concerns that this could decrease healthcare access and create disparities in access to and quality of providers for consumers depending on their State or could lead to narrow networks.

Response: We appreciate the concerns, and recognize the importance of patients having access to adequate networks. However, we believe that States are best positioned to determine what constitutes an adequate network in their geographic area. We do not believe relying on State reviews in States that have the authority and means to conduct sufficient network adequacy reviews will translate to decreased access to providers. We look forward to working closely with States in this area as we implement the new network adequacy review approach. We also plan to continue to monitor the States' implementation of the NAIC Model Act, and we intend to use that information to shape future network adequacy policy. We also plan to provide information to issuers about which States have been determined not to have sufficient network adequacy processes in the near future.

Comment: Some commenters stated that accreditation is not a substitute for a robust provider network and that accreditation organizations can only revoke accreditation and do not provide ongoing oversight of QHP issuers and advocated for the continuation of time and distance criteria. One State commented that it relies on HHS for the evaluation of network adequacy and questioned if relying upon the issuer's accreditation will be sufficient.

Response: We appreciate the comments regarding these concerns. Accredited issuers are required to develop reasonable standards for access and availability of services and measure themselves against those standards. Further, we believe that the requirement for unaccredited issuers to submit an access plan to demonstrate that an issuer has standards and procedures in place to maintain an adequate network consistent with the NAIC Model Act will ensure an issuer has a sufficient provider network. We are finalizing this proposal as proposed.

3. Essential Community Providers (§ 156.235)

Essential community providers (ECPs) include providers that serve predominantly low-income and medically underserved individuals, and specifically include providers described in section 340B of the PHS Act and section 1927(c)(1)(D)(i)(IV) of the Act. Section 156.235 establishes requirements for inclusion of ECPs in QHP provider networks and provides an alternate standard for issuers that provide a majority of covered services through employed physicians or a single contracted medical group.

For conducting upcoming reviews of the ECP standard for QHP and SADP certification for the 2018 plan year, we

[30] Letter to Issuers on Federally-facilitated and State Partnership Exchanges (April 5, 2013). Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2014_letter_to_issuers_04052013.pdf.*

[31] Recognition of Entities for the Accreditation of Qualified Health Plans 77 FR 70163 (November 23, 2012) and Approval of an Application by the Accreditation Association for Ambulatory Health Care (AAAHC) To Be a Recognized Accrediting Entity for the Accreditation of Qualified Health Plans 78 FR 77470 (December 23, 2013).

[32] The National Association of Insurance Commissioners' Health Benefit Plan Network Access and Adequacy Model Act is available at *http://www.naic.org/store/free/MDL-74.pdf.*

[33] Key Dates for Calendar Year 2017: QHP Certification in the Federally-facilitated Marketplaces; Rate Review; Risk Adjustment and Reinsurances, Revised February 2017, *available at https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Revised-Key-Dates-for-Calendar-Year-2017-2-17-17.pdf.*

proposed to follow the approach previously finalized in the 2018 Payment Notice and outlined in the 2018 Letter to Issuers in the Federally-facilitated Marketplaces, with two changes as outlined below. States performing plan management functions in the FFEs would be permitted to use a similar approach.

Section 156.235(a)(2)(i) stipulates that a plan has a sufficient number and geographic distribution of ECPs if it demonstrates, among other criteria, that the network includes as participating practitioners at least a minimum percentage, as specified by HHS. For the 2014 plan year, we set this minimum percentage at 20 percent, but, starting with the 2015 Letter to Issuers in the Federally-facilitated Marketplaces, we increased the minimum percentage to 30 percent.[34] For certification for the 2018 plan year, we proposed to return to the percentage used in the 2014 plan year, and to again consider the issuer to have satisfied the regulatory standard if the issuer contracts with at least 20 percent of available ECPs in each plan's service area to participate in the plan's provider network. The calculation methodology outlined in the 2018 Letter to Issuers in the Federally-facilitated Marketplaces and 2018 Payment Notice would remain unchanged.

We stated that we believe this standard will substantially reduce the regulatory burden on issuers while preserving adequate access to care provided by ECPs. In particular, as noted in the proposed rule, the standard would result in fewer issuers needing to submit a justification to prove that they include in their provider networks a sufficient number and geographic distribution of ECPs to meet the standard in § 156.235. For the 2017 plan year, 6 percent of issuers were required to submit such a justification. Although none of their networks met the 30 percent ECP threshold, all of these justifications were deemed sufficient, and each network would have met the 20 percent threshold. We anticipate that issuers will readily be able to contract with at least 20 percent of ECPs in a service area, and that enrollees will have reasonable and timely access to ECPs.

For certification for the 2018 plan year, we also proposed to modify our previous guidance regarding which providers issuers may identify as ECPs within their provider networks. Under our current guidance, issuers would only be able to identify providers in their network who are included on a list of available ECPs maintained by HHS (''the HHS ECP list''). This list is based on data maintained by HHS, including provider data that HHS receives directly from providers through the ECP petition process for the 2018 plan year.[35] In previous years, we also permitted issuers to identify ECPs through a write-in process. Because the ECP petition process is intended to ensure qualified ECPs are included in the HHS ECP list, we indicated in guidance that we would not allow issuers to submit ECP write-ins for plan year 2018. However, we are aware that not all qualified ECPs have submitted an ECP petition, and therefore have determined the write-in process is still needed to allow issuers to identify all ECPs in their network. Therefore, as for plan year 2017, for plan year 2018, we proposed that an issuer's ECP write-ins would count toward the satisfaction of the ECP standard only for the issuer that wrote in the ECP on its ECP template, provided that the issuer arranges that the written-in provider has submitted an ECP petition to HHS by no later than the deadline for issuer submission of changes to the QHP application. For example, issuers may write in any providers that are currently eligible to participate in the 340B Drug Program described in section 340B of the PHS Act[36] that are not included on the HHS list, or not-for-profit or State-owned providers that would be entities described in section 340B of the PHS Act but do not receive Federal funding under the relevant section of law referred to in section 340B of the PHS Act, as long as the provider has submitted a timely ECP petition. Such providers include not-for-profit or governmental family planning service sites that do not receive a grant under Title X of the PHS Act. We believe the proposal would help build the HHS ECP list so that it is more inclusive of qualified ECPs and better recognize issuers for the ECPs with whom they contract.

