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Presidential Documents

Title 3—

The President

Proclamation 9345 of October 9, 2015

National School Lunch Week, 2015

By the President of the United States of America

A Proclamation

America's schools strive to empower students with the tools and learning opportunities they need to pursue a tomorrow of endless possibility. In addition to serving as critical foundations for an education, schools are often the only stable source of health and nutrition for many of our children. The National School Lunch Program does more than simply provide students with one of our most basic human needs—it gives them the strength to focus on reaching for their greatest aspirations, rather than worrying about where their next meal will come from. During National School Lunch Week, we rededicate ourselves to safeguarding our Nation's future by providing our children with the support and nourishment they need to maintain healthy lifestyles, and we thank the school administrators, educators, and cafeteria workers who, alongside devoted parents, caregivers, and guardians, work together to achieve this goal.

By signing the National School Lunch Act in 1946, President Harry Truman recognized the tremendous role food security plays in the academic and overall success of America's youth. This groundbreaking legislation created the National School Lunch Program, which provides lunches—either subsidized or at no cost—to millions of students in over 100,000 schools. At the heart of this program lies a commitment to uphold one of our country's core principles: that all children should have the chance to live up to their fullest potential and be bound by nothing more than the scope of their dreams.

One in three children in our Nation is overweight or obese—and those rates are even higher in African-American, Hispanic, and Native American communities. Those who lack proper nutrition or do not lead an active lifestyle are far less likely to perform well in school and are more likely to experience health problems such as heart disease, cancer, asthma, and diabetes in the future. For many young people across America, particularly those from low-income communities, the meals their school provides are their most consistent source of food and nutrition.

My Administration remains committed to inspiring students to live a healthy, balanced lifestyle. First Lady Michelle Obama's *Let's Move!* initiative has encouraged schools to provide nutritious food and help students make educated decisions about the food they eat each day. Because of these efforts, thousands of schools across America have answered the HealthierUS School Challenge with commonsense standards for the health, physical activity, and nutritional awareness of our country's students. And since I signed the Healthy, Hunger-Free Kids Act into law in 2010, we have ensured healthy meals are available for millions of students—even after classes have finished for the year. By working to encourage students to eat right and make healthy choices today, we can help ensure these positive habits continue throughout their lives.

Despite the progress we have made, more must be done to safeguard a bright and healthy future for our children and our Nation. Schools should foster an environment where young people acquire the knowledge and skills needed to make smart choices about what they eat, and healthy school

meals should give children the fuel to work hard, grow, and succeed. During National School Lunch Week, I encourage everyone—students, educators, and parents alike—to add more greens to their plates and increase the amount of physical activity in their daily routines. Even small steps, like going for a walk or choosing fruits and vegetables over salty snacks and sweets, help set a positive example and instill the healthy habits our Nation's children need. Together—as families, neighbors, and friends—we can turn these small steps into national action and make a transformative impact.

The Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October each year as ''National School Lunch Week'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 11 through October 17, 2015, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program in appropriate activities that support the health and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2015–26584
Filed 10–16–15; 8:45 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9346 of October 9, 2015

International Day of the Girl, 2015

By the President of the United States of America

A Proclamation

America has long stood as a beacon of equality and liberty for all. Safeguarding our founding ideals means ensuring we all have the opportunity to contribute to our shared progress and forge brighter futures. On International Day of the Girl, we are reminded that without the presence and participation of women and girls in our classrooms, workplaces, and communities, our Nation can never realize its full potential. As we observe this day, let us renew our commitment to building a world where all feel valued, safe, and empowered to pursue a future of equal promise.

In too many places, the stories of women and girls are not always told, and they are limited by laws and norms and subject to forces that lessen their range of possibility and the scope of their aspirations. The United States and our partners around the globe have made significant strides in advancing opportunities for women and girls and promoting full gender equality. My Administration remains dedicated to working with our international allies to protect the rights of all women and girls. We are working to expand access to quality education and are investing in programs to combat gender-based violence. Building on my challenge to the United Nations in September 2011, we established the Equal Futures Partnership, a multilateral effort that encourages countries to make commitments to women's political and economic empowerment.

Right now, more than 62 million girls around the world—half of whom are adolescent—are not in school and are therefore more vulnerable to HIV/AIDS, early or forced marriages, and violence. My Administration is responding with the utmost urgency, and that is why we launched the *Let Girls Learn* initiative, which brings together the Department of State, the United States Agency for International Development, the Peace Corps, and the Millennium Challenge Corporation, as well as other agencies and programs, like the President's Emergency Fund for AIDS Relief (PEPFAR), to address the range of challenges preventing adolescent girls from attending and completing school, and from realizing their potential as adults.

As we work to advance justice and equality abroad, we are also making it a priority to combat gender disparities here at home. Thanks to the Affordable Care Act, health insurers are now prohibited from charging women higher premiums than men simply because they are female, helping to make quality, affordable health care accessible for all our people. We are attracting and supporting girls in careers and educational pursuits related to sciences, technology, engineering, and mathematics—helping to build a highly-skilled, competitive workforce that draws on the talents of all Americans to drive our country's greatest innovations. We are also supporting women-owned businesses and entrepreneurs through over 100 Women's Business Centers across our country, and we are continuing the fight to ensure all women are paid equally and fairly for their work.

Women and girls cannot be fully free to pursue their highest potential until they are safe from hateful violence and assault. Twenty percent of American women have been sexually assaulted while in college. That is why, under the leadership of Vice President Joe Biden, we launched the

1is2many initiative to raise awareness of dating violence and sexual assault among young people. And we established the White House Task Force to Protect Students from Sexual Assault, as well as ''It's On Us,'' a campaign designed to combat sexual assault on college campuses so every student in America is able to pursue an education free from the fear of intimidation or violence.

This work must encompass all women and girls—regardless of who they are or what they look like. I am committed to lifting up the lives of women and girls of color, an intersectionality that is disproportionately represented in the foster care and juvenile justice systems, who are at greater risks of violence and are often more susceptible to becoming victim to commercial sex trafficking. We must continue to improve the odds for at-risk girls and ensure they are visible, valued, and have every opportunity to succeed.

Our society must also value all who identify as female. Too many transgender women and girls face discrimination, violence, and abuse. My Administration will continue working to break down barriers that hold transgender girls back, including school bullying, youth homelessness, and health inequality—because America is a place where all our girls should be free to live honest and open lives.

Every person deserves the opportunity to reach for his or her dreams, regardless of their sex or gender. This is an ideal that has carried our Nation forward for centuries, and we have an obligation to do everything in our power to address the injustices that remain throughout society. Today, we reaffirm our commitment to building a world where all girls are safe and empowered to pursue a future of limitless possibility.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 11, 2015, as International Day of the Girl. I call upon the people of the United States to observe this day with programs, ceremonies, and activities that advance equality and opportunity for girls everywhere.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2015–26585
Filed 10–16–15; 8:45 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9347 of October 9, 2015

General Pulaski Memorial Day, 2015

By the President of the United States of America

A Proclamation

Today, our Nation honors the legacy of Brigadier General Casimir Pulaski, a Polish-born hero of the American Revolutionary War who gave his life to defend our country in its nascence. Drawn to fight by the basic premise that people have the right to determine their own destinies, he came here to help us shape ours. In the struggle for independence, he stood with the brave soldiers of the Continental Army and his sacrifices helped lay the foundation for the strong relationship between Poland and the United States today.

Born into a family determined to see a free and sovereign Poland, Pulaski demonstrated his courage and leadership abilities from an early age. Drawing on his experiences, he recognized the same yearning for freedom on display across the Atlantic in the American Revolution. Upon moving to France, he met Benjamin Franklin—who recognized his potential and recommended him to General George Washington, and in 1777, he embarked on a journey to help the Colonies preserve the same ideals of liberty and self-determination he fought for in his homeland.

While serving, Pulaski's zeal for the American cause impressed his fellow soldiers—including Washington, whose life he saved. He earned the rank of Brigadier General and an appointment to be ''Commander of the Horse.'' The cavalry unit he formed was in many ways reflective of our Nation today, comprised of volunteers of many backgrounds and beliefs and united in their faith in the unalienable rights of a free and independent society. Fearless until his death on October 11, 1779, Casimir Pulaski symbolizes an enduring American truth: that we owe our independence to brave men and women, spanning multiple generations, devoted to a cause greater than their own.

On General Pulaski Memorial Day, we celebrate the ideals and rights for which Pulaski fought and gave his life. We also celebrate all Polish-Americans who proudly preserve their culture in towns and cities throughout our Nation, enriching our society and contributing to our shared success. On this day, let us recognize the strong and enduring relationship between Poland and the United States, and let us renew our commitment to realizing the shared vision of our democracies: forging a world that is free and at peace.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 11, 2015, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to Casimir Pulaski and honoring all those who defend the freedom of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2015–26588
Filed 10–16–15; 8:45 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9348 of October 9, 2015

Columbus Day, 2015

By the President of the United States of America

A Proclamation

Over half a millennium ago, Christopher Columbus—an ambitious navigator native to Genoa, Italy—set sail for new horizons. Aboard the Niña, the Pinta, and the Santa María, his expedition went west for a months-long journey. Though his first of four voyages across the Atlantic did not end at his desired destination of Asia, Columbus's adventure reflected the insatiable thirst for exploration that continues to drive us as a people.

Columbus's legacy is embodied in the spirit of our Nation. Determined and curious, the young explorer persevered after having been doubted by many of his potential patrons. Once opportunity struck, when Ferdinand II and Isabella I agreed to sponsor his trip, he seized the moment and pursued what he knew to be possible. Columbus's arrival in the New World inspired many and allowed for generations of Italians to follow—people whose Italian-American heritage contributes in immeasurable ways to making our country what it is, and who continue to help strengthen the friendship between the United States and Italy.

Though these early travels expanded the realm of European exploration, to many they also marked a time that forever changed the world for the indigenous peoples of North America. Previously unseen disease, devastation, and violence were introduced to their lives—and as we pay tribute to the ways in which Columbus pursued ambitious goals—we also recognize the suffering inflicted upon Native Americans and we recommit to strengthening tribal sovereignty and maintaining our strong ties.

In the years since Columbus's time, the legacy of early explorers has carried on in the wide eyes of aspiring young dreamers and doers, eager to make their own journeys and to continue reaching for the unknown and unlocking new potential.

In commemoration of Christopher Columbus's historic voyage 523 years ago, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested the President proclaim the second Monday of October of each year as ''Columbus Day.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 12, 2015, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of our diverse history and all who have contributed to shaping this Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2015–26589
Filed 10–16–15; 8:45 am]
Billing code 3295–F6–P

Rules and Regulations

Federal Register
Vol. 80, No. 201
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0656; Directorate Identifier 2013–NM–224–AD; Amendment 39–18295; AD 2015–21–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; removal.

SUMMARY: We are removing Airworthiness Directive (AD) 2010–08–08, which applied to certain Airbus Model A330–243, –341, –342, and –343 airplanes. AD 2010–08–08 required deactivating the water scavenge automatic operation and revising the Limitations section of the airplane flight manual (AFM). We are also removing AD 2011–06–04, which applied to certain Airbus Model A330–243F airplanes. AD 2011–06–04 required revising the Limitations section of the AFM. We issued ADs 2010–08–08 and 2011–06–04 to prevent fuel flow restriction, caused by ice, resulting in a possible engine surge or stall condition, and the engine being unable to provide the commanded thrust. Since we issued AD 2010–08–08 and AD 2011–06–04, we received new data indicating that the water scavenge system (WSS) operation does not induce any risk of fuel feed system (including the engine) blockage by ice on the pipework or pump inlets. We have also determined that the risk of fuel flow restriction by ice at the fuel oil heat exchanger (FOHE) interface on airplanes equipped with Rolls-Royce Trent 700 engines is now addressed by a redesigned FOHE, which incorporates enhanced anti-icing and de-icing performance.

DATES: This AD becomes effective November 23, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0656;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A330–243, –243F, –341, –342, and –343 airplanes. The NPRM published in the **Federal Register** on October 2, 2014 (79 FR 59468). The NPRM proposed to remove AD 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010), and AD 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2010–0132–CN, dated October 14, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to cancel EASA AD 2010–0132R1, dated June 10, 2013, which superseded EASA AD 2010–0132, dated June 28, 2010. The requirements of FAA AD 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010), and AD 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011), correspond to EASA AD 2010–0132. The MCAI states:

During an in-service event, the flight crew of a Trent 700 powered A330 aeroplane reported a temporary Engine Pressure Ratio (EPR) shortfall on engine 2 during the takeoff phase of the flight. The ENG STALL warning was set. The flight crew followed the standard procedures which included reducing throttle to idle. The engine recovered and provided the demanded thrust level for the remainder of the flight.

Data analysis confirmed a temporary fuel flow restriction and subsequent recovery, and indicated that also engine 1 experienced a temporary fuel flow restriction shortly after the initial event on engine 2, again followed by a full recovery. The engine 1 EPR shortfall was insufficient to trigger any associated warning and was only noted through analysis of the flight data. No flight crew action was necessary to recover normal performance on this engine. The remainder of the flight was uneventful.

Based on industry-wide experience, the investigation of the event focused on the possibility for ice to temporarily restrict the fuel flow. While no direct fuel system fault was identified, the operation of the water scavenge system (WSS) at Rib 3 was considered to have been a contributory factor.

Prompted by these findings, EASA issued [EASA] Emergency AD 2010–0042–E [*http://ad.easa.europa.eu/ad/2010-0042-E*] [which corresponds to FAA AD 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010] to require deactivation of the automatic Standby Fuel Pump Scavenge System and to prohibit dispatch of an aeroplane with one main fuel pump inoperative.

Subsequently, EASA issued [EASA] AD 2010–0132 which superseded EASA AD 2010–0042–E, retaining its requirements, to expand the applicability to the newly certified model A330–243F [which corresponds to FAA AD 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011, for the A330–243F requirements]. EASA AD 2010–0132 was later revised to remove the dispatch restriction with one main fuel pump inoperative.

Since EASA AD 2010–0132R1 was issued, extensive fuel system icing risk investigations testing was conducted by Airbus and Rolls-Royce, the results of which confirmed that the Rib 3 WSS operation does not induce any risk of fuel feed system (including the engine) blockage by ice accreted on the pipework and/or pump inlets. In addition, it was demonstrated that the risk of fuel flow restriction by ice at the Fuel Oil Heat Exchanger (FOHE) interface on aeroplanes equipped with Trent 700 engines is now adequately addressed by introduction of a re-designed FOHE, more tolerant to the release of ice (modification 200218). The

modified FOHE (incorporating enhanced anti-icing and de-icing performance) is required to be installed on all Trent 700 engines through EASA AD 2009–0257 [*http://ad.easa.europa.eu/ad/2009-0257*] [which corresponds to FAA AD 2010–07–01, Amendment 39–16244 (75 FR 15326, March 29, 2010)].

Previously, the operation of the WSS at Rib 3 was no longer considered as a main contributory factor on ice build-up and subsequent release of ice into the fuel system. Based on the latest information, the deactivation of the automatic Standby Fuel Pump Scavenge System is no longer required.

For the reasons described above, this Notice cancels EASA AD 2010–0132R1.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0656-0004.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 59468, October 2, 2014), or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 59468, October 2, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 59468, October 2, 2014).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0656;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ (a) Removing Airworthiness Directive (AD) 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010); and AD 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011), and

■ (b) Adding the following new AD:

2015–21–03 Airbus: Amendment 39–18295. Docket No. FAA–2014–0656; Directorate Identifier 2013–NM–224–AD.

(a) Effective Date

This AD becomes effective November 23, 2015.

(b) Affected ADs

This AD removes AD 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010); and AD 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011).

(c) Applicability

This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airbus Model A330–243, –341, –342, and –343 airplanes, certificated in any category, all manufacturer serial numbers equipped with Rolls-Royce Trent 700 engines, on which Airbus Modification 56966MP16199 has been embodied in production or Airbus Service Bulletin A330–28–3105 has been embodied in service.

(2) Airbus Model A330–243F airplanes, certificated in any category, all manufacturer serial numbers on which Airbus Modification 56966H16199 has been embodied in production or Airbus Service Bulletin A330–28–3105 has been embodied in service.

Issued in Renton, Washington, on October 6, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–26219 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4203; Directorate Identifier 2015–NM–142–AD; Amendment 39–18299; AD 2015–21–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. This AD requires a detailed inspection of the girt installation of each escape slide and slide raft, and corrective action if necessary. This AD was prompted by a report of incorrect installation of the girt panel on passenger doors and an incorrectly installed quick release (girt) bar into the

girt panel of the slide raft. We are issuing this AD to detect and correct incorrect girt installation of the escape slide and slide raft, which could prevent slide deployment during an emergency, and result in reduced evacuation capacity from the airplane and possible injury to occupants.

DATES: This AD becomes effective November 3, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 3, 2015.

We must receive comments on this AD by December 3, 2015.