As in previous years, if an issuer's application does not satisfy the ECP standard, the issuer would be required to include as part of its application for QHP certification a satisfactory narrative justification describing how the issuer's provider networks, as presently constituted, provide an adequate level of service for low-income and medically underserved individuals and how the issuer plans to increase ECP participation in the issuer's provider networks in future years. At a minimum, such narrative justification would include the number of contracts offered to ECPs for the 2018 plan year; the number of additional contracts an issuer expects to offer and the timeframe of those planned negotiations; the names of the specific ECPs to which the issuer has offered contracts that are still pending; and contingency plans for how the issuer's provider network, as currently designed, would provide adequate care to enrollees who might otherwise be cared for by relevant ECP types that are missing from the issuer's provider network.

For the 2018 plan year, we are finalizing our proposals to decrease the minimum ECP threshold from 30 to 20 percent of the available ECPs in a plan's service area, and to continue to allow an issuer's ECP write-ins to count toward the satisfaction of the ECP standard for only the issuer that wrote in the ECP on its ECP template, provided that the issuer arranges that the written-in provider has submitted an ECP petition to HHS by no later than the deadline for issuer submission of changes to the QHP application.

Comment: Several commenters supported our proposal to decrease the minimum ECP threshold from 30 to 20 percent, stating that the lower threshold requirement would reduce the administrative burden on issuers, especially for those issuers in rural areas or States with few ECPs. Other commenters recommended that HHS further lower the ECP threshold to 15 percent for dental issuers, due to fewer ECPs that offer dental services.

Response: We appreciate these comments and agree that the lower 20 percent threshold requirement would reduce the administrative burden on issuers without affecting the ability of low-income and medically-underserved individuals to receive reasonable and timely access to care. At this time, we do not believe lowering the ECP threshold to 15 percent for dental issuers would adequately promote patient access to dental ECPs, given that there are fewer available dental ECPs compared to medical ECPs for low-income and medically-underserved consumers to access dental care.

Comment: Many commenters opposed our proposal to decrease the minimum ECP threshold that an issuer must achieve from 30 to 20 percent of the number of available ECPs located in a plan's service area. These commenters

[34] 2015 Letter to Issuers in the Federally-facilitated Marketplaces. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-final-issuer-letter-3-14-2014.pdf.*

[35] List available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/FINAL-CMS-ECP-LIST-PY-2018_12-16-16.xlsx.*

[36] For a list of types of providers eligible to participate in the 340B Drug Program, *see https://www.hrsa.gov/opa/eligibilityandregistration/index.html.*

expressed concerns that the lower threshold requirement would result in access barriers to care for low-income consumers; restricted access to specialty care; dangerous and costly treatment interruptions; continuity of care challenges; increased travel time; poor access to culturally appropriate healthcare providers; and diminished access to community health centers, safety net and children's hospitals, HIV/AIDS clinics, and family planning health centers. Many of these commenters stated that lowering the ECP threshold to achieve a reduced administrative burden on issuers is unnecessary given that 94 percent of issuers satisfied the 30 percent threshold for plan year 2017 and the remaining 6 percent were able to submit a satisfactory justification to meet the ECP regulatory requirement. Several commenters opposed the reduction in the threshold requirement, stating that the 30 percent threshold for plan year 2017 was not high enough to provide sufficient access to ECPs. One commenter supported the decrease of the ECP threshold for States with issuers that experienced difficulty satisfying the 30 percent threshold, but suggested that States with issuers that did not experience any difficulty be given the flexibility to require a higher ECP percent threshold.

Response: We are finalizing our proposal to decrease the ECP threshold requirement from 30 to 20 percent for plan year 2018 in an effort to reduce the regulatory burden on issuers and stabilize the Exchanges. The final rule provides that this threshold will be applicable for the 2018 plan year. Given the recent refinements to the HHS ECP list through the ECP petition process (for example, the addition of newly qualified ECPs and the removal of former ECPs that no longer provide care to low-income, medically-underserved populations), a 20 percent ECP threshold requirement is expected to adequately protect consumer access to ECPs for plan year 2018, while reducing the issuer burden that was associated with heavier reliance on the ECP write-in process to achieve the 94 percent issuer compliance with the 30 percent threshold for plan year 2017. We appreciate the suggestion to provide States with issuers that did not experience any difficulty achieving the 30 percent threshold the flexibility to require a higher ECP percent threshold. However, because the lower threshold reduces issuer burden while adequately protecting consumer access to ECPs, we believe it is important that this change apply in all States with FFEs.

Comment: All commenters supported the proposal to continue the ECP write-in process for the 2018 plan year using the ECP petition process. Some commenters stated that it would reduce administrative burden by continuing to allow issuers to count providers they have contracted with for the 2018 plan year but who missed the ECP petition window for the final 2018 plan year ECP list. Other commenters appreciated the additional time for providers to petition to be added to the HHS ECP list. Several commenters urged that we sunset the ECP write-in process for the 2019 plan year and beyond, allowing the 2018 plan year to further refine the ECP petition process.

Response: We are finalizing our proposal to continue the ECP write-in process for the 2018 plan year using the ECP petition process. We agree with commenters that continuation of the ECP write-in process for the 2018 plan year using the ECP petition process will ensure that issuers are better recognized for the ECPs with whom they contract by offering those providers additional time to petition for inclusion on the HHS ECP list. We appreciate commenters' recommendations regarding the appropriate time to sunset the ECP write-in process, and will take these into consideration in the future.

Comment: Numerous commenters urged that HHS extend the continuity of care protections under § 156.230(d) to ECP discontinuations from the issuer's provider network across plan years. These commenters stated that extending continuity of care provisions to ECPs would have negligible impact on issuers because issuers must already follow these requirements for provider discontinuations within a plan year. Commenters further explained that this protection would discourage discriminatory benefit design and support enrollee continuance within the same plan, promoting market stability. Without these protections, commenters expressed concern that issuers will attempt to shed high-cost enrollees by eliminating their ECPs from the provider network.

Response: In the 2017 Payment Notice (81 FR 12204), we finalized two policies related to continuity of care at § 156.230(d), which began applying in 2017 and apply to ECP terminations. First, we require the issuer, under § 156.230(d)(1), to make a good faith effort to provide written notice of discontinuation of a provider 30 days prior to the effective date of the change, or otherwise as soon as practicable, to enrollees who are patients seen on a regular basis by the provider or who receive primary care from the provider whose contract is being discontinued, irrespective of whether the contract is being discontinued due to a termination for cause or without cause, or due to a nonrenewal. Second, in cases where a provider is terminated without cause, we require the issuer, under § 156.230(d)(2), to allow enrollees in an active course of treatment to continue treatment until the treatment is complete or for 90 days, whichever is shorter, at in-network cost-sharing rates. These policies apply to provider transitions that occur because a QHP issuer in an FFE discontinues its contract with an ECP. More explicitly, with respect to § 156.230(d)(1), this policy applies to ECP contract discontinuations, irrespective of whether the contract is being discontinued due to a termination for cause or without cause, or due to a non-renewal; and with respect to § 156.230(d)(2), this policy applies to ECP contract discontinuations where a provider is terminated without cause.

IV. Provisions of the Final Regulations

For the most part, this final rule incorporates the provisions of the proposed rule. However, this final rule makes clarifications to the scope of the guaranteed availability policy regarding unpaid premiums; makes modifications to the provisions relating to special enrollment periods; finalizes amendments to § 155.400 to conform to changes made in this rule; and makes clarifications regarding States' roles.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. This final rule contains information collection requirements (ICRs) that are subject to review by OMB. A description of these provisions is given in the following paragraphs, with an estimate of the annual burden. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comments on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for the following sections of the proposed rule that contain ICRs.

A. ICRs Regarding Verification of Eligibility for Special Enrollment Periods (§ 155.420)

Starting in June 2017, HHS will begin to implement pre-enrollment verification of eligibility for all categories of special enrollment periods for all States served by the *HealthCare.gov* platform. Currently, individuals self-attest to their eligibility for many special enrollment periods and submit supporting documentation, but enroll in coverage through the Exchanges without any pre-enrollment verification. As mentioned in the preamble to this rule, beginning in June 2017, we previously planned to implement a pilot program to conduct pre-enrollment verification for a sample of 50 percent of consumers attempting to enroll in coverage through special enrollment periods. We will now expand pre-enrollment verification to all new consumers for applicable special enrollment periods, so that enrollment will be delayed or ''pended'' until verification of eligibility is completed. Individuals will have to provide supporting documentation within 30 days. Where possible, the FFE will make every effort to verify an individual's eligibility for the applicable special enrollment period through automated electronic means instead of through a consumer's submission of documentation. Since consumers currently provide required supporting documentation even though there is no pre-enrollment verification process, the provisions will not impose any additional paperwork burden on consumers.

Based on enrollment data, we estimate that HHS eligibility support staff members will conduct pre-enrollment verification for an additional 650,000 individuals. Once individuals have submitted the required verification documents, we estimate that it will take approximately 12 minutes (at an hourly cost of $40.82) to review and verify submitted verification documents. The verification process will result in an additional annual burden for the Federal government of 130,000 hours at a cost of $5,306,600.

We have revised the information collection currently approved under OMB control number 0938–1207 (Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment) to account for this additional burden. The 30-day notice soliciting public comment will be published in the **Federal Register** at a future date.

SBEs that currently do not conduct pre-enrollment verification for special enrollment periods are encouraged to follow the same approach. States that choose to do so will change their current approach. Under 5 CFR 1320.3(c)(4), this ICR is not subject to the PRA as we anticipate it would affect fewer than 10 entities in a 12-month period.

Comment: Commenters expressed concerns about the lack of Federal staff and resources available to adjudicate documents in a timely manner, especially when the work is layered on top of ongoing post-enrollment documentation verification for inconsistencies. Commenters noted the increased costs to the Federal government due to increased staffing needs and secure storage of submitted documents, and the additional time both consumers and assisters will need to spend to adhere to these new requirements. A few commenters indicated that a pre-enrollment verification of special enrollment period eligibility may also affect other entities, such as issuers and medical providers who would incur costs in re-submitting or refiling claims, processing retroactive claims, and effectuating retroactive enrollments. One commenter suggested that HHS's cost analysis include these costs, as well as the consumer cost of spending time requesting that claims be re-billed.

Response: We appreciate the concerns about the increased burden and cost that a documentation requirement for pre-enrollment verification of eligibility for special enrollment periods will have on all entities involved. We are dedicated to reviewing all special enrollment period documents received as quickly as possible in order to minimize delays. Although we recognize that gathering and submitting these documents can be difficult and time consuming, we do not believe that this places a new burden on consumers or those providing enrollment assistance since consumers are already required to submit documentation to prove their eligibility after enrollment for 5 common special enrollment periods. Because of our plans for timely document review, we do not believe that new costs will be incurred by issuers, medical providers, or consumers needing to re-submit, refile, or re-bill for claims for services received due to this new requirement.

B. ICRs Regarding Network Adequacy Reviews and Essential Community Providers (§ 156.230, § 156.235)

After further review and consideration, HHS has determined that the ICRs associated with QHP certification have already been assessed and encompassed by CMS–10592/OMB Control No. 0938–1187 (Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers). As such, the proposed ICRs related to QHP certification in the proposed rule have been removed in this final rule.

VI. Regulatory Impact Analysis

A. Statement of Need

As noted previously in the preamble, the Exchanges have experienced a decrease in the number of participating issuers and many States have recently seen increases in premiums. This final rule, which is being published as issuers develop their proposed plan benefit structures and premiums for 2018, aims to improve market stability and issuer participation in the Exchanges for the 2018 benefit year and beyond. This rule also aims to reduce the fiscal and regulatory burden on individuals, families, health insurers, patients, recipients of healthcare services, and purchasers of health insurance. This rule seeks to lower insurance rates and ensure dynamic and competitive markets in part by preventing and curbing potential misuse and abuse associated with special enrollment periods and gaming by individuals taking advantage of the current regulations on grace periods and termination of coverage due to the non-payment of premiums.