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

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

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4203.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4203; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0183R1, dated September 29, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. The MCAI states:

> During inspections of two different A330 aeroplanes before delivery, incorrect connection of the girt panel was noticed on one passenger (PAX) door 2 and one PAX door 4. Further investigation revealed that the quick release (girt) bar was incorrectly installed into the girt panel of the affected slide raft.
>
> This condition, if not detected and corrected, would cause the slide pack to remain attached to the door, preventing slide deployment during an emergency (door in ''ARMED'' mode), leading to reduced evacuation capacity from the aeroplane and possible injury to occupants.
>
> Further inspections at the Airbus final assembly line revealed a third case of incorrect installation of girt panel, on one emergency exit door.
>
> Prompted by these findings, Airbus issued Alert Operators Transmission (AOT) A25L004–15 to provide inspection instructions.
>
> For the reasons described above, EASA issued AD 2015–0183 to require a one-time inspection of the escape slide and slide/raft attachments and, depending on findings, accomplishment of applicable corrective action(s) [including reinstalling the slide or declaring the affected door inoperative].
>
> Since that AD was issued, it was found that the Applicability could be reduced by excluding some aeroplanes and that there was a need to clarify the applicable Airbus MPD Tasks and MRBR MSI.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4203.

Related Service Information Under 1 CFR Part 51

Airbus has issued Alert Operators Transmission (AOT) A25L004–15, Rev 00, dated August 24, 2015. The service information describes procedures for performing a visual inspection of the girt installations of each slide and slide raft, and corrective action. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because incorrect girt installation of the of escape slide and slide raft could prevent slide deployment during an emergency and result in reduced evacuation capacity from the airplane and possible injury to occupants. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–4203; Directorate Identifier 2015–NM–142–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any

personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 30 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $2,550, or $85 per product.

In addition, we estimate that any necessary follow-on actions will take about 18 work-hours, for a cost of $1,530 per escape slide/slide raft. We have no way of determining the number escape slides/slide rafts on the aircraft that might need this action.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–21–07 Airbus: Amendment 39–18299. Docket No. FAA–2015–4203; Directorate Identifier 2015–NM–142–AD.

(a) Effective Date

This AD becomes effective November 3, 2015.

(b) Affected ADs

None.

(c) Applicability

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

(1) This AD applies to the airplanes identified in paragraphs (c)(1)(i) through (c)(1)(vii) of this AD.

(i) Model A330–201, –202, –203, –223, and –243 airplanes.

(ii) Model A330–223F and –243F airplanes.

(iii) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(iv) Model A340–211, –212, and –213 airplanes.

(v) Model A340–311, –312, and –313 airplanes.

(vi) Model A340–541 airplanes.

(vii) Model A340–642 airplanes.

(2) This AD does not apply to airplanes on which the installations of all escape slides and slide rafts have passed an inspection as specified in any task/item identified in paragraphs (c)(2)(i) through (c)(2)(v) of this AD.

(i) Task 25–62–41–01–1 Cabin Escape Facilities, of the applicable Airbus Maintenance Planning Document.

(ii) Task 25–62–41–02–1 Cabin Escape Facilities, of the applicable Airbus Maintenance Planning Document.

(iii) Task 25–62–41–03–1 Cabin Escape Facilities, of the applicable Airbus Maintenance Planning Document.

(iv) Task 25–62–41–04–1 Cabin Escape Facilities, of the applicable Airbus Maintenance Planning Document.

(v) Maintenance Schedule Item 25.62.00 section 01, 02, or 03, of the Cabin Escape Facilities, of the applicable Airbus Maintenance Review Board Report.

(d) Subject

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

(e) Reason

This AD was prompted by a report of incorrect installation of the girt panel on passenger doors and an incorrectly installed quick release (girt) bar into the girt panel of the slide raft. We are issuing this AD to detect and correct incorrect girt installation of the escape slide and slide raft, which could prevent slide deployment during an emergency, and result in reduced evacuation capacity from the airplane and possible injury to occupants.

(f) Compliance

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

(g) Inspection

Within 30 days after the effective date of this AD, inspect to identify the slide raft and escape slide part numbers installed on the airplane. A review of the airplane delivery or maintenance records may be used in lieu of the inspection if the slide raft and escape slide part numbers can be conclusively defined through such review.

(h) Affected Slides and Slide Rafts

(1) If the inspection required by paragraph (g) of this AD reveals any slide raft having P/N 7A1508, 7A1510, 7A1539, or 4A3934 series, or any escape slide having P/N 7A1509 or 4A3928 series: Within 30 days after the effective date of this AD, do a detailed inspection of the girt installation of the affected escape slide and slide raft, in accordance with paragraph 4.2 of Airbus AOT A25L004–15, Rev 00, dated August 24, 2015.

(2) For any door position where an affected slide raft or escape slide has been removed and reinstalled, or replaced since the airplane's entry into service, the inspection of the girt installation of the slide raft or escape slide at that position, as required by paragraph (h)(1) of this AD, does not have to be done.

(i) Corrective Action

If, during the inspection required by paragraph (h)(1) of this AD, the girt bar fitted into the girt of an escape slide, or the quick release bar fitted into the girt of a slide raft, is found to be incorrectly installed, before further flight, accomplish the applicable corrective action(s), in accordance with paragraph 4.3 of Airbus AOT A25L004–15, Rev 00, dated August 24, 2015.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International

Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0183, dated August 31, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4203.

(l) Material Incorporated by Reference

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

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

(i) Airbus Alert Operators Transmission A25L004–15, Rev 00, dated August 24, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on October 11, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–26603 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0277; Directorate Identifier 2015–NE–05–AD; Amendment 39–18262; AD 2015–18–04]

RIN 2120–AA64

Airworthiness Directives; CFM International S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to certain CFM International S.A. (CFM) CFM56–7B and CFM56–3 turbofan engines. Four headings in the Compliance section are incorrect. This document corrects the errors. In all other respects, the original document remains the same.

DATES: This final rule is effective on October 20, 2015. The effective date of AD 2015–18–04, Amendment 39–18262 (80 FR 55235, September 15, 2015) remains October 20, 2015.

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

FOR FURTHER INFORMATION CONTACT: Kyle Gustafson, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7183; fax: 781–238–7199; email: *kyle.gustafson@faa.gov.*

SUPPLEMENTARY INFORMATION: AD 2015–18–04, Amendment 39–18262 (80 FR 55235, September 15, 2015), requires AGB/transfer gearbox (TGB) magnetic chip detector (MCD) inspection of the affected gearshafts until removal.

As published, four headings in the Compliance section are incorrect.

No other part of the final rule has been changed.

The effective date of AD 2015–18–04 remains October 20, 2015.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ 2. The FAA republishes airworthiness directive (AD) 2015–18–04, Amendment 39–18262 (80 FR 55235, September 15, 2015) as follows:

2015–18–04 CFM International S.A.: Amendment 39–18262; Docket No. FAA–2015–0277; Directorate Identifier 2015–NE–05–AD.

(a) Effective Date

This AD is effective October 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International S.A. (CFM) CFM56–7B and CFM56–3 engines with a 73-tooth or 41-tooth gearshaft installed in the accessory gearbox (AGB), that has a gearshaft serial number in Appendix A or Appendix B of CFM Service Bulletin (SB) No. CFM56–7B S/B 72–0964, Revision 1, dated December 15, 2014.

(d) Unsafe Condition

This AD was prompted by a report of an uncommanded in-flight shutdown on a CFM CFM56–7B engine following rupture of the 73-tooth gearshaft located in the engine AGB. We are issuing this AD to prevent failure of certain AGB gearshafts, which could lead to failure of one or more engines, loss of thrust control, and damage to the airplane.

(e) Compliance

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

(1) Initial AGB/Transfer Gearbox (TGB)/Magnetic Chip Detector (MCD) Inspection and Analysis for CFM56–7B Engines

(i) For affected 73-tooth gearshafts, perform an AGB/TGB MCD inspection within 250 flight hours (FHs) since last inspection, within 25 FHs from the effective date of this AD, or when the gearshaft accumulates 3,000 FHs since new, whichever comes later.

(ii) For affected 41-tooth gearshafts, perform an AGB/TGB MCD inspection within 250 FHs since last inspection, within 25 FHs from the effective date of this AD, or when the gearshaft accumulates 6,000 FHs since new, whichever comes later.

(iii) If any magnetic particles, including fuzz, are seen, determine with laboratory analysis if the particles are 73-tooth or 41-tooth gearshaft material.

(iv) If the particles are 73-tooth or 41-tooth gearshaft material, remove the affected gearshaft(s) within 75 FHs since the AGB/TGB MCD inspection.

(2) Repetitive AGB/TGB MCD Inspection and Analysis for CFM56–7B Engines

(i) For affected 73-tooth gearshafts, perform an AGB/TGB MCD inspection and laboratory analysis within every 500 FHs since the last AGB/TGB MCD inspection until affected gearshaft is removed.

(ii) For affected 41-tooth gearshafts, perform an AGB/TGB MCD inspection and laboratory analysis within every 500 FHs since the last AGB/TGB MCD inspection until affected gearshaft is removed.

(iii) If any magnetic particles, including fuzz, are seen, determine with laboratory analysis if the particles are 73-tooth or 41-tooth gearshaft material.

(iv) If the particles are 73-tooth or 41-tooth gearshaft material, remove the affected gearshaft(s) within 75 FHs since the AGB/TGB MCD inspection.

(f) Mandatory Terminating Action for CFM56–7B Engines

(1) Remove the affected 73-tooth gearshaft prior to the gearshaft accumulating 6,000 FHs since new or within 50 FHs after the effective date of this AD, whichever comes later.

(2) Remove the affected 41-tooth gearshaft prior to the gearshaft accumulating 9,000 FHs since new or within 50 FHs after the effective date of this AD, whichever comes later.

(g) Installation Prohibition for CFM56–3 and CFM56–7B Engines

After the effective date of this AD, do not install an affected gearshaft into an AGB.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov*.

(i) Related Information

For more information about this AD, contact Kyle Gustafson, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7183; fax: 781–238–7199; email: *kyle.gustafson@faa.gov*.

(j) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on October 20, 2015.

(i) CFM International Service Bulletin No. CFM56–7B S/B 72–0964, Revision 1, dated December 15, 2014.

(ii) Reserved.

(4) For CFM service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329; email: *aviation.fleetsupport@ge.com*.

(5) You may view this service information at FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on October 6, 2015.

Ann C. Mollica,

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

[FR Doc. 2015–26345 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–1835; Airspace Docket No. 14–AGL–7]

Establishment of Class E Airspace; Hart/Shelby, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Hart/Shelby, MI. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Oceana County Airport. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 10, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z Airspace Designations and Reporting Points and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Oceana County Airport, Hart/Shelby, MI.

History

On July 28, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Oceana County Airport, Hart/Shelby, MI., (80 FR 44895). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas,

air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Oceana County Airport, Hart/Shelby, MI, to accommodate new Standard Instrument Approach Procedures at the airport. This action enhances the safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MI E5 Hart/Shelby, MI [New]

Oceana County Airport, MI
(Lat. 43°38′30″ N., long. 086°19′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Oceana County Airport.

Issued in Fort Worth, TX, on October 5, 2015

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–26177 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–0842; Airspace Docket No. 15–ACE–2]

Amendment of Class E Airspace for the Following Missouri Towns: Chillicothe, MO; Cuba, MO; Farmington, MO; Lamar, MO; Mountain View, MO; Nevada, MO; and Poplar Bluff, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Chillicothe Municipal Airport, Chillicothe, MO; Cuba Municipal Airport, Cuba, MO; Farmington Regional Airport, Farmington, MO; Lamar Municipal Airport, Lamar, MO; Mountain View Airport, Mountain View, MO; Nevada Municipal Airport, Nevada, MO; and Poplar Bluff Municipal Airport, Poplar Bluff, MO. Decommissioning of the non-directional radio beacons (NDB) and/or cancellation of NDB approaches due to advances in Global Positioning System (GPS) capabilities has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. Geographic coordinates are also adjusted at Chillicothe Municipal Airport, Chillicothe, MO; Lamar Municipal Airport, Lamar, MO; and Nevada Municipal Airport, Nevada, MO.

DATES: Effective 0901 UTC, December 10, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/.* For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jim Pharmakis, Operations Support Group, Central Service Center, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: (817) 222–5855.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at the Missouri airports listed in this document.

History

On July 17th, 2015, the FAA published in the **Federal Register** a

notice of proposed rulemaking (NPRM) to amend Class E airspace extending upward from 700 feet above the surface at Chillicothe Municipal Airport, Chillicothe, MO; Cuba Municipal Airport, Cuba, MO; Farmington Regional Airport, Farmington, MO; Lamar Municipal Airport, Lamar, MO; Mountain View Airport, Mountain View, MO; Nevada Municipal Airport, Nevada, MO; and Poplar Bluff Municipal Airport, Poplar Bluff, MO (80 FR 42436). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Chillicothe Municipal Airport, Chillicothe, MO; Cuba Municipal Airport, Cuba, MO; Farmington Regional Airport, Farmington, MO; Lamar Municipal Airport, Lamar, MO; Mountain View Airport, Mountain View, MO; Nevada Municipal Airport, Nevada, MO; and Poplar Bluff Municipal Airport, Poplar Bluff, MO. Also, Class E airspace extending upward from the surface is amended at Farmington Regional Airport, Farmington, MO. Airspace reconfiguration is necessary due to the decommissioning of NDBs and/or cancellation of the NDB approach at each airport. Additionally, geographic coordinates are adjusted for Lamar Municipal Airport, Lamar, MO; Nevada Municipal Airport, Nevada, MO; and Poplar Bluff Municipal Airport, Poplar Bluff, MO, to coincide with the FAAs aeronautical database.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ACE MO E2 Farmington, MO [Amended]

Farmington Regional Airport, MO
(Lat. 37°45′40″ N., long. 90°25′43″ W.)

Within a 3.9-mile radius of Farmington Regional Airport and within 1.7 miles each side of the 202° bearing from the airport extending from the 3.9-mile radius to 4 miles south of the airport.

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

* * * * *

ACE MO E5 Chillicothe, MO [Amended]

Chillicothe Municipal Airport, MO
(Lat. 39°46′55″ N., long. 93°29′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Chillicothe Municipal Airport.

* * * * *

ACE MO E5 Cuba, MO [Amended]

Cuba Municipal Airport, MO
(Lat. 38°04′08″ N., long. 91°25′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cuba Municipal Airport.

* * * * *

ACE MO E5 Farmington, MO [Amended]

Farmington Regional Airport, MO
(Lat. 37°45′40″ N., long. 90°25′43″ W.)
Farmington VORTAC
(Lat. 37°40′24″ N., long. 90°14′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Farmington Regional Airport, and within 4 miles each side of the 204° bearing from the airport extending from the 6.4-mile radius to 11.5 miles southwest of the airport, and within 1.3 miles each side of the Farmington VORTAC 300° radial extending from the 6.4-mile radius of the airport to the VORTAC.

* * * * *

ACE MO E5 Lamar, MO [Amended]

Lamar Municipal Airport, MO
(Lat. 37°29′10″ N., long. 94°18′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Lamar Municipal Airport.

* * * * *

ACE MO E5 Mountain View, MO [Amended]

Mountain View Airport, MO
(Lat. 36°59′34″ N., long. 91°42′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mountain View Airport.

* * * * *

ACE MO E5 Nevada, MO [Amended]

Nevada Municipal Airport, MO
(Lat. 37°51′09″ N., long. 94°18′17″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Nevada Municipal Airport.

* * * * *

ACE MO E5 Poplar Bluff, MO [Amended]

Poplar Bluff Municipal Airport, MO
(Lat. 36°46′26″ N., long. 90°19′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Poplar Bluff Municipal Airport.

Issued in Fort Worth, TX, on October 8, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–26273 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–0841; Airspace Docket No. 15–ACE–3]

Amendment of Class E Airspace for the Following Nebraska Towns: Albion, NE; Bassett, NE; Lexington, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Albion Municipal Airport, Albion, NE; Rock County Airport, Bassett, NE; and Jim Kelly Field Airport, Lexington, NE. Decommissioning of the non-directional radio beacons (NDBs) and/or cancellation of NDB approaches due to advances in Global Positioning System (GPS) capabilities has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. Also, the geographic coordinates are being updated for Rock County Airport and Jim Kelly Field Airport.

DATES: Effective 0901 UTC, December 10, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/.* For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jim Pharmakis, Operations Support Group, Central Service Center, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: (817) 222–5855.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at the Nebraska airports listed in this document.

History

On May 11th, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace extending upward from 700 feet above the surface at Albion Municipal Airport, Albion, NE; Rock County Airport, Bassett, NE; and Jim Kelly Field Airport, Lexington, NE. (80 FR 26870). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Albion Municipal Airport, Albion, NE; Rock County Airport, Bassett, NE; and Jim Kelly Field Airport, Lexington, NE. Airspace reconfiguration is necessary due to the decommissioning of NDBs and/or the cancellation of the NDB approach at each airport. Additionally, geographic coordinates are adjusted for Rock County Airport and Jim Kelly Field to coincide with the FAAs aeronautical database.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist

that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE NE E5 Albion, NE [Amended]

Albion Municipal Airport, NE
(Lat. 41°43′43″ N., long. 98°03′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Albion Municipal Airport.

* * * * *

ACE NE E5 Bassett, NE [Amended]

Rock County Airport, NE
(Lat. 42°34′16″ N., long. 99°34′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Rock County Airport.