This rule addresses these issues by changing a number of requirements that HHS believes will provide needed flexibility to issuers and help stabilize the individual insurance markets, allowing consumers in many State or local markets to retain or obtain health insurance while incentivizing issuers to enter, or remain, in these markets while returning greater autonomy to the States for a number of issues.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–

354), section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

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

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule—(1) having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and a ''significant'' regulatory action is subject to review by OMB. HHS has concluded that this rule is likely to have economic impacts of $100 million or more in at least 1 year, and therefore, meets the definition of ''significant rule'' under Executive Order 12866. Therefore, HHS has provided an assessment of the potential costs, benefits, and transfers associated with this rule.

The provisions in this final rule aim to improve the health and stability of the Exchanges. They provide additional flexibility to issuers for plan designs, reduce regulatory burden, reduce administrative costs, seek to improve issuer risk pools and lower premiums by reducing potential gaming and adverse selection and incentivize consumers to maintain continuous coverage. Through the reduction in financial uncertainty for issuers and increased affordability for consumers, these provisions are expected to increase access to affordable health coverage. Although there is some uncertainty regarding the net effect on enrollment, premiums, and total premium tax credit payments by the government, we anticipate that the provisions of this final rule will help further HHS's goal of ensuring that all consumers have quality, affordable healthcare; that markets are stable; and that Exchanges operate smoothly.

In accordance with Executive Order 12866, HHS has determined that the benefits of this regulatory action justify the costs.

C. Impact Estimates and Accounting Table

In accordance with OMB Circular A–4, Table 1 depicts an accounting statement summarizing HHS's assessment of the benefits, costs, and transfers associated with this regulatory action.

The provisions in this rule will have a number of effects, including reducing regulatory burden for issuers, reducing the impact of adverse selection, stabilizing premiums in the individual insurance markets, and providing consumers with more affordable health insurance coverage. The effects in Table 1 reflect qualitative impacts and estimated direct monetary costs and transfers resulting from the provisions of this final rule.

TABLE 1—ACCOUNTING TABLE

Benefits:

Qualitative:

- Improved health and protection from the risk of catastrophic medical expenditures for the previously uninsured, especially individuals with medical conditions (if health insurance enrollment increases).[a]
- Cost savings due to reduction in providing medical services (if health insurance enrollment decreases).[a b]
- Cost savings to issuers from not having to process claims while enrollment is ''pended'' during pre-enrollment verification of eligibility for special enrollment periods.[c]
- Cost savings to the government and plans associated with the reduced open enrollment period.
- Costs savings to consumers and issuers due reduced administrative costs to issuers.

Costs:

Qualitative:

- Harms to health and reduced protection from the risk of catastrophic medical expenditures for the previously uninsured, especially individuals with medical conditions (if health insurance enrollment decreases).[a]
- Cost due to increases in providing medical services (if health insurance enrollment increases).[a b]
- Possible decrease in quality of medical services (for example, reductions in continuity of care due to lower ECP threshold).
- Administrative costs incurred by the Federal government and by States that start conducting verification of special enrollment period eligibility.
- Costs to issuers of redesigning plans.
- Costs to the Federal government and issuers of outreach activities associated with shortened open enrollment period.
- Administrative costs to stakeholders to read, comprehend and comply with provisions of the final rule.

Transfers	Low estimate (million)	High estimate (million)	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized ($millions/year)	$200	$400	2016	7	2018–2022
	200	400	2016	3	2018–2022

Transfer from Federal Government to issuers and providers via possible increases in CSRs, as well as a transfer of similar magnitude via possible reductions in APTC subsidies from some combination of enrollees and issuers to the Federal Government.

TABLE 1—ACCOUNTING TABLE—Continued

Qualitative:
- Transfers, via premium reductions and claim reductions, from special enrollment period applicants who do not provide sufficient documentation and their medical providers to all other enrollees and issuers.
- Transfers related to changes in AV from enrollees to issuers.
- Transfer from enrollees to issuers in the form of payments made for past due premiums.

Notes:
[a] Enrollment may increase due to decreases in premiums resulting from pass-through of administrative cost savings (as listed) and savings associated with reductions in special enrollment period or the shortened open enrollment period. Enrollment may decrease due to lessened consumer appeal of insurance with reduced AV and less access to ECPs, increases in premiums resulting from pass-through of administrative costs (as listed), former special enrollment period users discontinuing participation, or due to shortened enrollment periods. The net effect on enrollment is ambiguous.
[b] These cost and cost savings generalizations are somewhat oversimplified because uninsured individuals are relatively likely to obtain healthcare through high-cost providers (for example, visiting an emergency room for preventive services).
[c] These savings will potentially be negated as issuers process any claims that occur while being ''pended'' once an enrollee's SEP eligibility has been verified.

1. Guaranteed Availability of Coverage

This final rule provides that, to the extent permitted by applicable State law, issuers may apply a premium payment to past-due premiums owed for coverage from the same issuer, or another issuer in the same controlled group within the prior 12 month period preceding the effective date of coverage before effectuating new coverage. Individuals with past due premiums will generally owe no more than 1 to 3 months of past-due premiums. The issuer will have to apply its premium payment policy uniformly to all employers or individuals in similar circumstances in the applicable market and State and regardless of health status and consistent with applicable non-discrimination requirements. Furthermore, issuers adopting a premium payment policy, as well as any issuers that do not adopt the policy but are within an adopting issuer's controlled group, must clearly describe in any enrollment application materials and in any notice that is provided regarding non-payment of premiums, whether in paper or electronic form, the consequences of non-payment on future enrollment. Plan documents and related materials are usually reviewed and updated annually before a new plan year begins. Issuers may include this information in their plan documents and related materials at negligible cost at that time. This will reduce misuse of grace periods and the risk of adverse selection by consumers while likely also discouraging some individuals from obtaining coverage.

A recent study [37] surveying consumers with individual market plans concluded that approximately 21 percent of consumers stopped premium payments in 2015. Approximately 87 percent of those individuals repurchased plans in 2016, and 49 percent of these consumers purchased the same plan on which they had previously stopped payment.