* * * * *

ACE NE E5 Lexington, NE [Amended]

Jim Kelly Field, NE
(Lat. 40°47′26″ N., long. 99°46′33″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Jim Kelly Field.

Issued in Fort Worth, TX, on October 8, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–26275 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–0843; Airspace Docket No. 15–ASW–5]

Amendment of Class E Airspace for the Following Louisiana Towns: Jonesboro, LA and Winnfield, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Jonesboro Airport, Jonesboro, LA, and David G. Joyce Airport, Winnfield, LA. Decommissioning of the non-directional radio beacons (NDB) and/or cancellation of NDB approaches due to advances in Global Positioning System (GPS) capabilities has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports.

DATES: Effective 0901 UTC, December 10, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/.* For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jim Pharmakis, Operations Support Group, Central Service Center, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: (817) 222–5855.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at the Louisiana airports listed in this final rule.

History

On May 11th, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace extending upward from 700 feet above the surface at Jonesboro Airport, Jonesboro, LA, and David G. Joyce Airport, Winnfield, LA. (80 FR 26872). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Jonesboro Airport, Jonesboro, LA; and David G. Joyce Airport, Winnfield, LA. Airspace reconfiguration is necessary due to the decommissioning of NDBs and/or the cancellation of the NDB approach at each airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW LA E5 Jonesboro, LA [Amended]

Jonesboro Airport, LA
(Lat. 32°12′07″ N., long. 92°43′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Jonesboro Airport.

* * * * *

ASW LA E5 Winnfield LA [Amended]

David G. Joyce Airport, LA
(Lat. 31°57′49″ N., long. 92°39′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of David G. Joyce Airport.

Issued in Fort Worth, TX, on October 8, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–26277 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–1394; Airspace Docket No. 15–ACE–4]

Amendment of Class E Airspace; Tekamah, Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Tekamah Municipal Airport, Tekamah, NE. A Class E extension is no longer required due to the decommissioning of the Tekamah VHF Omni-directional radio range (VOR) facility and its associated standard instrument approach procedures (SIAPs). This enhances the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 10, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/.* For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jim Pharmakis, Operations Support Group, Central Service Center, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: (817) 222–5855.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at the Iowa airports listed in this document.

History

On May 21st, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace extending upward from 700 feet above the surface Tekamah Municipal Airport, Tekamah, NE. A Class E extension is no longer required due to the decommissioning of the Tekamah VHF Omni-directional radio range (VOR) facility and its associated standard instrument approach procedures (80 FR 29226). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR

part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius of Tekamah Municipal Airport, Tekamah, NE., reconfiguring the airspace for standard instrument approach procedures at the airport. The Tekamah VOR facility has been decommissioned and its associated standard instrument approach procedures have been canceled.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE NE E5 Tekamah, NE [Amended]

Tekamah Municipal Airport, NE
(Lat. 41°45′49″ N., long. 96°10′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Tekamah Municipal Airport.

Issued in Fort Worth, TX, on October 8, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–26272 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–1071; Airspace Docket No. 14–AGL–15]

Revocation of Class D Airspace; Springfield, OH

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

ACTION: Final rule.

SUMMARY: This action removes Class D airspace at Springfield-Beckley Municipal Airport, Springfield, OH. The closure of the air traffic control tower has necessitated the need to remove the Class D airspace area at the airport.

DATES: Effective 0901 UTC, December 10, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 29591; telephone: 202–267–8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as removes controlled airspace at Springfield-Beckley Municipal Airport, Springfield, OH.

History

On May 29, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to remove

Class D airspace at Springfield-Beckley Municipal Airport, Springfield, OH, (80 FR 30632). Interested parties were invited to participate in this proposed rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by removing Class D airspace at Springfield-Beckley Municipal Airport, Springfield, OH. The closing of the air traffic control tower at Springfield-Beckley Municipal Airport has made this action necessary for the efficient use of airspace within the National Airspace System.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace Areas Extending Upward From the Surface of the Earth.

* * * * *

AGL OH D Springfield, OH [Removed]

Issued in Fort Worth, TX, on October 7, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–26179 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–1387; Airspace Docket No. 15–AGL–4]

Establishment of Class E Airspace; Tomah, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Tomah, WI. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures at Bloyer Field Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 10, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications.*

For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Bloyer Field Airport, Tomah, WI.

History

On June 22, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Bloyer Field Airport, Tomah, WI (80 FR 35599). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Bloyer Field Airport, Tomah, WI, to accommodate new Standard Instrument Approach Procedures at the airport. This action enhances the safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL WI E5 Tomah, WI [New]

Bloyer Field Airport, WI

(Lat. 43°58′34″ N., long. 090°28′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Bloyer Field Airport.

Issued in Fort Worth, TX, on October 7, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–26178 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2015–0011]

RIN 0960–AH77

Extension of the Expiration Date for State Disability Examiner Authority To Make Fully Favorable Quick Disability Determinations and Compassionate Allowance Determinations

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending the expiration date of our rule that authorizes State agency disability examiners to make fully favorable determinations without the approval of a State agency medical or psychological consultant in claims that we consider under our quick disability determination (QDD) and compassionate allowance (CAL) processes. The current rule will expire on November 13, 2015. In this final rule, we are changing the November 13, 2015 expiration or ''sunset'' date to November 11, 2016, extending the authority for 1 year. We are making no other substantive changes.

DATES: This final rule is effective October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Kenneth Williams, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0608, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background of the QDD and CAL Disability Examiner Authority

On October 13, 2010, we published a final rule that temporarily authorized State agency disability examiners to make fully favorable determinations without the approval of a State agency medical or psychological consultant in claims that we consider under our QDD and CAL processes. 75 FR 62676.

We included in 20 CFR 404.1615(c)(3) and 416.1015(c)(3) provisions by which the State agency disability examiner authority to make fully favorable determinations without medical or psychological consultant approval in QDD and CAL claims would no longer be effective, unless we decided to terminate the rule earlier or extend it beyond that date by publication of a

final rule in the **Federal Register**. On August 28, 2014, we published a final rule extending the expiration date until November 13, 2015. 79 FR 51241.

Explanation of Provision

This final rule extends for 1 year the authority in the rule that we published on October 13, 2010 allowing disability examiners to make fully favorable determinations in certain disability claims under our QDD and CAL processes without the approval of a medical or psychological consultant. This rule allows us to make fully favorable determinations when we can as quickly as possible. The rule also helps us process claims more efficiently because it allows State agency medical and psychological consultants to spend their time on claims that require their expertise.

In the rule that we published on October 13, 2010, we noted that our experience adjudicating QDD and CAL claims led us to our decision to allow disability examiners to make some fully favorable determinations without a medical or psychological consultation. When we implemented the rule, we also knew that State agencies would require some time to establish procedures, adopt necessary software modifications, and satisfy collective bargaining obligations. Extending the rule provides data on the active processes as well as ongoing analysis of the data we will use to make a decision on whether to make the authority permanent.

Regulatory Procedures

Justification for Issuing a Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. However, the APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We have determined that good cause exists for dispensing with the notice and public comment procedures for this rule. 5 U.S.C. 553(b)(B). Good cause exists because this final rule only extends the expiration date of the existing provisions. It makes no substantive changes. The current regulations expressly provide that we may extend or terminate the current rule. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this rule as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes in our current rule, but are extending the expiration date of the rule. In addition, as discussed above, the change we are making in this final rule will allow us to better utilize our scarce administrative resources in light of the current budgetary constraints under which we are operating. For these reasons, we find that it is contrary to the public interest to delay the effective date of our rule.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it.

We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-age, Survivors and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons stated in the preamble, we are amending subpart Q of part 404 and subpart J of part 416 of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart Q—[Amended]

■ 1. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

■ 2. Amend § 404.1615 by revising paragraph (c)(3) to read as follows:

§ 404.1615 Making disability determinations.

* * * * *

(c) * * *

(3) A State agency disability examiner alone if the claim is adjudicated under the quick disability determination process (see § 404.1619) or the compassionate allowance process (see § 404.1602), and the initial or reconsidered determination is fully favorable to you. This paragraph will no longer be effective on November 11, 2016 unless we terminate it earlier or extend it beyond that date by publication of a final rule in the **Federal Register**; or

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart J—[Amended]

■ 3. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

■ 4. Amend § 416.1015 by revising paragraph (c)(3) to read as follows:

§ 416.1015 Making disability determinations.

* * * * *

(c) * * *

(3) A State agency disability examiner alone if you are not a child (a person who has not attained age 18), and the claim is adjudicated under the quick

disability determination process (see § 416.1019) or the compassionate allowance process (see § 416.1002), and the initial or reconsidered determination is fully favorable to you. This paragraph will no longer be effective on November 11, 2016 unless we terminate it earlier or extend it beyond that date by publication of a final rule in the **Federal Register**; or

* * * * *

[FR Doc. 2015–26488 Filed 10–16–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 81 and 82

[156A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076–AE93

Secretarial Election Procedures

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is amending its regulations governing Secretarial elections and procedures for tribal members to petition for Secretarial elections. This rule reflects changes in the law and the requirement that regulations be written in plain language. The rule also clarifies how tribes may remove Secretarial election requirements from their governing documents.

DATES: This rule is effective November 18, 2015.

FOR FURTHER INFORMATION CONTACT: Laurel Iron Cloud, Chief, Division of Tribal Government Services, Central Office, Bureau of Indian Affairs at telephone (202) 513–7641. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Bureau of Indian Affairs (BIA) is amending 25 CFR parts 81 (Tribal Reorganization under a Federal Statute) and 82 (Petitioning Procedures for Tribes Reorganized under Federal Statute and Other Organized Tribes), combining them into one Code of Federal Regulations part at 25 CFR part 81 (Secretarial Elections). The Secretarial elections regulations were originally adopted in 1964, and the Petitioning Procedures regulations were originally adopted in 1967. *See* 29 FR 14359 (October 17, 1964); 32 FR 11779 (August 16, 1967). The Department has not updated either of these regulations since 1981. *See* 46 FR 1668 (January 7, 1981).

A Secretarial election is a Federal election conducted by the Secretary of the Interior (Secretary) under a Federal statute or tribal governing document under 25 CFR part 81. *See Cohen's Handbook of Federal Indian Law* section 4.06[2][a]–[b], at 286–297 (Nell Jessup Newton ed., 2012). *See also Cheyenne River Sioux Tribe* v. *Andrus,* 566 F. 2d 1085 (8th Cir. 1977), *cert. denied,* 439 U.S. 820 (1978). This final rule:

- Responds to the 1988 amendments made to section 16 of the Indian Reorganization Act (IRA) (June 18, 1934, 48 Stat. 984) (25 U.S.C. 476), as amended, which established time frames within which the Secretary must call and conduct Secretarial elections;
- Provides that all elections will be handled by mailout ballot unless polling places are expressly required by the amendment or adoption article of the tribe's governing document;
- Responds to the amendments made to Section 17 of the IRA by the Act of May 24, 1990 (104 Stat. 207) (25 U.S.C. 477) under which additional tribes may petition for charters of incorporation and removes the requirement of an election to ratify the approval of new charters issued after May 24, 1990, unless required by tribal law; and
- Reflects the 1994 addition of two subsections to section 16 of the IRA by the Technical Corrections Act of 1994 (108 Stat. 707) (25 U.S.C. 476(f) & (g)) that prohibit the Federal government from making a regulation or administrative decision ''that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes.''

When Congress enacted the Oklahoma Indian Welfare Act (OIWA) in 1936, the language it used to guarantee the right of tribes to organize and adopt constitutions and bylaws was different from that used in the IRA. The OIWA language requires the Secretary to approve the constitution before it is submitted to the tribal membership for a vote to ratify it. These regulations reflect the difference in language between the IRA and the OIWA.

For many tribes, the requirement for Secretarial elections or Secretarial approval is anachronistic and inconsistent with modern policies favoring tribal self-governance. The rule includes language clarifying that a tribe reorganized under the IRA may amend its governing document to remove the requirement for Secretarial approval of future amendments. The Department encourages amendments to governing documents to remove vestiges of a more paternalistic approach toward tribes. Once the requirement for Secretarial approval is removed through a Secretarial election, Secretarial approval of future amendments is not required, meaning there will be no future Secretarial elections conducted for the tribe, and future elections will be purely tribal elections, governed and run by the tribe rather than BIA. Additionally, without a requirement for Secretarial approval, the constitution will no longer be governed by the other election-related requirements of the IRA, such as the minimum number of tribal voters to make an election effective. Such matters will be governed by tribal policy decisions rather than Federal ones.

Tribes with Secretarial election requirements are encouraged to remove them in furtherance of tribal sovereignty and self-determination.

The rule also clarifies that the Secretary will accept petitions for Secretarial elections only from federally recognized tribes included on the list of recognized tribes published by the Secretary pursuant to section 479a–1.

It is the policy of the Federal government to support tribal self-governance as a substitute for Federal governance to the maximum extent permitted under Federal law. This rule seeks to effectuate that policy.

II. Summary of Comments on the Proposed Rule and Responses to Comments

BIA published a proposed rule on Secretarial elections procedures on October 9, 2014. *See* 79 FR 61021. The original comment deadline was then extended to January 16, 2015. *See* 79 FR 75103. We received several comments during the public comment period and at tribal consultation and listening sessions. Several commenters stated their support for the proposed revisions to simplify and clarify the process, as well as provisions that recognize tribal self-determination and self-governance. A few commenters opposed the revisions, stating that the proposal exceeds statutory authority, establishes quasi government-to-government relationships with individuals, and includes inconsistencies. The following summarizes specific comments received and BIA's responses to those comments.

A. General

1. Application to Federally Recognized Tribes Only

Comment: One tribal commenter opposed the proposal to limit the availability of Secretarial elections to federally recognized tribes only. This commenter stated that the IRA, at 25 U.S.C. 479, allows for organization of residents of a reservation as a tribe, and that, as such, BIA is bound to allow residents to organize as a tribe under these regulations. The tribe points to several instances throughout the rule that fail to account for residents of a reservation organizing for the first time (*e.g.,* § 81.4 does not include in the definition of ''petition'' organization for the first time; ''spokesman for petitioners'' does not include an eligible voter selected by reservation residents seeking to organize for the first time; § 81.10(a)(2) allows any member to vote regardless of residence; § 81.52 limiting authority to petition to those instances where the tribe's governing document or charter of incorporation allows petitioning; § 81.57(b) requires a certain percentage of tribal members but does not include residence on reservation requirement).

Response: The final rule retains the draft rule's limitation of the availability of Secretarial elections to federally recognized tribes. The commenter is correct that, as a matter of law, a group of half-bloods on a reservation could seek to organize through a Secretarial election, even though the group is not listed as a federally recognized tribe. *See Pit River Home & Agric. Coop. Ass'n* v. *U.S.,* 30 F.3d 1088, 1096 (9th Cir. 1994). However, federal reservations currently in existence are under the jurisdiction of a federally recognized tribe. In practice, this means that it is no longer necessary to allow individual Indians residing on a federal reservation the option of requesting a Secretarial election. The Department has therefore determined that it is appropriate to limit the definition of ''tribe'' in the Secretarial elections regulation to listed federally recognized Indian tribes.

2. General

Comment: A few commenters stated that, where a tribe's election code is sufficient, the Secretarial elections should follow the tribe's procedures rather than the procedures in these regulations. The commenters stated that having different requirements causes unnecessary complications and that using the tribe's procedures would minimize the potential for confusion and show greater respect for tribal sovereignty.

Response: The Department agrees with the spirit in which this comment was made. The current rule included a provision, at § 81.5(d), that the election would be conducted as prescribed by the regulations unless the amendment article for the tribe's constitution and bylaws or charter provided otherwise, in which case the provisions of those documents would rule where applicable. The proposed rule omitted this provision without including a basis for its omission. The final rule reinserts this provision, with the addition that the tribal procedures must not violate Federal law. *See* § 81.2(b). This provision allows for the use of tribal election procedures. If a tribe wishes to use tribal voting procedures for a Secretarial election, it may prescribe voting procedures in its amendment article. The exception is that a tribe may not apply voting qualifications that conflict with Federal voting qualifications, such as the requirement that voters be at least 18 years of age. Federal voting qualifications continue to apply, regardless of tribal voting qualifications, because a Secretarial election is a Federal election in which Federal voting standards apply (see discussion below).

If a tribe wishes to avoid entirely the application of all Federal voting requirements, including Federal voting qualifications, the tribe may hold a Secretarial election to remove the requirement for Secretarial approval, such that all future elections would be tribal elections conducted in accordance with tribal voting procedures and substantive requirements.

Comment: A tribal commenter questioned why, in proposed § 81.2(f), a tribe would have to undergo a Secretarial election to amend a Federal charter of incorporation if the charter was ratified before the 1990 IRA amendments.

Response: Prior to 1990, the IRA required a Secretarial election for the issuance and amendment of a Federal charter of incorporation. Therefore, the amendment article of the corporate charter would have language requiring a Secretarial election. The 1990 amendments to the IRA removed this election requirement as a matter of Federal law, allowing the tribal governing body, rather than ''a majority vote of the adult Indians living on the reservation,'' to ratify the charter. The regulations had not been updated since 1990, so they continued to include the requirement for a Secretarial election for the issuance of a Federal charter of incorporation, and the proposed rule would have carried forward that requirement. In response to the comment, the final rule removes this requirement, so that a Secretarial election is required to amend a charter only if the charter itself states that a Secretarial election is required to amend it. *See* final § 81.2(a)(6).

3. Removal of Requirement for Secretarial Election

Comment: Several tribal commenters stated their support for the provision at proposed § 81.2(h), which states that a tribe may amend its governing documents to remove the requirement for Secretarial approval. One tribe stated that this provision promotes tribal sovereignty and self-governance, allowing the tribe to have the ultimate say in whether a Secretarial election should be required. One tribe asked about the consequences to a tribe of removing the requirement for Secretarial approval of future governing document amendments.

Response: The final rule retains this proposed provision, as each tribe has the discretion to require a Secretarial

election or not in its governing documents. *See* final § 81.2(a)(8). As explained by a Federal representative at the tribal consultation sessions, removing the requirement for Secretarial approval of future amendments means that Secretarial elections will no longer be required for additional amendments to the tribe's governing document and the governing document will no longer be considered to have been adopted pursuant to a Federal statute. Of course, removing the Secretary from the amendments section does not diminish the government-to-government relationship or Federal trust responsibilities owed to the tribe. The Department encourages tribes to take such action in furtherance of tribal self-governance.

Comment: One tribal commenter asked whether a tribe that has reorganized under the IRA and wishes to remove the requirement for a Secretarial election must hold a Secretarial election to remove that requirement.

Response: The tribe must hold a Secretarial election to remove the requirement for a Secretarial election from its governing document. Final § 81.2(a)(8) addresses this issue.

Comment: One tribal commenter requested clarification in § 81.2 that removing the requirement for Secretarial approval of amendments does not mean removing the requirement for Secretarial elections.

Response: The IRA makes it clear that Secretarial approval of a tribe's organic documents is part of the Secretarial election process, not a separate action. *See, e.g.,* 25 U.S.C 476(d)(1).

B. Definitions

Comment: Two tribal commenters opposed including Solicitor opinions in the definition of ''applicable law.'' One stated it is unclear whether ''opinion of the Solicitor'' includes opinions written by those in regional Solicitor offices or only M-opinions. The other stated that such opinions may provide guidance, but do not carry the force of law.

Response: The proposed rule included Solicitor opinions and Interior Board of Indian Appeals (IBIA) decisions to alert the public that the Department intends to abide by its own prior interpretations of statutes, regulations, and other primary law. In response to the concern expressed by the commenters, the final rule removes these items from the definition of ''applicable law.'' However, the Department is bound by opinions of the Solicitor and IBIA decisions to the extent such interpretations resolve any ambiguity or vague provision of the law.

Comment: One commenter stated confusion over defining ''cast'' as ''received'' because the Secretarial Election Board would not know a ballot was spoiled before cast.

Response: No change to the proposed definition of ''cast'' is necessary in response to this comment because the voter must recognize a ballot is spoiled before cast and identify it as such to the Board in order to obtain a new ballot. If the voter does not recognize the ballot is spoiled, then the vote is considered cast when the Board receives it.

Comment: One commenter stated that the ''Eligible Voters List'' and ''tribal request'' should not include individuals' birthdates for privacy reasons.

Response: The Eligible Voters List, and the list provided as part of the tribal request, must include individuals' birthdates to allow the Secretarial Election Board to ascertain whether each individual is over 18 years of age and to distinguish between individuals with the same name. The Secretarial Election Board does not make these lists public; it posts only the Registered Voters List, which does not include birthdates. *See* final § 81.30.

Comment: A tribal commenter asked whether ''local Bureau office'' means the agency or regional office or both, and noted that ''local Bureau Official'' includes the Superintendent, Field Representative, or other official with delegated responsibility, stating that there is a potential for confusion.

Response: In most of Indian country, the BIA office serving as the primary point of contact between tribes and the Bureau is an Agency headed by a Superintendent. In some places, however, the primary point of contact may be a BIA Field Office; in other places, the Regional Office may serve as the primary point of contact. The terms ''local Bureau office'' and ''local Bureau official'' are used because these terms embrace all three possibilities. For this reason, no changes to these terms have been made in response to the comment.

Comment: A commenter stated that the proposed definition of ''member'' would not provide for tribes without written criteria for membership or for tribes that do not have formal enrollment.

Response: The final rule revises the definition of ''member'' to account for tribes without written criteria, by deleting the word ''written.'' The final rule also accounts for tribes without formal enrollment by deleting ''duly enrolled'' and instead providing that the member must be someone who meets the criteria for membership in the tribe and, if required by the tribe, is formally enrolled. This definition signifies that there is a rebuttable presumption that the tribe's identification of its members is accurate in the list it provides of all members who will be 18 years old or older within 120 days of the tribal request. This definition also signifies that the list must, in fact, be accurate, by including all persons who meet the tribe's criteria for membership and who will be 18 years old or older within 120 days of the request (and, if the tribe's governing document's amendment article imposes additional requirements for petitioning, also meets those requirements).

Comment: A commenter stated that the definitions of ''petition'' and ''spokesperson for the petitioners'' should be revised to include circumstances in which a tribe may be adopting or ratifying a governing document for the first time.

Response: The final rule makes no change to the proposed definition of ''petition'' because it would already cover circumstances in which a federally recognized tribe is adopting or ratifying a governing document for the first time. The final rule makes a change to the definition of ''spokesperson for the petitioners'' to replace ''eligible voter'' to ''member'' in response to this comment, because the tribe would not yet have a list of eligible voters if adopting or ratifying a governing document for the first time.

Comment: A tribal commenter stated that using the same definition for ''absentee ballot'' and ''mailout ballot'' is confusing and makes it difficult to discern the difference in procedures in proposed § 81.22(f) and (g).

Response: A mailout ballot and an absentee ballot are the same types of ballots; they are identified with different nomenclature depending on whether the entire election is conducted by mail (''mailout ballot'') or whether polling sites are used but individual voters submit their ballots by mail on a case-by-case basis because they are unable to vote in person at the polls (''absentee ballot''). In response to this comment, the final rule clarifies the differences between procedures for absentee ballots and mailout ballots by making the differences explicit in final §§ 81.4 and 81.22(f) and (g).

Comment: A few commenters asked why the term ''Indian'' is not defined in the rule. One noted that such a definition is necessary to allow groups of Indians residing on a reservation to organize.

Response: The rule does not need to define the term ''Indian'' because the rule does not use this term and instead

relies on whether an individual meets the criteria for membership in the tribe.

C. Provisions Applicable to All Secretarial Elections

1. Tribal Request

Comment: One commenter requested clarification on what BIA considers to be the official date the tribal request is submitted, starting the clock on the statutory deadline for holding the election.

Response: The final regulations consider the clock to start when the Bureau receives a complete tribal request, as defined in 83.4 to include the duly adopted tribal resolution or other appropriate tribal document, the exact document or amended language to be voted on, and the list of all tribal members who will be 18 or older within 120 days of the request with last known addresses, dates of birth, and voting district, if any.

2. Informal Review and Official Request

Comment: A tribal commenter stated that proposed § 81.5 should include an instruction that the local Bureau official will also review and comment on the procedures set out in the federally approved governing document.

Response: The final rule addresses this comment by clarifying in § 81.5 that Bureau officials will offer technical assistance to the tribe during an informal review.

Comment: A few commenters opposed the proposed approach of requiring the tribe to seek technical assistance from the Bureau prior to submitting a request for Secretarial election, noting that the statute provides that technical assistance should occur following submission of the request. One commenter stated that imposing a pre-submission requirement that would bar any formal requests unless and until BIA comments and a tribe or petitioners respond is unlawful. A few other commenters stated that the proposed regulations call for a quick time period in which the election may be held after the request, leaving a short turnaround time for notice, voter education and registration. One of these commenters stated that the timeframe is ''unrealistic'' and noted that the Board becomes ''overwhelmed with workload'' once the process begins.

Response: The statute requires the Secretary to call and hold an election within a certain period of time following the receipt of a tribal request for an election. *See* 25 U.S.C. 476(c) (requiring the Secretary to call and hold an election within 180 days to ratify a proposed document or revoke an existing document or 90 days to ratify an amendment to an existing document). The statute also requires that, during this time period, the Secretary provide technical advice and assistance and review the final draft of the document to determine if any provision is contrary to applicable laws. *See* 25 U.S.C. 476(c)(2).

Practically, these timeframes pose a challenge for even the most skilled and experienced of Bureau and Department personnel because there are many steps required to ''call and hold'' an election and require considerable responsive cooperation from tribal officials (*e.g.,* allow the tribe at least 10 days to appoint members to the Secretarial Election Board, prepare and send the Secretarial Election Notice Packet sufficiently in advance of the election date, allow time for the return of registration forms, prepare the Registered Voters List, allow for challenges to the Registered Voters List, prepare and send official ballots to voters). As some commenters pointed out, taking all these steps leaves little time to provide technical advice and assistance or review the final draft to determine if any provision is contrary to applicable laws. Further, in nearly all cases, Bureau expertise is required to perfect a request to include all necessary information and avoid inconsistencies. For these reasons, while it is not required by law or regulation, the Department strongly recommends that tribes seek an informal review from the Department to take advantage of the Bureau's and Department's accumulated experience before submitting an official request for election. This informal review will provide the Department with the time to ensure that all the necessary documents are internally consistent and as compliant as possible with applicable laws and avoid complications resulting from conflicting or noncompliant documents. Informal review reflects best practices and good governance. It helps to ensure competent and thoughtful handling of this most important of government functions and seeks to avoid inadvertent disenfranchisement of voters. While the informal review is entirely optional, and a tribe may choose instead to immediately submit a request for Secretarial election, the informal review will ultimately be more efficient by helping to ensure that the election runs as smoothly as possible and that the results are meaningful. The final rule clarifies at §§ 81.5 and 81.6 that this informal review is prior to, and separate from, the process that follows the submission of a request for election that triggers the statutory timeframes.

Comment: A commenter also noted that requiring two submissions (a pre-submission review and then the formal request) will require two tribal resolutions.

Response: No tribal resolution is required to request the informal review. The Bureau has the discretion to ask for confirmation in some form of the authority of the person requesting, however, that the request is on behalf of the tribe.

Comment: A commenter also noted that BIA is under no deadline to provide comments in the initial review.

Response: While the commenter is correct that the rule does not provide a deadline for the Bureau to assist the tribe as part of the informal review, it is in the Bureau's best interest to respond as expeditiously as possible because, at any time, the tribe could submit a formal request triggering the statutory timeframe.

Comment: A tribal commenter stated that the rule should allow the tribe to end the consultation process and require BIA to move forward in holding the election, in lieu of responding to BIA's issues.

Response: The final rule allows a tribe to end the informal review and require the Bureau to move forward in holding an election at any time by submitting a tribal request for election. For IRA elections, once a formal request for election is submitted, the Bureau will provide technical assistance, culminating in a letter that either authorizes the election with no suggestions for changes, or authorizes the election with suggestions for changes and advises the tribe of any provisions that are contrary to applicable laws. The tribe may choose to accept the suggested changes, or may choose to reject the suggested changes; in either case, the election will proceed. Note, however, that if the tribe chooses to reject the suggested changes, it risks having the Bureau disapprove of the constitution or amendment if it contains provisions that are contrary to applicable laws. The final rule clarifies this risk at § 81.7(b). For OIWA elections, once a formal request for election is submitted, the Bureau will provide technical assistance, culminating in a letter that either authorizes the election, or identifies a provision of the proposed document that is contrary to law to be addressed before the election may be authorized. *See* final § 81.46.

Comment: A commenter stated that the technical assistance provisions in proposed §§ 81.6 and 81.47 contain

similar provisions but are not worded the same.

Response: These sections in the final rule are combined in Subpart C, General Provisions, to ensure that they match. Please note that there is a substantive difference in how the Bureau handles the request depending on whether the election occurs under the IRA or OIWA because of differences in the language of the statutes. Documents adopted pursuant to the OIWA become effective upon ratification by the membership; therefore, Departmental review and approval must necessarily be completed before the election is held. Stated differently, elections under the OIWA require a Secretarial determination that the proposed document or amendment is not contrary to applicable law before the Secretary may authorize the election.

Comment: A tribal commenter stated concern that the authorizing official could reverse positions after the election results are in, by finding the proposal is contrary to Federal law even though the official did not find it was contrary to Federal law during the initial review. This commenter suggested that the determination should be made only once—when the proposal is first presented.

Response: The commenter is correct that the determination as to whether the proposal is contrary to applicable laws is made twice: when the request for election is first submitted, and then after the election. The statute requires the Department to make the determination at these points. See 25 U.S.C. 476(c)(2)(B) (when the Department reviews the tribal request) and 476(d))(when the Department determines whether to approve of the document). The Department's first interpretation of whether any provision is contrary to applicable laws is binding on the Department's later interpretation, to ensure consistency; however, it is conceivable that, between the time the Department makes its first determination to the end of the election, a change in the applicable law could occur. The Department must review the results of the election in light of whether any provision is contrary to applicable laws at the time approval is given.

Comment: A few commenters stated their support for the provision at proposed § 81.8 that the Department will defer to the tribe's interpretation of its own documents, but stated their opposition to the second sentence of proposed § 81.8 that allows the Secretary to interpret tribal law when necessary ''to carry out the government-to-government relationship with the tribe.'' These commenters disagreed with the implication that the Secretarial interpretation of tribal law would trump the tribe's interpretation.

Response: The final rule retains the proposed language at final § 81.9, reserving the Secretary's authority to interpret tribal law when necessary. *Udall* v. *Littell,* 366 F.2d 668, 672 (D.C. Cir. 1966), *cited in United States* v. *Eberhardt,* 789 F.2d 1354, 1361 (9th Cir. 1986), and in *Cal. Valley Miwok Tribe* v. *United States,* 515 F.3d 1262, 1267 (D.C. Cir. 2008). The specific provision allowing the Secretary to interpret tribal law in those rare cases when it is necessary to carry out the government-to-government relationship with the tribe incorporates IBIA precedent establishing that the Bureau should refrain from interpreting tribal law unless it must do so in order to make a decision it is required to make in furtherance of its government-to-government relationship with the tribe. *William H. Richards, et al.* v. *Acting Pacific Regional Director,* 2007 I.D. LEXIS 50, *10, 45 IBIA 187 (2007); *Sandra Maroquin* v. *Anadarko Area Director,* 29 IBIA 45 (1996), citing *Parmenton Decorah,* 22 IBIA 98. Consistent with its strong policies in favor of tribal self-governance, the Bureau will not exercise this authority to interpret tribal law lightly or often, and reserves the authority for those cases where, for example, it believes a tribe diverges from the apparent mandate of its governing document without a reasonable explanation. The Secretary must balance deference to tribes with the duty to ensure the Secretarial election includes the safeguards of any other Federal election.

3. Who May Vote in a Secretarial Election

Comment: Several tribes asked questions regarding who may vote in a Secretarial election. For example, at least one tribe asked for language stating that the tribe's governing documents may establish eligibility for voting. Another tribe asked what happens if the tribe's governing document establishes an age different from 18 years to define eligible voters.

Response: The 26th Amendment to the Federal constitution established the minimum voting age for Federal elections to be 18. Secretarial elections are Federal elections, and, as such, anyone who is 18 years of age or older and otherwise qualified is eligible to vote, even if the tribal governing document requires voters to be 21 to be eligible to vote in tribal elections. This provision is at final § 81.11. Any other eligibility qualifications that the tribal governing document imposes for voting in Secretarial elections apply.

Comment: A tribal commenter asked under what circumstances voting is limited to only the class of citizens who voted on the original tribal charter or governing document.

Response: Voting is limited to the class of citizens who voted on the original tribal charter or governing document only if the tribe's governing documents establish that limitation.

Comment: A commenter stated that proposed § 81.9 appears to allow any tribal member to vote on an amendment to a governing document, even if the governing document limits who may vote to those members who reside on the reservation.

Response: The proposed § 81.9(b)(2) and final § 81.10(b)(2) state that the member must meet the qualifications in the tribe's governing documents or charter in addition to being over the age of 18. Any restrictions in the tribe's governing document or charter on who can vote continue to apply (unless it is an age restriction, because Federal law establishes a voting age of 18). For example, if the governing document's amendments article limits the vote to those members who reside on the reservation, then only those members who reside on the reservation (and are age 18 or older) may vote.

4. Costs of Holding a Secretarial Election

Comment: One commenter requested that the rule clarify that once a tribe removes the Secretarial election requirement, the tribe must pay for all subsequent elections.

Response: The final rule clarifies in § 81.16 that the tribe is responsible for paying the costs of tribal elections.

Comment: A commenter asked whether the Bureau will pay for interpreters, audio-visual aids, or reasonable accommodations for those with impairments required by proposed § 81.12. Another commenter asked for additional detail on what covered costs would include.

Response: The final rule states that the Bureau will pay for costs of holding a Secretarial election. *See* final § 81.16. Examples of costs the Bureau will pay for are the costs of printing and mailing ballots and, if polling places are required, use of voting machines. In many cases, the Secretarial Election Board is able to arrange for facilities and services such as interpreters and audio-visual aids at no cost. In those cases where such costs are necessary, the Bureau will pay for them.