Based on internal analysis, we estimate that approximately one in ten enrollees in the FFE had their coverage terminated due to non-payment of premiums in 2016. We estimate that approximately 86,000 (or 16 percent) of those individuals whose coverage was terminated due to non-payment of premium in 2016 and who lived in an area where their 2016 issuer was available in 2017 had an active 2017 plan selection with the same issuer at the end of the open enrollment period. Additionally, for those individuals living in an area where their 2016 issuer was the only issuer available in 2017, 23 percent of those individuals whose coverage was terminated due to non-payment in 2016 had an active 2017 plan selection with that issuer at the end of the open enrollment period—equating to approximately 21,000 individuals. In the absence of data, we are unable to determine the amount of past-due premiums that consumers will have to pay in order to effectuate new coverage with the same issuer or an issuer in the same controlled group, though individuals will generally owe no more than 1 to 3 months of premiums.

2. Open Enrollment Periods

This final rule amends § 155.410(e) and changes the individual market annual open enrollment period for coverage year 2018 to begin on November 1, 2017, and run through December 15, 2017. This is expected to have a positive impact on the individual market risk pools by reducing the risk of adverse selection. However, the shortened enrollment period could lead to a reduction in enrollees, primarily younger and healthier enrollees who usually enroll late in the enrollment period. The change in the open enrollment period could lead to additional reductions in enrollment if Exchanges and enrollment assisters do not have adequate support, which can lead to potential enrollees facing longer wait times. In addition, this change is expected to simplify operational processes for issuers and the Exchanges. However, the Federal government, SBEs, and issuers may incur costs if additional consumer outreach is needed.

3. Special Enrollment Periods

Special enrollment periods ensure that people who lose health insurance during the year (for example, through non-voluntary loss of minimum essential coverage provided through an employer), or who experience other qualifying events such as marriage or birth or adoption of a child, have the opportunity to enroll in new coverage or make changes to their existing coverage. In the individual market, while the annual open enrollment period allows previously uninsured individuals to enroll in new insurance coverage, special enrollment periods are intended to promote continuous enrollment in health insurance coverage during the benefit year by allowing those who were previously enrolled in coverage to obtain new coverage without a lapse or gap in coverage.

However, allowing previously uninsured individuals to enroll in coverage via a special enrollment period that they would not otherwise qualify for can increase the risk of adverse selection, negatively impact the risk pool, contribute to gaps in coverage, and contribute to market instability and reduced issuer participation.

Currently, in many cases, individuals self-attest to their eligibility for most special enrollment periods and submit supporting documentation, but enroll in coverage through the Exchanges without further pre-enrollment verification. As mentioned earlier in the preamble, in 2016 we took several steps to further

[37] 2016 OEP: Reflection on enrollment, Center for U.S. Health System Reform, McKinsey & Company, May 2016, available at *http://healthcare.mckinsey.com/2016-oep-consumer-survey-findings.*

verify eligibility for special enrollment periods and planned to implement a pilot program to conduct pre-enrollment verification for a sample of 50 percent of consumers attempting to enroll in coverage through special enrollment periods. The provisions finalized in this rule will increase the scope of pre-enrollment verification, strengthen and streamline the parameters of several existing special enrollment periods, and limit several other special enrollment periods. Starting in June 2017, new consumers in all States served by the *HealthCare.gov* platform attempting to enroll through applicable special enrollment periods will have to undergo pre-enrollment verification of eligibility, so that their enrollment would be delayed or ''pended'' until verification of eligibility is completed by the Exchange. Where possible, the FFE will make every effort to verify an individual's eligibility for a special enrollment period through automated electronic means instead of through documentation. Based on past experience, we estimate that the expansion in pre-enrollment verification to all individuals seeking to enroll in coverage through all applicable special enrollment periods will result in an additional 650,000 individuals having their enrollment delayed or ''pended'' annually until eligibility verification is completed. As discussed previously in the Collection of Information Requirements section, there will be an increase in costs to the Federal government for conducting the additional pre-enrollment verifications. SBEs that begin to conduct pre-enrollment verification will incur administrative costs to conduct those reviews. We anticipate that there will be a reduction in costs to issuers since they will not have to process any claims while the enrollments are ''pended'', though these savings may be negated as issuers process any claims that occur while an enrollment is ''pended'' once an enrollee's special enrollment period eligibility has been verified.

The changes will promote continuous coverage and allow individuals who qualify for a special enrollment period to obtain coverage, while ensuring that uninsured individuals who do not qualify for a special enrollment period obtain coverage during open enrollment instead of waiting until they get sick, which is expected to protect the Exchange risk pools, enhance market stability, and in doing so, limit rate increases. On the other hand, it is possible that the additional steps required to verify eligibility may discourage some eligible individuals from obtaining coverage, and reduce access to healthcare for those individuals, increasing their exposure to financial risk. If it deters younger and healthier individuals from obtaining coverage, it can also worsen the risk pool.

If pre-enrollment verification causes premiums to fall and all individuals who inappropriately enrolled via special enrollment periods continue to be covered, there will be a transfer from such individuals to other consumers. Conversely, if some individuals are no longer able to enroll via special enrollment periods, they will experience reduced access to healthcare. If there is a significant decrease in enrollment,[38] especially for younger and healthier individuals, it is possible that premiums will not fall, and potentially might increase.

Office of the Actuary analysis of the net effect of pre-enrollment verification and other special enrollment period changes estimated that premiums will be approximately 1.5 percent lower. The premium difference was calculated by taking into account the greater claims cost per member per month for enrollees through special enrollment periods and fewer enrollees through special enrollment periods.

4. Levels of Coverage (Actuarial Value)

We are amending the de minimis range included in § 156.140(c), to a variation of −4/+2 percentage points, rather than +/− 2 percentage points for all non-grandfathered individual and small group market plans (other than bronze plans meeting certain conditions) that are required to comply with AV for plans beginning in 2018. We are also amending the expanded de minimis range for certain bronze plans from −2/+5 percentage points to −4/+5 percentage points to align with the policy in this rule for the same timeline. While we are modifying the de minimis range for the metal level plans (bronze, silver, gold, and platinum), we are not modifying the de minimis range for the silver plan variations (the plans with an AV of 73, 87 and 94 percent) under §§ 156.400 and 156.420. In the short run, the impact of this change will be to generate a transfer of costs from consumers to issuers. The change in AV may reduce the value of coverage for consumers, which can lead to more consumers facing increases in out-of-pocket expenses, thus increasing their exposure to financial risks associated with high medical costs. However, providing issuers with additional flexibility can help stabilize premiums over time, increase issuer participation and ultimately provide more coverage options at the silver level and above, thereby attracting more young and healthy enrollees into plans at these levels.