Comment: A few commenters stated that compacting and contracting tribes

should be responsible for paying for Secretarial elections only if they received compact or contract funds specifically for the purpose of conducting a Secretarial election.

Response: The final rule clarifies that a tribe will be responsible for the costs of a Secretarial election only if it has contracted or compacted for that function.

Comment: One commenter suggested the rule should require the Bureau to pay for an election requested by petition where the tribe contracting or compacting for that function refuses.

Response: If a contracting or compacting tribe that has contracted for this function refuses to pay the costs of a Secretarial election for any reason, the tribe would be in violation of the contract or compact. If necessary to meet statutory timeframes, the Regional Director may draw Bureau funds to pay for the election and seek reimbursement from the tribe.

D. IRA (and OIWA, as Applicable) Secretarial Elections

1. Secretarial Election Board

Comment: A few commenters requested that proposed § 81.19(b) clarify that, when a tribe fails to appoint two tribal members to the Secretarial Election Board, the individuals that the Local Bureau Official appoints will be tribal members.

Response: The final rule at § 81.19(c) adds that the Local Bureau Official will appoint tribal members if they are available.

Comment: A commenter stated that the Chair of the Secretarial Election Board should be a tribal member, rather than a Bureau employee.

Response: The final rule retains the requirement for the Chair to be a Bureau employee. A Federal employee is necessary for this role because a Secretarial election is a Federal election and a Federal responsibility and, as such, it is the Bureau's responsibility to fulfill the Chair duties of ensuring the Board fulfills its responsibilities and that the proper procedures are followed. In most cases, a tribe may ultimately avoid this provision in the future by amending its governing documents to remove the requirement of a Secretarial election.

Comment: A few commenters stated that where the election is being held as a result of a petition, the spokesperson for the petitioners, rather than the tribe, should appoint the two members to the Secretarial Election Board.

Response: The final rule provides that, where the election is being held as a result of a petition, the spokesperson for the petitioners may appoint one member to the Board and the tribe may appoint one member to the Board.

Comment: A commenter requested replacing ''tribe'' with ''tribe's governing body'' in § 81.19 to clarify who specifically appoints individuals to the Board.

Response: The final rule retains the term ''tribe'' because who speaks for the tribe may vary by tribe.

Comment: A commenter stated that the 10-day timeline is not sufficient time for the Tribe to appoint two members to the Board, and requested increasing the time to 15 days. This commenter stated that there are times of the year, such as during Tribal Council breaks, that it could be difficult to make an appointment within 10 days.

Response: Because the tribe has control over when it submits a tribal request for election and has advance notice that it will need to appoint two members to the Board and because BIA is required to move very quickly, the final rule does not increase the 10-day timeline for appointment.

Comment: A commenter asked whether the Board must conduct business at a known location so voters will know where to request a new ballot.

Response: There is no established location for the Board to conduct its business. Final § 81.40 clarifies that voters can go to the local Bureau official to request a new ballot.

2. Ballot and Submission of Ballot

Comment: A commenter stated that proposed § 81.24(f) is confusing because it implies that a voter must submit a request for a mailout ballot in addition to registering, rather than automatically receiving a mailout ballot upon registering.

Response: The final rule clarifies at § 81.24(f) the procedure required only where a voter needs an absentee ballot even though there are polling sites.

Comment: A commenter suggested that the regulations require a cover sheet describing all proposed amendments and ballots if there are several amendments to be voted on, and therefore several ballots.

Response: As proposed and final § 81.34(a) state, each proposed amendment will have a separate ballot so there may be several ballots, as the commenter notes. The final regulations adopt the commenter's suggestion for a cover sheet enumerating the ballots in final § 81.36(a).

Comment: A commenter asked what ''ballot transactions'' in proposed § 81.35 are. A few commenters suggested using alternative delivery methods, beyond U.S. mail, such as commercial carrier or personal delivery, to increase voter turnout. Another commenter stated that the proposal to allow voting only through U.S. mail may stifle voter participation by disallowing voters the opportunity to return registration forms and ballots in person.

Response: The final rule clarifies § 81.35 to use the word ''deliveries'' rather than ''transactions.'' The final rule also adds hand-delivery as a method for submitting ballots. Other methods of delivery are not added because the regularity and uniformity of the U.S. mail allows the Bureau to better track receipt of ballots by limiting intake to one carrier.

Comment: A commenter requested that a timeline be added by which ballots must be mailed to voters, to ensure that the voters receive the ballot a minimum amount of time before the election.

Response: The final rule adds that the Board must send the ballots to registered voters ''promptly upon completion'' of the final list of registered voters (*i.e.,* after resolution of any challenges).

3. Eligible Voters List

Comment: A commenter stated that the tribe should have the option to request that the Board return the Eligible Voters List to the tribe for retention, to avoid opening it to the possibility of being disclosed under FOIA.

Response: Because the Secretary's determination of who can vote is based on the Eligible Voters List, the list becomes a Federal record, which is retained in accordance with Federal records schedules. While Federal documentation is subject to FOIA disclosure, it is also protected by the Privacy Act, as applicable, and tribal rolls are generally excluded from disclosure under one or both of these laws.

Comment: A commenter stated that tribes, rather than the Bureau or Board, should determine who qualifies as registered voters under tribal standards for eligibility to vote. This voter also stated that eligible voters should be determined in accordance with eligible voter qualifications in tribal ordinances.

Response: The Eligible Voters List, supplied by the tribe, is the starting point for determining who can register to vote; however, the Federal requirement that individuals must be 18 years of age or older to vote applies to Secretarial elections because they are Federal elections. The Department has a responsibility to verify the list provided

by the tribe to ensure that the rights of individual tribal members to vote in the Federal election are protected. If the amendment section of the tribe's governing document includes eligibility qualifications, the Bureau will apply those qualifications.

4. Notice

Comment: A few commenters suggested requiring the Secretarial election notice and results to be posted on the tribe's Web site.

Response: The Department encourages tribes to publicize both the notice and results, including encouraging tribes to post such information on their Web sites. Proposed and final § 81.25 require the Board to post the Secretarial election notice at the local Bureau office and tribal headquarters, and provides the flexibility for the Board to post in other public places, which may include posting on the tribe's Web site. The Board is also required to post the results at the local Bureau office, tribal headquarters, and other places listed in the Secretarial lection notice under § 81.42. The final § 81.42 also adds that the Board may publicize the election results in other ways, such as by posting on the tribe's Web site.

Comment: One commenter stated that access to information is especially needed where a large portion of the tribal voting population is located off the reservation. This commenter also stated that the information such voters receive is not always clear or complete.

Response: The regulations require the Board to send the Secretarial election notice to all eligible voters. The Bureau also encourages the tribe to provide informational meetings to members. The Board Chairman works with the tribal government, including any appointed board members, to ensure the information in the Secretarial election notice packet is as complete and as accurate as possible. For example, if an amendment is to be voted on, the packet will include a side-by-side comparison of the new and old language. The final rule adds to § 81.23 that such a comparison will be included in the packet.

Comment: A commenter stated that the lack of an accurate membership roll has disenfranchised voters and is a chronic problem. This commenter recounted experiences with Secretarial elections in the past in which mailings were returned as undeliverable.

Response: Each tribe is responsible for its own enrollment and maintaining its membership roll, if any. Tribal members are responsible for updating their addresses with the tribe. Tribes are strongly encouraged to engage in address update initiatives with members as soon as the tribe realizes it will need to eventually provide a list of eligible voters as part of an upcoming tribal request. The Department relies on the tribe's Eligible Voters List in compiling the Registered Voters List; however, in recognition that there may be inaccuracies, the regulations allow individuals the opportunity to challenge the Registered Voters List.

Comment: A commenter suggested developing internal procedures, based on input from election boards, to help ensure compliance with Secretarial election regulations.

Response: These updates to the regulations are intended to provide more explicit procedures for Secretarial elections to ensure uniformity. To the extent necessary to fully implement these revised regulations, the Department will develop handbooks or other implementing documents.

Comment: A commenter stated that the proposed requirement at § 81.22(b) for the Board to send the Secretarial Election Notice Packet at least 60 days before the election leaves too little time for the Bureau to conduct the other necessary activities, such as preparing the notice packet.

Response: The proposed rule required the packet to be sent at least 60 days before the election to ensure that voters had as much notice as possible of the election. In response to the comment that this leaves too little time on the front end for other activities, the final rule instead provides that the Board must mail the package at least 30 days before the election, but no more than 60 days before the election. This final language at § 81.22(b) adopts the timeframes set out in the current rule at § 81.14.

5. Registration

Comment: One commenter suggested editing proposed § 81.9 to clarify that the voters must meet the qualifications required by the tribe's governing documents or charter ''for that particular type of Secretarial election.'' The commenter also stated that the section should state that, for a tribe already reorganized under Federal statute, if the tribe's governing documents or charter do not define the voting qualifications, then the tribe's election code or ordinance should apply. A few commenters stated that voting qualifications established by the tribe should apply. A tribe stated that its constitution requires amendments to be approved by a majority of tribally registered voters, but the proposed regulations require the constitutional amendments be approved by federally registered voters.

Response: The final § 81.10 incorporates the suggested edits clarifying that the voting qualifications must be required ''for that particular type of Secretarial election.'' The final rule does not make any change to address when the tribal governing documents or charter of a tribe already reorganized under Federal statute do not define voting qualifications. In these situations, any tribal member age 18 or older may vote.

Comment: One commenter stated that voters should not have to ''re-register'' to vote in a Secretarial election, but that registration for a tribal election should also count as registration for a Secretarial election. The commenter stated that requiring separate registration could cause confusion, suspicion, and disenfranchisement if voters are unaware of or disinclined to comply with the registration requirement. This commenter stated that eliminating the need for separate registration would also allow Secretarial elections to be conducted at the same time as tribal elections, minimizing confusion and maximizing voter participation.

Response: Registration for a Secretarial election must be separate from registration for a tribal election because Federal voting qualifications may be different from tribal voting qualifications. The Board will work with the tribal governing body to ensure that voters are informed of the need to register specifically for the Secretarial election, separately from tribal election registration. Tribes have the option of holding a Secretarial election to remove the Secretarial election requirement if they believe the separate registration process is unnecessary or inappropriate. Indeed, tribes are encouraged to do so, consistent with the strong Federal policy favoring tribal self-governance. The proposed and final regulations recommend that Secretarial elections not be conducted at the same time as tribal elections because of the potential for confusion, given that different voting qualifications may apply.

Comment: A few commenters stated that, in the past, several tribal members failed to register for the Secretarial election. One asked how the Board can verify that every eligible member registers.

Response: The tribe provides the Board with the Eligible Voters List, and the Board then sends out the registration form to each individual on the list. While the Board will work with the tribe to inform voters of the need to register specifically for the Secretarial

election, it is up to each individual to register.

Comment: One commenter stated that the definition of ''Registered Voters List,'' which states that the posted list will include the voting district, is inconsistent with proposed § 81.31, which states that the list will show names only.

Response: The final § 81.31 clarifies that the Registered Voters List will include both the names and, if applicable, voting districts.

Comment: A commenter stated that there should be a mechanism, even if after the fact, to challenge the removal of a name from the Registered Voters List.

Response: Both the proposed and final § 81.32 provide the opportunity to challenge the Registered Voters List prior to the election. The election occurs only after the Board has resolved challenges and finalized the Registered Voters List. If someone disputes how the Board resolved a challenge to the Registered Voters List, that person may appeal the Board's determination.

Comment: One commenter stated that if the registration of a voter is rejected, that person should be allowed to vote under supervised circumstances, rather than holding a whole new election.

Response: If a voter's registration is rejected, that person has the opportunity to challenge his or her omission from the registered voter's list. The election is not held until challenges to the Registered Voters List are decided.

Comment: One commenter stated that voters should be able to mail the registration form at the same time as the ballot, or if polling sites are used, to allow same-day registration. This commenter stated that doing so would reduce unnecessary steps, eliminate confusion, and increase voter turnout.

Response: The regulations establish a process whereby registration is completed as a first, and separate, step from voting, to allow for the compilation of a Registered Voters List prior to the election, and allow time for resolution of challenges to the Registered Voters List prior to the election. This process is designed to promote due process and confidence in the election's outcome. By combining these steps, there would be no allowance for challenges to the Registered Voters List. Allowing for challenges to the Registered Voters List after the election would delay posting of election results, because the Board would first have to review and resolve challenges, and would require tracking the source of each individual ballot, undermining anonymity, to allow the Board to extract the vote of anyone ultimately removed from the Registered Voters List. However, a tribe may request a waiver to allow for registration and voting at the same time; for example, if a tribe plans to hold an event where most of the membership is expected to be present, same-day registration and voting may be appropriate.

Comment: One commenter suggested having a universal registration form showing the address to which the ballot may be mailed.

Response: With this proposed rule, the Department submitted a request for approval under the Paperwork Reduction Act, including a universal registration form. We have revised the form to include a placeholder for the address to which the ballot may be mailed.

6. Polling Sites

Comment: A commenter opposed the proposed rule's requirement that mailout ballots be used, rather than polling places, except where the tribe's governing documents require polling sites. This commenter stated that it is unlikely that a tribe's governing document would even address whether polling sites are required. According to this commenter, the regulations should provide for more flexibility to allow a tribe to decide to use polling sites by including the decision in the tribal request. This commenter also stated the rationale for using mailout ballots is unclear, as the tribes will have to pay for mailing through contracts/compacts, and the requirement is unnecessary and could have unintended consequences. The commenter pointed out that mailout ballots may not increase voter participation in remote areas where tribal members do not retrieve mail on a daily basis or open mail from the tribe or Bureau because they receive so much of it. Another tribal commenter stated they ''wholeheartedly support'' the proposed rule's requirement for voting through mailout ballots, rather than polling places, because mailout ballots lessen the burden of voting, encourage greater voter participation overall, and allow voters flexibility and convenience. This commenter stated that voter participation increased by 51 percent for a tribally held referendum by mailout ballot as compared to the prior election that relied on polling places and absentee ballots.

Response: The proposed rule and final rule require the use of mailout ballots, rather than polling sites, because polling sites require more resources and because mailout ballots tend to maximize voter turnout and prevent the disenfranchisement of urban members and others who are living away, temporarily or permanently, from the reservation. The rule accounts for the fact that some tribes have governing documents with amendment articles requiring use of polling sites, providing that, in such cases, polling sites will be provided in addition to mailout ballots.

Comment: A commenter stated that their tribe's constitution refers only to a ''polling site'' but does not require polling sites.

Response: To be considered required, the amendments section of the tribe's governing document must require polling sites in Secretarial elections. If you have a question as to whether your tribal governing document requires polling sites, please consult with your local Bureau official.

Comment: A tribal commenter stated that voting in person would allow Secretarial elections to be held at the same time as tribal elections to increase voter turnout. Another tribal commenter stated that they agree Secretarial elections should not be scheduled at the same time as tribal elections and recounted a personal experience, in the past, where the two were held at the same time, resulting in ''complete confusion between the two elections.''

Response: Generally, the Department suggests avoiding holding Secretarial elections and tribal elections at the same time because the lists of registered voters are different, but final § 81.14 allows the Board to hold a Secretarial election at the same time as a tribal election as long as voters are educated as to the need for separate ballots.

Comment: One commenter stated that the requirement to notarize absentee ballots is outdated.

Response: Notarization is not required for absentee ballots. The voter must sign a certification, but there is no need for a notary.

7. Challenges

Comment: One commenter stated their support for the provision that anyone who submitted a registration form, even one that was ultimately rejected, can challenge the results of an election.

Response: The proposed rule at § 81.43 stated that ''any person who submitted a voter registration form'' may challenge the election results. The final rule requires that a challenger also be an eligible voter, such that only eligible voters who submitted a registration form may challenge election results. Requiring that the person be an eligible voter prevents a non-member who happens to obtain and submit a registration form from challenging the election results. Therefore, someone

who submitted a registration form but was ultimately rejected from the Registered Voters List may challenge the results only if he or she is also an eligible voter.

Comment: A commenter asked whether the 3-day time period for challenges established in proposed § 81.43 includes the day of posting.

Response: Final § 81.43 clarifies that the time period does not include the day of posting. The final rule further clarifies what is considered a ''business day'' by adding a definition in § 81.4.

Comment: One commenter stated that the 3-day challenge period is too short and suggested 10 calendar days instead.

Response: The final rule increases the challenge period to 5 days at § 81.43, to better accommodate filing challenges by mail. The final rule allows for 5, rather than 10, days to prevent undue delay, given that the Secretary is required by statute to issue an approval decision within 45 days of the election results.

Comment: One commenter stated that election results should not be publicized until all challenges have been resolved.

Response: Challenges to the election results must necessarily follow posting of the election results; challenges to the results generally require knowing the results. Following resolution of any challenges, the Authorizing Official's approval of the governing document or amendment is the finalization of the process.

Comment: A commenter stated that the proposed § 81.45(a) is vague, in that it states that a recount or new election may be held if a challenge is sustained and ''may have an impact on the outcome of the election.''

Response: The final rule clarifies that a recount or new election may be held if a challenge is sustained and the errors would invalidate the election.

Comment: One commenter stated that the rule should provide more specificity on what types of challenges merit consideration by the Board.

Response: To clarify, the Board decides challenges to the Registered Voters List prior to the election, and the Authorizing Official decides challenges to the election results after the election. The final rule does not provide any greater specificity on what types of challenges merit consideration because each challenge is fact-specific.

Comment: One commenter asked how challenges may be made and when they must be filed.

Response: Proposed and final § 81.43 set out how challenges may be made and when they must be filed.

Comment: One commenter requested that the provision that the ''Secretary's approval of the documents must be considered as given'' in § 81.45(e) instead state simply that the governing document or amendment ''is approved.''

Response: The language providing that the Secretary's approval must be ''considered as given'' is taken directly from the statute: ''If the Secretary does not approve or disapprove the constitution and bylaws or amendments within the forty-five days, the Secretary's approval shall be considered as given.'' 25 U.S.C. 476(d). In other words, it shall be deemed approved by the Secretary. The statutory language is retained in the final rule.

8. Participation in the Election

Comment: A few commenters stated that the regulation should establish a threshold for participation by eligible voters in the election—either that a certain percentage of eligible voters register to vote or that a certain percentage of eligible voters vote. The requested provision would deem an election invalid if a certain percentage of the eligible voters failed to register or vote. One commenter illustrated that if there are 6,500 eligible voters, but only 100 register, and only 40 of those actually cast a ballot, the election would be valid under the proposed regulation because more than 30 percent of registered voters voted, even though less than 1 percent of the eligible voters cast a vote. Another commenter stated that often, a voter will protest by not voting rather than by submitting a ''no'' vote, and that the regulation disregards this form of protest by not requiring a minimum number of voters to register.

Response: The final rule does not add a minimum participation threshold for eligible voters, because it includes other provisions designed to increase voter participation (*e.g.,* all mailout packets). The Board Chair will work with the tribe to improve voter education for each Secretarial election to promote participation in the elections.

Comment: One commenter stated that there is no requirement for 30 percent participation by registered voters in the statute. This commenter stated that the tribe's governing documents should be the sole source of voter participation requirements.

Response: The requirement for 30 percent participation by registered voters is statutorily required at 25 U.S.C. 478a. Because Federal law establishes this participation requirement, it supersedes any contrary requirement in the tribe's governing documents. Therefore, if a tribe has a threshold for participation that is lower than 30 percent in their amendment article, a 30 percent threshold will be applied.

Comment: One commenter stated that a ''spoiled ballot'' should not be included in the tally to determine if enough registered voters voted because the vote is not counted toward the results.

Response: A spoiled ballot that has been cast indicates that a voter intended to vote, and indeed attempted to vote. To protect that intention to participate, the spoiled ballot is counted for the purpose of determining the number of registered voters who participated, even though the vote cannot count toward the results of the election because its spoiled state obscures whether the voter intended to vote for or against the proposed document or amendment.

E. Petitioning

Comment: One commenter stated that the petitioning procedures set out in proposed § 81.65 ignore statutory deadlines for holding Secretarial elections. This commenter stated that the rule should specify that the petition need not undergo the initial review, and that the petition may simply request an election by filing a completed petition with the Bureau.

Response: The IRA timeframes for calling and holding an election apply to requests by ''an Indian tribe.'' *See* 25 U.S.C. 476(a), (c). We interpret a request by petition to be a request by the tribe. Therefore, like the commenter, we interpret the statutory timeframes as applying to election requests in the form of a petition. Nevertheless, the regulations apply the timeframes once the petition is validated, and the procedures set out in final § 81.62 for validating a petition occur before timeframes are triggered. The final rule clarifies when the petition is considered a ''tribal request'' that triggers the timeframes for calling and holding the election. Unlike when a tribal governing body submits a resolution requesting an election, petitioners must first undergo a review to verify the petition. This review is necessary to determine if the request is a valid tribal request.

Comment: Several commenters pointed out various points in the process where the petitioner or Bureau must rely on the tribe to provide a list of tribal members who are 18 and older. One commenter noted that in most cases, petitions do not have the support of elected tribal officials and the tribe has no incentive to assist the petitioners by providing membership lists. A commenter stated that requiring the list as part of the ''tribal request'' will ''eviscerate'' the ability of petitioners, who have a constitutional right to petition, to make a proper request for election.

• One commenter stated that petitioners do not have access to a list of all tribal members who are 18 and older because those records are maintained by the tribe, and that requiring such a list in the definition of ''tribal request'' effectively prevents petitioners from making a proper request for election.

• Another commenter stated that proposed § 81.60(a), which provides that the Bureau will determine how many signatures are needed on a petition, should provide some alternative to relying on the tribe to provide the current number of tribal members 18 years of age and older, in case the tribe refuses to turn over the information.

• A commenter asked how the Bureau creates its own list of members where the tribe refuses to provide an Eligible Voters List.

Response: It is not necessary for the petitioner to provide the Eligible Voters List. For each petition, the Bureau requests the Eligible Voters List from the tribe. This process has been Bureau practice and is now being codified in the regulation. Although commenters expressed concern that the tribe may refuse to provide the information, tribes generally cooperate with this request. If a tribe refused to provide the information, the Bureau will make a reasonable effort given its responsibilities and statutory requirements to coordinate with the tribe to obtain the information through some means in order to allow the Bureau to meet its statutorily mandated duties. For example, in a past occasion when a tribe refused to provide the Eligible Voters List, the Bureau conducted its own research to compile a number and then provided the tribe a certain time period to correct the number or affirm by silence.

Comment: A commenter stated that the rule should define ''petitioner'' to better specify how a petitioner may request a Secretarial election upon filing a petition.

Response: The final rule adds a definition for ''petitioner.''

Comment: A commenter stated that proposed § 81.54 provides that the Bureau will provide technical assistance to the tribe and notify the tribe of any provisions that are contrary to Federal law, rather than providing the petitioner with assistance and notifying the petitioner. Another commenter noted that the IRA requires the Bureau to provide tribes, not individual members, with technical assistance. The commenter stated that proposed §§ 81.53 and 81.54, in allowing the Bureau to provide technical assistance to petitioners, puts the Bureau in a position to advocate against the tribe's governing body in a manner potentially adverse to the tribe's best interests. A commenter also stated that the section is of concern because the Bureau has an obligation to the existing tribe, rather than to the group of petitioners.

Response: The final rule clarifies that technical assistance on a petition will be provided to both the tribal governing body and spokesperson for the petitioners. The Bureau does not provide technical assistance to petitioners to undermine tribal governments; rather, it provides technical assistance to petitioners to facilitate bringing the issue to a vote, without taking sides on the content of the vote. This approach furthers tribal self-determination because the tribe provided for the petitioning process in its governing document amendments article. Technical assistance on a petition is provided only after the Bureau has determined that the petition is valid, and represents the required percentage of tribal membership rather than any one individual who wants to challenge the tribal governing body in some way. Both the tribal governing body and petitioners benefit from this technical assistance, because it ensures that the issue is as clearly stated as possible for voters' understanding. The technical assistance provided to the petitioners is also provided to the tribal governing body as part of the Bureau's government-to-government relationship with the tribe.

Comment: A commenter suggested reducing the amount of time allowed for gathering signatures from one year to 6 months to prevent the number of signatures required under § 81.60 from changing dramatically during the petitioning process.

Response: When the tribe or Local Bureau Official provides the spokesperson with the number of signatures required for a petition, under final § 81.57 (proposed § 81.60), that number is set regardless of whether the number actually increases because more tribal members turn 18 or decreases because of tribal members passing away over the course of the year in which signatures are collected.

Comment: A commenter stated that the proposal to allow tribal members a year to gather signatures is too lengthy and is supported by no known legal authority. This commenter expressed concern that over the course of a year, a voter could change his or her decision.

Response: The final rule establishes a year to gather signatures because in some cases, the number of signatures required would require several months and possibly up to a year, to collect them all. The commenter's concern as to a signer changing his or her decision may not have considered that the original signer still has an opportunity to express his or her change of position by removing his or her signature from the petition. Ultimately, signatures on a petition represent only a request to bring the issue to a vote, rather than a decision on the question to be voted upon.

Comment: A commenter stated that proposed § 81.63(b)(2), which states that the Bureau official must provide a copy of the receipt and petition to the recognized tribal governing body, should add ''if any'' since the tribe may not have a recognized tribal governing body.

Response: The final rule does not add the words ''if any'' because they are surplusage: if there is no recognized tribal governing body for whatever reason, then there is no recognized tribal governing body to whom to provide a copy of the receipt and petition. *See* final § 81.60.

Comment: One commenter opposed the proposed requirement that 20 percent of the tribal members who are 18 or older must sign a petition for a federally recognized tribe adopting a governing document under Federal statute for the first time. *See* proposed § 81.60. That commenter stated that the 20 percent threshold relaxes requirements, and the switch from the 60 percent requirement is ''concerning.'' Another commenter stated that the 20 percent standard could be appropriate if, at the tribe's request, the members are establishing the first governing document and thus the 20 percent standard would provide a more realistic opportunity for tribes to reorganize. This commenter stated their belief that the 60 percent requirement has never been used, thus rendering the process obsolete.

Response: The final rule lowers the current 60 percent requirement to 50 percent. The lowering recognizes that the current 60 percent requirement may never have been met, but keeps it high enough to avoid the harassment of the governments of organized tribes through frivolous petitions by a small minority of the membership. *See* final § 81.57. A lower percentage, such as the proposed 20 percent, may be appropriate for unorganized tribes.

Comment: A commenter asked for clarification on whether the percentage ''of the tribal members who are 18 years of age or older'' should instead be attached to eligible voters rather than the entire enrollment.

Response: The percentage requirement applies for a federally recognized tribe adopting a governing document under Federal statute for the first time; therefore, the tribe will not have a governing document imposing restrictions on who may vote beyond the baseline of being a tribal member 18 years or older.

Comment: One commenter stated that the proposed rules for petitioners place unnecessary obstacles and processes designed to thwart the efforts of petitioners.

Response: The rule is not designed to thwart the efforts of petitioners, but to balance the Secretary's duties to tribal governments and to tribal members. As mentioned above, the Bureau will provide technical assistance to petitioners and will work with the tribe to obtain necessary information that the petitioners lack.

Comment: One commenter stated that proposed § 81.56, which provides that a member of the tribe who is 18 or older may sign the petition, is misleading because the tribe's governing document may impose additional qualifications, such as residence on the reservation.

Response: The final rule clarifies that if the tribe's governing document includes additional requirements for petitioning, that are not inconsistent with Federal law such as the 26th Amendment to the Constitution, then those additional requirements also apply. *See* final § 81.53.

Comment: A commenter requested clarification on how an election request is withdrawn if the request is based on a petition. The commenter asked specifically whether the same number of people that signed the petition must agree on withdrawing.

Response: The final rule clarifies that a majority of those who signed the original petition must request the withdrawal of the petition; this is intended to prevent the spokesperson from withdrawing the petition without authority from the other petitioners to do so. *See* final § 81.18.

F. Miscellaneous

Comment: A commenter requested retaining the current § 81.5(e) in the regulations as currently published, which states ''if the amendment provisions of a tribal constitution or charter have become outdated and amendment cannot be effected pursuant to them, the Secretary may authorize an election under this part to amend the documents when the recognized tribal government so requests.''

Response: The final rule adds the substance of current § 81.5(e), as requested. *See* final § 81.2(c).

Comment: A commenter stated that proposed § 81.14 should clarify what a ''final action'' is that allows for resubmission of a conflicting proposal.

Response: The final rule provides a definition of ''final agency action'' to include the Authorizing Official's approval or disapproval of the election, or acknowledgment of the tribe's or petitioners' withdrawal. *See* final § 81.15.

Comment: A tribal commenter stated that proposed § 81.17, allowing withdrawal of a request for election, does not address what happens if a tribal judicial forum makes a ruling on the subject of the election.

Response: Because Secretarial elections are Federal elections, the Bureau is bound by the statutory requirements regardless of whether a tribal judicial forum makes a ruling on the subject of the election.

Comment: One commenter suggested requiring notarization of ballots to avoid ballot fraud. Another commenter objected to requiring notarization of ballots because of the inconvenience.

Response: Neither the proposed nor final rule requires notarization of ballots. Notarization of ballots is not required because it often requires money and may negatively impact voter participation, potentially resulting in disenfranchisement.

Comment: A tribal commenter requested cross-referencing 25 CFR 1.2 to allow for waivers of the Part 81 requirements, when in the best interest of the Indians, to acknowledge that such a waiver is available. This tribal commenter also stated that adding escape clauses in the regulations would help address situations that were unanticipated or where the regulations inadvertently undermine the tribe.

Response: The Secretary's regulations at 25 CFR 1.2 provide that, ''the Secretary retains the power to waive or make exceptions to his regulations as found in chapter I of title 25 CFR in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.'' The Secretary's authority to waive regulations applies regardless of whether it is restated in the rule. The final rule does not address waiver, but it nevertheless exists as an option of the Secretary. The final rule does not add escape clauses because the Secretary already has the authority to waive requirements. In addition, waiving regulations is an extraordinary remedy. Pointing out the existence of that remedy in the rule might be misconstrued as suggesting that such waivers are routine.

Comment: One commenter asked whether the Bureau can unilaterally withdraw a request in 81.17, and suggested the rule provide limits on when the Bureau can withdraw.

Response: The Bureau may not withdraw a tribal request; there is no provision in the statute allowing the Bureau to do so.

Comment: A commenter stated that the statute requires submission of the tribal request to the ''Area Office'' and recommended changing the regulation to require filing at the Bureau's Regional Offices (the organizational successor to Area Offices).

Response: While the statute does refer to the Area Office, *see* 102 Stat. 2938, 2939, the Local Bureau Official, who is most often in the local agency office rather than the regional office, is the first point of contact for tribes and petitioners and reviews the request for validity.

III. Consultations

Efforts to revise this regulation date back to 1992, when the first consultations were held. More recently, the Department hosted tribal consultation sessions on December 1, 2009, in Anchorage, Alaska; Brooks, California, on January 12, 2010; Minneapolis, Minnesota, on January 20, 2010; Oklahoma City, Oklahoma, on January 26, 2010; Pala, California, on February 2, 2010; and Albuquerque, New Mexico, on February 4, 2010. The Department also accepted written comments on the regulations. The Department reviewed the comments and made significant changes to the draft in response to tribes' comments and suggestions. Following publication of the proposed rule in October 2014, the Department hosted additional tribal consultation sessions including a session on October 26, 2014, in Atlanta, Georgia during the National Congress of American Indians (NCAI) annual convention; on November 18, 2014, in Oklahoma City, Oklahoma; and on November 20, 2014, in Rocklin, California. The Department also held a listening session with tribes in Alaska in December 2014. Several tribes provided their input at these sessions or in writing. The final rule incorporates this input and responds to comments, above.

IV. Procedural Matters

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

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has

determined that this rule is not significant. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

B. Regulatory Flexibility Act

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

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Secretarial elections are funded by the BIA. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

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

E. Takings (E.O. 12630)

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

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule clarifies the procedures for conducting a Secretarial election, which is a Federal election, for federally recognized Indian tribes.

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

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

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

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have held several consultation sessions with representatives of federally recognized tribes throughout the development of this rule. Details on these consultation sessions and the comments received are described above.

I. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. In accordance with 44 U.S.C. 3507(d), BIA submitted the information collection and recordkeeping requirements of the rule to OMB for review and approval. The following describes the information collection requirements in each section of the rule and any changes from the current rule.

Title: Secretarial elections (25 CFR part 81).

OMB Control Number: 1076–0183.

Requested Expiration Date: Three years from the approval date.

Summary: Section 81.6 of the revised Part 81 regulations requires the Department of the Interior to collect information from tribes that are requesting a Secretarial election. The information to be collected includes the language to be voted on, and a certified list of tribal members who will be age 18 at the time of the Secretarial election and their current addresses or a certified Eligible Voters List with addresses. Such a list with names and addresses is necessary to ensure that all eligible voters receive notice of the Secretarial election and the opportunity to register and vote in the election.

Section 81.55 of the revised Part 81 regulations requires the Department to collect information from tribal members who petition for a Secretarial election. Such petitioners are required to provide certain information in the petition, that tribal members who wish to vote in the election to register for the election, that votes be submitted via ballots. In addition, the section requires anyone wishing to challenge the results of an election to provide substantiating evidence for the challenge.

Frequency of Collection: On occasion.

Description of Respondents: Indian tribes, Indian tribal members.

Total Annual Responses: 252,041.

Total Annual Burden Hours: 64,305 (1,280 hours for tribal submissions, 63,025 hours for member submissions).

Total Annual Cost Burden: $ 110,880.

You can receive a copy of BIA's submission to OMB by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section, or by requesting the information from the Indian Affairs Information Collection Clearance Officer, Office of Regulatory Affairs & Collaborative Action, 1849 C Street, NW., MS–3623, Washington, DC 20240. You may also view the information collection request as submitted to OMB at *www.reginfo.gov.*

Comments should address: (1) Whether the collection of information is necessary for the proper performance of the Program, including the practical utility of the information to the BIA; (2) the accuracy of the BIA's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

J. National Environmental Policy Act

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

K. Information Quality Act

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

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

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

List of Subjects in 25 CFR Parts 81 and 82

Administrative practice and procedure, Elections, Indians—tribal government, Reporting and recordkeeping requirements.