Taking into account limits on design flexibilities for bronze plans and related to State limits on flexibility, the Office of the Actuary analysis estimated that the change in AV will lead to a 0.75 percent reduction in total premiums. This analysis estimated that the change to the de minimis range would reduce premiums for the non-subsidized population at the silver, gold, and platinum metal levels.

The lower AV will decrease plan liability for non-cost-sharing variation plans in silver, gold, and platinum and therefore premiums for non-subsidized enrollees will have a proportional reduction in premiums comparable to the reduction in AV.

A reduction in premiums will likely also reduce the benchmark premium for purposes of the premium tax credit, leading to a transfer from APTC (or premium tax credit) recipients to the government. One commenter estimated that if the AV for all benchmark silver level plans were to decrease from 68 to 66 percent AV, this would result in a decrease of the benchmark premium by $131 per year, which would reduce APTCs the Federal government provides to consumers by $381 million dollars per year (holding enrollment constant). We agree with the commenter's assessment that lower financial assistance in the form of APTCs is likely. The premium reduction measures total premium reductions not the effects of lower APTC on net premiums for subsidized enrollees. With a decrease in the benchmark premium and therefore the APTC, enrollees, particularly subsidized enrollees who purchase plans with premiums less than the second lowest cost silver plan, could have higher net premiums than in prior years.

The decrease in the de minimis range for the silver metal tier will also affect the value of cost-sharing reductions provided to individuals who qualify for CSRs, with the magnitude of the impact based on individual income levels. Currently, individuals with a household income in the range of 250 to 400 percent of FPL do not receive any CSRs because reductions to the maximum

[38] As some commenters noted, preliminary data regarding HHS's special enrollment confirmation process did indicate a decrease in special enrollment period plan selection. See, Frequently Asked Questions Regarding Verification of Special Enrollment Periods (Sept. 6, 2016) *available at https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/FAQ-Regarding-Verification-of-SEPs.pdf.*

annual limitation on cost sharing under the previous de minimis range of 68 percent–72 percent AV, without substantive increases to other cost sharing parameters would have resulted in an AV that exceeded the statutory maximum 70 percent AV. Because enrollees with incomes between 250 to 400 percent of FPL do not receive CSRs, the lower AV for the silver metal tier will result in higher cost sharing for these individuals. However, individuals with a household income up to 250 percent of FPL, who enroll in a CSR silver plan variation, will benefit from additional CSRs that the issuer will provide to make up the difference between the lower AV of silver metal tier standard plans and the CSR silver plan variation AV. As part of CSR reconciliation, HHS will continue to calculate CSR amounts provided based on the cost sharing that the individual would have otherwise paid in a standard plan. That is, if the standard plan the CSR-eligible enrollee chooses is now a 66 percent AV plan, with a de minimis variation of 4 percent below 70 percent AV (or 2 percentage points below the lowest available silver plan at 68 percent AV previously), the CSRs provided will equal the difference between the value of CSRs in the applicable CSR silver plan variation (either 73 percent, 87 percent, 94 percent AV), and the standard plan (66 percent), which will be greater than the CSRs provided if the standard silver plan has +/−2 percent allowable variation. Based on the most recent data on CSRs provided by CSR plan variations, steady-state enrollment in CSR plans, and an increase in CSRs provided based on a conservative range of 30 to 50 percent of CSR eligible individuals choosing a standard silver plan with lower AV than previously available, we estimate the lowered AV under the new de minimis range will increase the CSRs provided to enrollees in 2018 by approximately $200 million to $400 million or approximately an amount equal to the expected reduction in APTCs (or premium tax credits) described above in this section.

5. Network Adequacy

Section 156.230(a)(2) requires a QHP issuer to maintain a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be accessible without unreasonable delay. For the 2018 plan year, HHS will defer to the State's reviews in States with authority and means to assess issuer network adequacy; while in States without authority and means to conduct sufficient network adequacy reviews, HHS will rely on an issuer's accreditation (commercial, Medicaid, or Exchange) from an HHS-recognized accrediting entity. Unaccredited issuers in States without network adequacy review will be required to submit an access plan as part of the QHP Application. This may reduce administrative costs for issuers, which can ultimately lead to reduced premiums for consumers.

Depending on the level of review by State regulators and accrediting entities, this can have an impact on plan design. Issuers can potentially use network designs to encourage enrollment into certain plans, exacerbating selection pressures. The net effect on consumers is uncertain.

6. Essential Community Providers

Section 156.235(a)(2)(i) stipulates that a plan has a sufficient number and geographic distribution of ECPs if it demonstrates, among other criteria, that the network includes as participating practitioners at least a minimum percentage, as specified by HHS. For the 2014 plan year, this minimum percentage was 20 percent, but starting with the 2015 Letter to Issuers in the Federally-facilitated Marketplaces, we increased the minimum percentage to 30 percent. For certification and recertification for the 2018 plan year, we will instead consider the issuer to have satisfied the regulatory standard if the issuer contracts with at least 20 percent of available ECPs in each plan's service area to participate in the plan's provider network. In addition, we are reversing our previous guidance that we were discontinuing the write-in process for ECPs, and will continue to allow this process for the 2018 plan year. If an issuer's application does not satisfy the ECP standard, the issuer will be required to include as part of its application for QHP certification a satisfactory narrative justification describing how the issuer's provider networks, as presently constituted, provide an adequate level of service for low-income and medically underserved individuals and how the issuer plans to increase ECP participation in the issuer's provider networks in future years. We expect that issuers will be able to meet this requirement, with the exception of issuers that do not have any ECPs in their service area.

Less expansive requirements for network size will lead to both costs and cost savings. Costs can take the form of increased travel time and wait time for appointments or reductions in continuity of care for those patients whose providers have been removed from their insurance issuers' networks.

Cost savings for issuers will be associated with reductions in administrative costs of arranging contracts, meeting QHP certification requirements, and, if issuers focus their networks on relatively low-cost providers to the extent possible, reductions in the cost of healthcare provision.