For the reasons given in the preamble, under the authority of 5 U.S.C. 301 and 25 U.S.C. 2 and 9, the Department amends parts 81 and 82 of chapter I, title 25 of the Code of Federal Regulations, as follows:

■ 1. Revise part 81 to read as follows:

PART 81—SECRETARIAL ELECTION PROCEDURES

Subpart A—Purpose and Scope

Authority : 25 U.S.C. 473a, 476, 477, as amended, and 503.

Subpart A—Purpose and Scope

§ 81.1 What is the purpose of this part?

This part prescribes the Department's procedures for authorizing and conducting elections when Federal statute or the terms of a tribal governing document require the Secretary to conduct and approve an election to:

(a) Adopt, amend, or revoke tribal governing documents; or

(b) Adopt or amend charters.

§ 81.2 When does this part apply?

(a) This part applies only to federally recognized tribes, in the circumstances shown in the following table.

If a tribe wants to . . .	And . . .
(1) Adopt a new governing document to reorganize under Federal statute.	The Federal statute requires an election before or after Secretarial approval.
(2) Adopt a new governing document to reorganize outside Federal statute.	The governing document requires approval under the Secretary's general authority to approve.

If a tribe wants to . . .	And . . .
(3) Amend or revoke a governing document adopted under Federal statute.	The Federal statute requires an election and approval for amendment or revocation.
(4) Amend or revoke a governing document adopted outside Federal statute.	The governing document requires Secretarial approval of an amendment or revocation.
(5) Ratify a federal charter of incorporation	The charter requires Secretarial approval or is being ratified under the Oklahoma Indian Welfare Act (OIWA).
(6) Amend a federal charter of incorporation	The charter requires a Secretarial election to amend.
(7) Take other action	A Federal statute or tribal law requires a Secretarial election in order to take that action.
(8) Remove the requirement for a Secretarial approval from a governing document.	A Federal statute or tribal law requires a Secretarial election in order to take that action.

(b) Secretarial elections will be conducted in accordance with the procedures in this part unless the amendment article of the tribe's governing document provides otherwise and is not contrary to Federal voting qualifications or substantive provisions, in which case the provisions of those documents shall rule, where applicable.

(c) If the amendment provisions of a tribal governing document have become outdated and the amendment cannot be effected under them, and the recognized tribal governing body requests a Secretarial election, the Bureau may authorize a Secretarial election under this part to amend the documents.

§ 81.3 Information collection.

The information collection requirements contained in this part are approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and has been assigned OMB control number 1076–0183. This information is collected when, under Federal statute or the tribe's governing documents, the Secretarial election is authorized to adopt, amend, or revoke governing documents; or adopt or amend charters. This information is required to obtain or retain benefits. A Federal agency may not collect or sponsor an information collection without a valid OMB control number.

Subpart B—Definitions

§ 81.4 What terms do I need to know?

For purposes of this part:

Absentee ballot means a ballot the Secretarial Election Board provides to a registered voter, upon request, to allow him or her to vote by mail even though polling sites are used.

Amendment means any modification or change to one or more provisions of an existing governing document or charter.

Applicable law means any treaty, statute, Executive Order, regulation, or final decision of a Federal court, which is applicable to the tribe.

Authorizing Official means the Bureau official with delegated Federal authority to authorize a Secretarial election.

Bureau means the Bureau of Indian Affairs, Department of the Interior.

Business day means a weekday (Monday through Friday), excluding Federal holidays.

Cast means the action of a registered voter, when the ballot is received through the mail by the Secretarial Election Board, or placed in the ballot box at the polling site.

Charter means a charter of incorporation issued under a Federal statute and ratified by the governing body in accordance with tribal law or, if adopted before May 24, 1990, by a majority vote in an election conducted by the Secretary.

Day means a calendar day. A Secretarial election may be held on a Saturday, Sunday or Federal holiday.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Affairs or his or her authorized representative.

Electioneering means campaigning for or against the adoption, ratification, revocation or amendment of a proposed governing document or a charter.

Eligible voter means a tribal member who will be 18 years of age or older on the date of the Secretarial election (and, if the tribe's governing document imposes additional requirements for voting in a Secretarial election, also meets those requirements).

Eligible Voters List means a list of eligible voters, including their birthdates and their last known mailing addresses. The Eligible Voters List is compiled and certified by the tribe's governing body or the Bureau if the Bureau maintains the current membership roll for the tribe.

Federal statute means the Indian Reorganization Act (IRA), 25 U.S.C. 476, 477, as amended, the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503, and any tribe-specific Federal statute that requires a Secretarial election for the adoption of a governing document.

Final agency action means the Authorizing Official's approval or disapproval of a Secretarial election or acknowledgment of the tribe's or petitioners' withdrawal of a request for Secretarial election, and is final for the Department.

Governing document means any written document that prescribes the extent, limitations, and manner in which the tribe exercises its sovereign powers.

Local Bureau office means the local administrative office of the Bureau that is the primary point of contact between the Bureau and the tribe.

Local Bureau Official means the Superintendent, Field Representative, or other official having delegated Federal administrative responsibility under this part.

Mailout ballot means a ballot the Secretarial Election Board provides to a registered voter to allow him or her to vote by mail in an election conducted entirely by mail.

Member of a tribe or *tribal member* means any person who meets the criteria for membership in a tribe and, if required by the tribe, is formally enrolled.

Petition means the official document submitted by the petitioners to the Secretary to call a Secretarial election for the purpose of adopting or ratifying a new governing document, amending the tribe's existing governing document, or revoking the tribe's existing governing document.

Petitioner means a tribal member who is 18 years of age or older (and, if the tribe's governing document imposes additional requirements for petitioning, also meets those requirements), and signs a petition.

Polling site ballot means the ballot the Secretarial Election Board provides to a registered voter, allowing him or her to vote when polling sites are required by the amendment and adoption article of the tribe's governing document.

Recognized governing body means the tribe's governing body recognized by the Bureau for the purposes of government-to-government relations.

Registered Voter means an eligible voter who has registered to vote in the Secretarial election.

Registered Voters List means the list of all Registered Voters showing only names and, where applicable, voting districts.

Registration means the process by which an eligible voter signs up to vote in the Secretarial election.

Revocation means that act whereby the registered voters of a tribe vote to revoke their current governing document.

Secretarial election means a Federal election conducted by the Secretary under a Federal statute or tribal governing document under this part.

Secretarial Election Board means the body of officials appointed by the Bureau and the tribe (and the spokesperson for petitioners, as applicable) to conduct the Secretarial election.

Secretary means the Secretary of the Interior or his or her authorized representative.

Spoiled ballot means the ballot is mismarked, mutilated, rendered impossible to determine the voter's intent, or marked so as to violate the secrecy of the ballot.

Spokesperson for the petitioners or *spokesperson* means a tribal member who provides a document signed by other tribal members that provides him or her authority to speak or submit a petition on their behalf.

Tribal request means a request that includes all of the components set out in 81.6.

Tribe means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that is listed in the **Federal Register** under 25 U.S.C. 479a—1(a), as recognized and receiving services from the Bureau of Indian Affairs.

Voting district means a geographic area established to facilitate the voting process, if required, by the amendment and adoption articles of the tribe's governing document.

Subpart C—Provisions Applicable to All Secretarial Elections

§ 81.5 What informal review is available to a tribe or petitioner when anticipating adopting or amending a governing document?

A tribe that plans to adopt or amend a governing document or a spokesperson for a petitioner may, but is not required to, submit the proposed document with a request for informal review to the Local Bureau Official.

(a) During the informal review:

(1) Bureau personnel will help the tribal government or petitioner spokesperson in drafting governing documents, bylaws, charters, amendments and revocations, explain the Secretarial election process, and provide guidance on methods for voter education, such as informational meetings.

(2) The Local Bureau Official will review the proposed document and will offer technical assistance and comments to the tribe or petitioner spokesperson, including but not limited to guidance on whether any of the provisions of the proposed document or amendment may be contrary to applicable laws.

(b) The Bureau will provide technical assistance for a petition only upon request of the spokesperson. Bureau personnel will provide a courtesy copy to the tribe's governing body of all correspondence regarding technical assistance to the petitioners. The spokesperson will be responsible for obtaining the approval of the tribal members it represents on changes to the content of the petition.

§ 81.6 How is a Secretarial election requested?

To request a Secretarial election:

(a) The tribe or petitioner must submit:

(1) A duly adopted tribal resolution, tribal ordinance, other appropriate tribal document requesting the Secretary to call a Secretarial election, or, in the absence of an existing governing document or if authorized or required by the existing governing documents, a petition that has been verified by the Bureau as having the minimum number of required signatures of tribal members; and

(2) The exact document or amended language to be voted on; and

(b) The tribe must submit a list in an electronically sortable format with names, last known addresses, dates of birth, and voting district, if any, of all tribal members who:

(1) Will be 18 years of age or older within 120 days of the date of the request; and

(2) Meet any other voting restrictions imposed by the tribe's governing document for voting in the Secretarial election.

§ 81.7 What technical assistance will the Bureau provide after receiving a request for election?

After receiving a tribal request for election under § 81.6, the Bureau will provide the following technical assistance.

(a) The Local Bureau Official will review and make a recommendation on the proposed document or amendment, prepare background information on the tribe, and submit to the Authorizing Official.

(b) The Authorizing Official must do all of the following:

(1) Review the proposed document or amendment and offer technical assistance to the tribe (and spokesperson, for petitions);

(2) Consult with the Office of the Solicitor to determine whether any of the provisions of the proposed document or amendment may be contrary to applicable law; and

(3) Notify the tribe (and spokesperson, for petitions) in writing of the results of the review.

(i) If the review finds that a provision is or may be contrary to applicable law, the notification must explain how the provision may be contrary to applicable law and list changes to the document that would be required to allow the Authorizing Official to approve the document as not contrary to applicable law.

(ii) The notification must be sent to the tribe (and spokesperson, for petitions) promptly but in no case less than 30 days before calling the election.

(iii) For IRA elections, the tribe may choose to proceed with the election without incorporating required changes, but the Authorizing Official may not approve election results ratifying provisions that are contrary to applicable law.

(iv) For OIWA elections, the Authorizing Official may not authorize a Secretarial election on any proposed document that contains provisions that may be contrary to applicable law.

§ 81.8 What happens if a governing Federal statute and this part disagree?

If a conflict appears to exist between this part and a specific requirement of the Federal statute, this part must be interpreted to conform to the statute.

§ 81.9 Will the Secretary give deference to the Tribe's interpretation of its own documents?

The Secretary will give deference to the tribe's reasonable interpretation of the amendment and adoption articles of the tribe's governing documents. The Secretary retains authority, however, to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe or when a provision, result, or interpretation may be contrary to Federal law.

§ 81.10 Who may cast a vote in a Secretarial election?

If the tribe:	Then the following individuals may cast a vote:
(a) Is reorganizing under Federal statute for the first time,	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial election; and (2) Has duly registered, regardless of residence or other qualifications contained in the tribe's governing documents or charter
(b) Is already reorganized under Federal statute,	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial election; and (2) Otherwise meets the qualifications required by the tribe's governing documents or charter for that particular type of Secretarial election; and (3) Has duly registered.
(c) Is not reorganized under a Federal statute but tribal law requires a Secretarial election.	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial election; and (2) Otherwise meets the qualifications, if any, required by the tribe's governing documents or charter for that particular type of Secretarial election, if any; and (3) Has duly registered.

§ 81.11 May a tribe establish a voting age different from 18 years of age for Secretarial elections?

No. A Secretarial election is a Federal election. According to the 26th Amendment of the U.S. Constitution, adopted July 1, 1971, all individuals 18 years of age and older must be allowed to vote in Federal elections.

§ 81.12 What type of electioneering is allowed before and during Secretarial election?

There shall be no electioneering within 50 feet of the entrance of a polling site.

§ 81.13 What types of voting assistance are provided for a Secretarial election?

If polling sites are required by the amendment or adoption article of the tribe's governing document, the Chair of the Secretarial Election Board will:

(a) Appoint interpreters;

(b) Ensure that audio or visual aids for the hearing or visually impaired are provided;

(c) Ensure that reasonable accommodations are made for others with impairments that would impede their ability to vote; and

(d) Allow the interpreter or Secretarial Election Board member to explain the election process and voting instructions. At the request of the voter, the interpreter or Board member may accompany the voter into the voting booth, but must not influence the voter in casting the ballot.

§ 81.14 May Secretarial elections be scheduled at the same time as tribal elections?

The Secretarial Election Board will, generally, avoid scheduling Secretarial elections at the same time as tribal elections to avoid confusion. If the Secretarial Election Board decides to schedule a Secretarial election at the same time as a tribal election, the Secretarial Election Board must clearly inform eligible voters of any differences between the tribal election and the Secretarial election and separate ballots must be used for each type of election.

§ 81.15 How are conflicting proposals to amend a single document handled?

When conflicting proposals to amend a single provision of a tribal governing document or charter provision are submitted, the proposal first received by the Local Bureau Official, if properly submitted as a complete tribal request, must be voted on before any consideration is given other proposals. Other proposals must be considered in order of their receipt if they are resubmitted following final agency action on the first submission. This procedure applies regardless of whether the proposal is a new or revised tribal governing document.

§ 81.16 Who pays for holding the Secretarial election?

(a) A Secretarial election is a Federal election; therefore, Federal funding will be used to cover costs. The Bureau will pay for the costs, unless the tribe has received funding for this function through contracts or self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450f, *et seq.*

(b) Once a tribe removes the requirement for Secretarial approval, all subsequent elections it holds to amend the governing document are tribal elections and the tribe is responsible for the costs of those elections.

§ 81.17 May a tribe use its funds to pay non-Federal election officials?

A recognized tribal governing body may use tribal funds to compensate non-Federal personnel to respond to the needs of the tribal government in the conduct of the Secretarial election.

§ 81.18 Who can withdraw a request for a Secretarial election?

The tribe may withdraw the request for Secretarial election in the same manner in which the Secretarial election was requested. The petitioners may withdraw the request for Secretarial election by submitting a new petition, with signatures of at least a majority of the signers of the original petition, seeking withdrawal of the original petition. However, the request for a Secretarial election cannot be withdrawn after the established deadline for voter registration.

Subpart D– The Secretarial Election Process under the Indian Reorganization Act (IRA)

§ 81.19 How does the Bureau proceed after receiving a request for a Secretarial election?

(a) Upon receiving a request for a Secretarial election, the Local Bureau Official will forward the request to the Authorizing Official with any appropriate background information.

(b) The Authorizing Official will issue a memorandum to the Local Bureau official. The memorandum will do all of the following:

(1) Direct the Local Bureau Official to call and conduct a Secretarial election by one of the following deadlines:

(i) If the tribal request is to amend an existing governing document, within 90 days from the date of receipt of the request;

(ii) If the tribal request is to adopt a new governing document (including an amendment to a governing document in the nature of an entire substitute) or to revoke an existing governing document, within 180 days after receiving the request.

(2) Include as an attachment the document or proposed language to be voted upon;

(3) Include as an attachment the Certificate of Results of Election with instructions to return it after the Secretarial election. The Certificate shall read as follows:

Certificate of Results of Election

Under a Secretarial election authorized by (name and title of authorizing official) on (date), the attached [insert: Governing document and Bylaws, charter of incorporation, amendment or revocation] of the (official name of tribe) was submitted to the registered voters of the tribe and on (date) duly (insert: adopted, ratified, rejected or revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled in an election in which at least 30 percent (or such ''percentages'' as may be required to amend according the governing document) of the (number) registered voters cast their ballot in accordance with (appropriate Federal statute).

Signed: _____

(by the Chair of the Secretarial Election Board and Board Members)

Date: _____; and

(4) Advise that no changes or modifications can be made to any attached document, without the Authorizing Official's prior approval.

(c) The Local Bureau Official will appoint a Bureau employee to serve as the Chair of the Secretarial Election Board and notify the tribe of the need to appoint at least two tribal members, who are at least 18 years of age, to the Secretarial Election Board. If the election is to be held as the result of a petition, then the Local Bureau Official will appoint a Bureau employee to serve as the Chair of the Secretarial Election Board and notify the tribe and the spokesperson for the petitioners of the need to appoint one tribal member each, who is at least 18 years of age, to the Secretarial Election Board. If the tribe or spokesperson for the petitioners declines or fails for any reason to make the appointment(s) by close of business on the 10th day after the date the notice letter is issued, the Chair of the Secretarial Election Board must appoint the representative(s), who are tribal members, if available, on the 11th day after the notice letter is issued.

§ 81.20 What is the first action to be taken by the Chair of the Election Board?

Within 5 days after the Secretarial Election Board representatives are appointed, the Chair must hold the first meeting of the Secretarial Election Board to set the election date.

§ 81.21 What are the responsibilities of the Secretarial Election Board in conducting a Secretarial election?

The Secretarial Election Board conducts the Secretarial election. Except as provided in § 81.43, decisions of the Secretarial Election Board are not subject to administrative appeal.

§ 81.22 How is the Secretarial election conducted?