7. Uncertainty

The net effect of these provisions on enrollment, premiums and total premium tax credit payments are uncertain. That is, premiums will tend to fall if more young and healthy individuals obtain coverage, adverse selection is reduced and issuers are able to lower costs due to reduced regulatory burden, and offer greater flexibility in plan design. However, if changes such as a shortened open enrollment period, pre-enrollment verification for special enrollment periods, reduced AV of plans, or less expansive provider networks result in lower enrollment, especially for younger, healthier adults, it will tend to increase premiums. Lower premiums in turn will increase enrollment, while higher premiums will have the opposite effect. In addition, lower premiums will tend to decrease total premium tax credit payments, which can be offset by an increase in enrollment. Increased enrollment will lead to an overall increase in healthcare spending by issuers, while a decrease in enrollment will lower it, although the effect on total healthcare spending is uncertain, since uninsured individuals are more likely to obtain healthcare through high cost providers such as emergency rooms.

D. Regulatory Alternatives Considered

In developing the final rule, we considered maintaining the status quo with respect to our interpretation of guaranteed availability, network adequacy requirements, and essential community provider requirements. However, we determined that the changes are urgently needed to stabilize markets, to incentivize issuers to enter into or remain in the market and to ensure premium stability and consumer choice.

With respect to the provision regarding essential community providers, we considered proposing a minimum threshold other than 20 percent, but believed that reverting to the previously used 20 percent threshold that issuers were used to would better help stabilize the markets, while adequately protecting access to ECPs.

We also considered keeping the current individual market open enrollment period for 2018 coverage, but determined that an immediate change would have a positive impact on the individual market risk pools by reducing the risk of adverse selection and that the market is mature enough for an immediate transition.

In addition, we considered increasing the scope of pre-enrollment verification for certain special enrollment periods to 90 percent instead of 100 percent. This would have allowed us to maximize the verification of eligibility while providing some control population for claims comparison as envisioned by the scaled pilot. We solicited comment on the issue, but noted that we believe that in order to minimize the risk of adverse selection, complete pre-enrollment verification for special enrollment periods is necessary. We also considered maintaining the existing parameters around special enrollment periods so that the individual market special enrollment periods would continue to align with group market policies. However, HHS determined that aspects of the individual market and the unique threats of adverse selection in this market justified a departure from the group market policies.

With respect to the provision regarding AV, we considered proposing that the change would be effective for the 2019 plan year, but determined that an immediate change would have a positive impact on the markets for the 2018 plan year.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires agencies to prepare a regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule would not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses a change in revenues of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities.

This rule will affect health insurance issuers. We believe that health insurance issuers would be classified under the North American Industry Classification System code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $38.5 million or less would be considered small entities for these North American Industry Classification System codes. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $32.5 million or less.[39] We believe that few, if any, insurance companies underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) fall below these size thresholds. Based on data from MLR annual report submissions for the 2015 MLR reporting year, approximately 97 out of 528 issuers of health insurance coverage nationwide had total premium revenue of $38.5 million or less. This estimate may overstate the actual number of small health insurance companies that would be affected, since almost 74 percent of these small companies belong to larger holding groups, and many, if not all, of these small companies are likely to have non-health lines of business that would result in their revenues exceeding $38.5 million for Direct Health and Medical Insurance Carriers or $32.5 million for HMO Medical Centers.

HHS is not preparing an analysis for the RFA because it has determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a rule that includes any Federal mandate that may result in expenditures in any 1 year by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. Currently, that threshold is approximately $146 million. Although we have not been able to quantify all costs, we expect the combined impact on State, local, or Tribal governments and the private sector to be below the threshold.

[39] ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes'', effective February 26, 2016, U.S. Small Business Administration, available at *https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards.*

G. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications.

In HHS's view, while this final rule will not impose substantial direct requirement costs on State and local governments, this regulation has Federalism implications due to direct effects on the distribution of power and responsibilities among the State and Federal governments relating to determining standards relating to health insurance that is offered in the individual and small group markets. However, HHS anticipates that the Federalism implications (if any) are substantially mitigated because under the statute and this final rule, States have choices regarding the structure, governance, and operations of their Exchanges. This rule strives to increase flexibility for SBEs. For example, we recommend, but do not require, that SBEs engage in pre-enrollment verification with respect to special enrollment periods; and we will defer to State network adequacy reviews provided the States have the authority and the means to conduct network adequacy reviews. Additionally, the PPACA does not require States to establish these programs; if a State elects not to establish any of these programs or is not approved to do so, HHS must establish and operate the programs in that State.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, HHS has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with State insurance officials on an individual basis.

While developing this rule, HHS attempted to balance the States' interests in regulating health insurance issuers with the need to ensure market stability. By doing so, it is HHS's view that we have complied with the requirements of Executive Order 13132.

H. Congressional Review Act

This rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5

U.S.C. 801, *et seq.*), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller for review.

I. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, entitled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. It has been determined that this final rule does not impose costs that trigger the above requirements of Executive Order 13771.

List of Subjects

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interest, Consumer protection, Grant administration, Grant programs-health, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, Technical assistance, Women and youth.

45 CFR Part 156

Administrative practice and procedure, Advertising, American Indian/Alaska Natives, Conflict of interest, Consumer protection, Cost-sharing reductions, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Individuals with disabilities, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR parts 147, 155, and 156 as set forth below:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: Secs 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 2. Section 147.104 is amended by adding paragraph (b)(2)(iii) to read as follows:

§ 147.104 Guaranteed availability of coverage.

* * * * *

(b) * * *

(2) * * *

(iii) Notwithstanding anything to the contrary in § 155.420(d) of this subchapter, § 155.420(a)(4) of this subchapter does not apply to limited open enrollment periods under paragraph (b)(2) of this section.

* * * * *

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 3. The authority citation for part 155 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1332, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083).

■ 4. Section 155.400 is amended by adding paragraph (e)(1)(iv) to read as follows:

§ 155.400 Enrollment of qualified individuals into QHPs.

* * * * *

(e) * * *

(1) * * *

(iv) Notwithstanding the requirements in paragraphs (e)(1)(i) through (iii) of this section, for coverage to be effectuated after pended enrollment due to special enrollment period eligibility verification, the binder payment must consist of the premium due for all months of retroactive coverage through the first prospective month of coverage consistent with the coverage effective dates described in § 155.420(b)(1), (2) and (3) or, if elected, § 155.420(b)(5) and the deadline for making the binder payment must be no earlier than 30 calendar days from the date the issuer receives the enrollment transaction.

* * * * *

■ 5. Section 155.410 is amended by revising paragraphs (e)(2) and (3) to read as follows:

§ 155. 410 Initial and annual open enrollment periods.

* * * * *

(e) * * *

(2) For the benefit years beginning on January 1, 2016 and January 1, 2017, the annual open enrollment period begins on November 1 of the calendar year preceding the benefit year, and extends through January 31 of the benefit year.

(3) For the benefit years beginning on or after January 1, 2018, the annual open enrollment period begins on November 1 and extends through December 15 of the calendar year preceding the benefit year.

* * * * *

■ 6. Section 155.420 is amended by:

■ a. Adding paragraph headings for paragraphs (a)(1) and (2);

■ b. Adding paragraphs (a)(3) through (5);

■ c. Revising paragraphs (b)(1) introductory text, (b)(5), and (d) introductory text;

■ d. Adding paragraph (d)(2)(i)(A) and reserved paragraph (d)(2)(i)(B); and

■ e. Revising paragraph (d)(7).

The additions and revisions read as follows:

§ 155.420 Special enrollment periods.

(a) * * *

(1) *General parameters.* * * *

(2) *Definition of dependent.* * * *

(3) *Use of special enrollment periods.* Except in the circumstances specified in paragraph (a)(4) of this section, the Exchange must allow a qualified individual or enrollee, and when specified in paragraph (d) of this section, his or her dependent to enroll in a QHP if one of the triggering events specified in paragraph (d) of this section occur.

(4) *Use of special enrollment periods by enrollees.* (i) If an enrollee has gained a dependent in accordance with paragraph (d)(2)(i) of this section, the Exchange must allow the enrollee to add the dependent to his or her current QHP, or, if the current QHP's business rules do not allow the dependent to enroll, the Exchange must allow the enrollee and his or her dependents to

change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b) of this subchapter, or, at the option of the enrollee or dependent, enroll the dependent in any separate QHP.

(ii) If an enrollee and his or her dependents become newly eligible for cost-sharing reductions in accordance with paragraph (d)(6)(i) or (ii) of this section and are not enrolled in a silver-level QHP, the Exchange must allow the enrollee and his or her dependents to change to a silver-level QHP if they elect to change their QHP enrollment.

(iii) If an enrollee qualifies for a special enrollment period or is adding a dependent to his or her QHP through a triggering event specified in paragraph (d) of this section other than those described under paragraph (d)(2)(i), (d)(4), (d)(6)(i), (d)(6)(ii), (d)(8), (d)(9), or (d)(10), the Exchange must allow the enrollee and his or her dependents to make changes to his or her enrollment in the same QHP or to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b) of this subchapter, or, at the option of the enrollee or dependent, enroll in any separate QHP.

(5) *Prior coverage requirement.* Qualified individuals who are required to demonstrate coverage in the 60 days prior to a qualifying event can either demonstrate that they had minimum essential coverage as described in 26 CFR 1.5000A–1(b) for 1 or more days during the 60 days preceding the date of the qualifying event; lived in a foreign country or in a United States territory for 1 or more days during the 60 days preceding the date of the qualifying event; or that they are an Indian as defined by section 4 of the Indian Health Care Improvement Act.

(b) * * *

(1) *Regular effective dates.* Except as specified in paragraphs (b)(2), (3), and (5) of this section, for a QHP selection received by the Exchange from a qualified individual—

* * *

(5) *Option for later coverage effective dates due to prolonged eligibility verification.* At the option of the consumer, the Exchange must provide for a coverage effective date that is no more than 1 month later than the effective date specified in this paragraph (b) if a consumer's enrollment is delayed until after the verification of the consumer's eligibility for a special enrollment period, and the assignment of a coverage effective date consistent with this paragraph (b) would result in the consumer being required to pay 2 or more months of retroactive premium to effectuate coverage or avoid cancellation.

* * * * *

(d) *Triggering events.* Subject to paragraphs (a)(3) through (5) of this section, as applicable, the Exchange must allow a qualified individual or enrollee, and, when specified below, his or her dependent, to enroll in or change from one QHP to another if one of the triggering events occur:

* * * * *

(2) * * *

(i) * * *

(A) In the case of marriage, at least one spouse must demonstrate having minimum essential coverage as described in 26 CFR 1.5000A–1(b) for 1 or more days during the 60 days preceding the date of marriage.

(B) [Reserved]

* * * * *

(7) The qualified individual or enrollee, or his or her dependent, gains access to new QHPs as a result of a permanent move and—

(i) Had minimum essential coverage as described in 26 CFR 1.5000A–1(b) for one or more days during the 60 days preceding the date of the permanent move.

(ii) [Reserved]

* * * * *

■ 7. Section 155.725 is amended by adding paragraph (j)(7) to read as follows:

§ 155.725 Enrollment periods under SHOP.

* * * * *

(j) * * *

(7) Notwithstanding anything to the contrary in § 155.420(d), § 155.420(a)(4) and (d)(2)(i)(A) do not apply to special enrollment periods in the SHOP.

* * * * *

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 8. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

■ 9. Section 156.140 is amended by revising paragraph (c) to read as follows:

§ 156.140 Levels of coverage.

* * * * *

(c) *De minimis variation.* For plan years beginning on or after January 1, 2018, the allowable variation in the AV of a health plan that does not result in a material difference in the true dollar value of the health plan is −4 percentage points and +2 percentage points, except if a health plan under paragraph (b)(1) of this section (a bronze health plan) either covers and pays for at least one major service, other than preventive services, before the deductible or meets the requirements to be a high deductible health plan within the meaning of 26 U.S.C. 223(c)(2), in which case the allowable variation in AV for such plan is −4 percentage points and +5 percentage points.

CMS–9929–P

Dated: April 10, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 11, 2017.

Thomas E. Price,

Secretary, Department of Health and Human Services.

[FR Doc. 2017–07712 Filed 4–13–17; 4:15 pm]

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