The Secretarial Election Board:

(a) Uses the list provided in the tribal request as the basis for the Eligible Voters List;

(b) Assembles and mails the Secretarial Election Notice Packet at least 30 days, but no more than 60 days, before the date of the Secretarial election to all persons on the Eligible Voters List;

(c) Confirms that registration forms were received on or before the deadline date;

(d) Retains the completed registration form as part of the record;

(e) Develops the Registered Voters List for posting;

(f) Where the election is conducted entirely by mailout ballot, notes on a copy of the Registered Voters List, by the individual's name, the date the ballot was mailed, and the date the ballot was returned; and

(g) Where polling sites are required and an individual requests an absentee ballot, notes on a copy of the Registered Voters List, by the individual's name, the date his or her absentee ballot request was received, the date the absentee ballot was mailed, and the date the absentee ballot was returned.

§ 81.23 What documents are included in the Secretarial Election Notice Packet?

The Secretarial Election Notice Packet includes the following:

(a) Mailout Balloting:

(1) The Secretarial election notice;

(2) A registration form with instructions for returning the completed form by mail;

(3) An addressed envelope with which to return the completed registration form;

(4) If the entire document is to be amended or adopted, a copy of the proposed document including proposed language; and if applicable, a copy of the current document proposed for change; and

(5) A side-by-side comparison showing the current language to be changed, if applicable, in the left column and the proposed language in the right column.

(b) Polling Sites (if required by the amendment or adoption articles of the tribe's governing document):

(1) The Secretarial election notice;

(2) A registration form with instructions for returning the completed form by mail;

(3) An absentee ballot request form with instructions for returning the completed form by mail;

(4) An addressed envelope with which to return the completed registration form and absentee ballot request form;

(5) If the entire document is to be amended or adopted, a copy of the proposed document including proposed language; and if applicable, a copy of the current document proposed for change; and

(6) A side-by-side comparison showing the current language to be changed, if applicable, in the left column and the proposed language in the right column.

§ 81.24 What information must be included on the Secretarial election notice?

The Secretarial election notice must contain all of the following items.

(a) The date of the Secretarial election;

(b) The date which registration forms must be received by the Secretarial Election Board;

(c) A description of the purpose of the Secretarial election;

(d) A description of the statutory and tribal authority under which the Secretarial election is held;

(e) The deadline for filing challenges to the Registered Voters List;

(f) If polling sites are to be used, the date an absentee ballot request must be received by the Secretarial Election Board;

(g) A statement as to whether the Secretarial election is being held entirely by mailout ballot or with polling sites, in accordance with the tribe's governing document's amendment or adoption articles; and

(h) The locations and hours of established polling sites, if any.

§ 81.25 Where will the Secretarial election notice be posted?

The Secretarial election notice will be posted at the local Bureau office, if any, the tribal headquarters, and other public places determined by the Secretarial Election Board.

§ 81.26 How does BIA use the information I provide on the registration form?

We use the information you provide on the registration form to determine whether you will be registered for and vote in the Secretarial election. The

registration form must include the following statements:

(a) Completing and returning this registration is necessary if you desire to vote in the forthcoming Secretarial election;

(b) This form, upon completion and return to the Secretarial Election Board, will be the basis for determining whether your name will be placed upon the list of registered voters, and therefore may receive a ballot, and

(c) Completion and return of this form is voluntary, but failure to do so will prevent you from participating in the Secretarial election.

§ 81.27 Must I re-register if I have already registered for a tribal or Secretarial election?

Yes. A Secretarial election is a Federal election and you must register for each Secretarial election.

§ 81.28 How do I submit my registration form?

You must submit your registration form to the Secretarial Election Board by U.S. mail.

§ 81.29 Why does the Secretarial Election Board compile a Registered Voters List?

The Registered Voters List is a list of eligible voters who have registered and are, therefore, entitled to vote in the Secretarial election. We use this list, after all challenges have been resolved, to determine whether voter participation in the Secretarial election satisfies the minimum requirements of the tribe's governing documents and Federal law.

§ 81.30 What information is contained in the Registered Voters List?

The Registered Voters List must contain the names, in alphabetical order, of all registered voters and their voting districts, if voting districts are required by the tribe's governing document's amendment or adoption articles.

§ 81.31 Where is the Registered Voters List posted?

A copy of the Registered Voters List, showing only names and, where applicable, voting districts, must be posted at the local Bureau office, the tribal headquarters, and other public places the Secretarial Election Board designates.

§ 81.32 May the Registered Voters List be challenged?

(a) It is possible to challenge in writing the inclusion or exclusion or omission of a name on the Registered Voters List. The written challenge must be received by the Secretarial Election Board by the established deadline and include the following:

(1) The name of the affected individual or individuals;

(2) The reason why the individual's name should be added to or removed from the Registered Voters List; and

(3) Supporting documentation.

(b) If an individual failed to submit his or her registration form on time, that individual is precluded from challenging the omission of his/her name from the list.

§ 81.33 How does the Secretarial Election Board respond to challenges?

All challenges must be resolved by close of business on the third day after the date of the challenge deadline established by the Secretarial Election Board and all determinations of the Secretarial Election Board are final for the purpose of determining who can vote in the Secretarial election.

(a) If the challenge was received after the deadline, the Secretarial Election Board must deny the challenge.

(b) If the challenge was received on or before the deadline, the Secretarial Election Board will decide the challenge by reviewing the documentation submitted. Thereafter, the Secretarial Election Board will include the name of any individual whose name should appear or remove the name of any individual who should not appear on the Registered Voters List.

§ 81.34 How are the official ballots prepared?

(a) The Secretarial Election Board must prepare the official ballot so that it is easy for the voters to indicate a choice between no more than two alternatives (*i.e.,* adopting or rejecting the proposed language). Separate ballots should be prepared for each proposed amendment or a single ballot for adoption of a proposed document (with a reference to the document provided in the Secretarial election notice).

(b) The following information must appear on the face of the mailout or absentee ballot:

OFFICIAL BALLOT

(Facsimile Signature)

CHAIR, SECRETARIAL ELECTION BOARD

(c) When polling places are required by the tribe's governing document, the official ballot may be a paper ballot, voting machine ballot, or other type of ballot supporting the secret ballot process.

§ 81.35 When must the Secretarial Election Board send ballots to voters?

(a) Unless the amendment or adoption articles of the tribe's governing document require the use of polling sites in the election, the election must be conducted entirely by mailout ballots, and the Secretarial Election Board must send mailout ballots to registered voters promptly upon completion of the Registered Voters List.

(b) When the amendment or adoption articles of the tribe's governing document require the use of polling sites in the election, the Secretarial Election Board must send an absentee ballot to every registered voter who requests an absentee ballot, as long as the request is received before the Secretarial election date.

(c) All mailout or absentee ballot deliveries must be via U.S. Mail or by hand-delivery to the location identified in the Secretarial election notice before the date of the Secretarial election.

§ 81.36 What will the mailout or absentee ballot packet include?

The mailout or absentee ballot packet contains:

(a) A cover letter summarizing what the ballot packet contains and, if there is more than one ballot included in the packet, enumerating the ballots and advising voters to give consideration to each enumerated ballot;

(b) A mailout or absentee ballot (or, if several amendments are to be voted on, multiple ballots, each printed on a different colored sheet if possible);

(c) Instructions for voting by mailout or absentee ballot including the date the ballot must be received by the Secretarial Election Board;

(d) An inner envelope with the words ''Mailout Ballot'' or ''Absentee Ballot'' printed on the outside, as applicable;

(e) A copy of the proposed governing document or amendment, if the full text is not printed on the mailout ballot and if the entire document is to be amended or adopted; and

(f) A pre-addressed outer envelope with the following certification printed on the back:

I, (print name of voter), hereby certify I am a registered voter of the (name of Tribe); I will be 18 years of age or older on the day of the Secretarial election; I am entitled to vote in the Secretarial election to be held on (date of Secretarial election). I further certify that I marked the enclosed mailout ballot in secret.

Signed:

(voter's signature) _____

§ 81.37 How do I cast my vote at a polling site?

If polling sites are required by the tribe's governing document's amendment or adoption articles, the Secretarial Election Board will establish procedures for how polling site ballots will be presented and collected, including, but not limited to, paper

ballots, voting machines, or other methods supporting a secret ballot.

§ 81.38 When are ballots counted?

The ballots will be counted under the supervision of the Secretarial Election Board, after the deadline established for receiving all ballots or closing of the polls, if polling sites are required by the tribe's governing document's amendment or adoption articles.

§ 81.39 How does the Board determine whether the required percentage of registered voters have cast ballots?

The Secretarial Election Board must count the number of valid ballots and cast spoiled ballots to determine total voter participation. The Board must take the total voter participation and divide it by the total number of Registered Voters. This total is used to determine whether the percentage of Registered Voters who cast votes meets the requirements of the tribe's governing documents or Federal statute that requires at least 30 percent voter participation. For example:

(a) If there were 200 registered voters of which 75 cast valid ballots and 5 cast spoiled ballots for a total of 80 cast ballots (75 + 5 = 80). The percentage of voter participation would be determined as follows:

Total number of votes cast (80) divided by the total number registered voters (200) or 80 ÷ 200 = 0.40 or 40 percent voter participation.

(b) This example meets the Federal statutory requirement of at least 30 percent voter participation.

§ 81.40 What happens if a ballot is spoiled before it is cast?

If a ballot is spoiled before it is cast, this section applies.

(a) The registered voter may return the spoiled ballot to the Secretarial Election Board by mail or in person at the local Bureau office with a request for a new ballot before the election date. The new ballot will be promptly provided to the registered voter. The Secretarial Election Board must retain all ''spoiled uncast ballots'' for recordkeeping purposes.

(b) If polling sites are required, the voter may return the spoiled ballot to the polling site worker and request a new ballot. Upon receiving the new ballot, the voter must then complete the voting process. The polling site worker will mark the spoiled ballot ''spoiled uncast'' and record that the ballot has been spoiled. The polling site worker must retain all ''spoiled uncast ballots'' for recordkeeping purposes.

§ 81.41 Who certifies the results of the Election?

The Chair and all members of the Secretarial Election Board must be present during the counting of the ballots and must sign the Certificate of Results of Election.

§ 81.42 Where are the results of the Election posted?

The Secretarial Election Board must post a copy of the Certificate of Results of Election at the local Bureau office, the tribal headquarters, and at other public places listed in the election notice. The Board also has the discretion to publicize the results using additional methods, such as by posting on the tribe's Web site.

§ 81.43 How are the results of the Election challenged?

Any person who was listed on the Eligible Voters List and who submitted a voter registration form may challenge the results of the Secretarial election. The written challenge, with substantiating evidence, must be received by the Chairman of the Secretarial Election Board within 5 days after the Certificate of Results of Election is posted, not including the day the Certificate of Results of Election is posted. Challenges received after the deadline for filing challenges will not be considered. If the third day falls on a weekend or Federal holiday, the challenge must be received by close of business on the next business day.

§ 81.44 What documents are sent to the Authorizing Official?

The Chair of the Secretarial Election Board must transmit all documents pertaining to the Secretarial election to the Authorizing Official, including:

(a) The original text of the material voted on;

(b) The Eligible Voters List;

(c) The Registered Voters List;

(d) The Secretarial Election Notice Packet;

(e) Any challenges to the Secretarial election results; and

(f) The Certificate of Results of Election.

§ 81.45 When are the results of the Secretarial election final?

The Authorizing Official will review election results and challenges, if any, as follows:

(a) If a challenge alleges errors that would invalidate the election, and the Authorizing Official sustains any such challenges, the Authorizing Official must authorize a recount or call for a new Secretarial election. The Authorizing Official will take the appropriate steps necessary to provide for a recount or a new Secretarial election.

(b) If all challenges are denied or dismissed, the Authorizing Official will review and make a decision based on the following:

(1) The percentage of total votes cast was at least 30 percent, or other percentages required according to the tribe's governing document's amendment or adoption articles.

(2) The voters rejected or accepted the proposed document or each proposed amendment; and

(3) The proposed documents or amendments are not contrary to Federal law.

(c) The Authorizing Official must notify, in writing, the recognized governing body of the tribe, and the Director of the Bureau, of the following:

(1) The decisions on challenges;

(2) The outcome of the voting;

(3) Whether the proposed governing document, proposed amendment(s) or charter or charter amendments are approved or ratified, or if the proposed documents contain language that is contrary to Federal law and, therefore, disapproved; and

(4) That the decision is a final agency action.

(d) The Authorizing Official must:

(1) Forward the original text of the document, Original Certificate of Approval or Disapproval, and the Certificate of Results of Election to the tribe and a copy of all documents to the Bureau Director; and

(2) Retain, as required by the Records Disposition Schedule, a copy of all document(s) relevant to the Secretarial election.

(e) If the certified election results show that the tribal members ratified the documents, but the Authorizing Official does not approve or disapprove the governing document or amendment by close of business on the 45th day after the date of the Secretarial election, the Secretary's approval of the documents must be considered as given.

(f) The Authorizing Official's decision to approve or disapprove the governing document or amendment is a final agency action.

Subpart E—The Secretarial Election Process Under the Oklahoma Indian Welfare Act (OIWA)

§ 81.46 How does the Bureau proceed upon receiving a request for an OIWA Election if no provisions are contrary to applicable law?

If the proposed document does not contain any provision that may be contrary to applicable law, the Bureau will take the following steps.

(a) The Authorizing Official will issue a memorandum to the Local Bureau Official:

(1) Approving the proposed document or proposed amendments;

(2) Authorizing the Local Bureau Official to call and conduct a Secretarial election, within 90 days from the date of receiving the tribal request;

(3) Attaching the document or proposed language to be voted upon;

(4) Attaching the Certificate of Results of Election, with instructions to return it at the conclusion of the Secretarial election. The Certificate shall read as follows:

Certificate of Results of Election

Under a Secretarial election authorized by (name and title of authorizing official) on (date), the attached [insert: Governing document and Bylaws, charter of incorporation, amendment or revocation] of the (official name of tribe) was submitted to the registered voters of the tribe and on (date) duly (insert: adopted, ratified, rejected or revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled in an election in which at least 30 percent (or such ''percentages'' as may be required to amend according the governing document) of the (number) registered voters cast their ballot in accordance with (appropriate Federal statute).

Signed: _____

(by the Chair of the Secretarial Election Board and Board Members)

Date: _____.; and

(5) Advising that no changes or modifications can be made to any of the attached documents, without prior approval from the Authorizing Official.

(b) The Local Bureau Official will appoint the Chair of the Secretarial Election Board and notify the tribe of the need to appoint at least two tribal members to the Secretarial Election Board. If the election is to be held as the result of a petition, then the Local Bureau Official will appoint a Bureau employee to serve as the Chair of the Secretarial Election Board and notify the tribe and the spokesperson for the petitioners of the need to appoint one tribal member each, who is at least 18 years of age, to the Secretarial Election Board. If the tribe or spokesperson declines or fails for any reason to make the appointment(s) by close of business on the 10th day after the date the notice letter is issued, the Chair of the Secretarial Election Board must appoint the representative(s), who are tribal members, if available, on the 11th day after the notice letter is issued.

§ 81.47 How is the OIWA Secretarial election conducted?

After the Chair of the Election Board receives the authorization of the Election, the Chair of the Secretarial Election Board will conduct the election following the procedures set out in §§ 81.19 through § 81.45 of subpart D.

§ 81.48 When are the results of the OIWA Election final?

(a) If a challenge is sustained and has an effect on the outcome of the election, the Authorizing Official must authorize a recount or call for a new Secretarial election. The Authorizing Official will take the appropriate steps necessary to provide for a recount or a new Secretarial election.

(b) If the challenges are denied or dismissed, the Authorizing Official will review and determine whether:

(1) The percentage of total votes cast was at least 30 percent, or such percentages as may be required according to the tribe's governing document's amendment or adoption articles; and

(2) The voters ratified or rejected the proposed document, proposed amendment or revocation.

(c) The Authorizing Official must notify, in writing, the recognized governing body of the tribe, and the Director of the Bureau, of the following:

(1) The decisions on challenges;

(2) The outcome of the voting; and

(3) That the proposed document, proposed amendments or revocation becomes effective as of the date of the Secretarial election; and

(4) That the decision is a final agency action.

(d) The Authorizing Official must:

(1) Forward the original text of the document, Original Certificate of Approval, and the Certificate of Results of Election to the tribe and a copy of all documents to the Director of the Bureau; and

(2) Retain, as required by the Records Disposition Schedule, a copy of all document(s) relevant to the Secretarial election.

Subpart F—Formulating Petitions To Request a Secretarial Election

§ 81.49 What is the purpose of this subpart?

This subpart establishes requirements for formulating and submitting petitions to request the Secretary to call a Secretarial election as required by the governing documents or charters of incorporation of tribes issued under the Indian Reorganization Act (IRA), 25 U.S.C. 476 and 477, as amended, and the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503. This Subpart may also be used by a federally recognized tribe that is adopting a governing document, under Federal statute, for the first time.

§ 81.50 Who must follow these requirements?

Any tribe meeting the criteria in paragraphs (a) or (b) of this section must follow the requirements of this subpart.

(a) A tribe whose governing document or charter of incorporation provides for petitioning the Secretary to call a Secretarial election for any of the following purposes:

(1) Amending or revoking the governing document;

(2) Amending a charter of incorporation ratified under 25 U.S.C. 477 of the IRA before May 24, 1990 where the amendments section or article specifically requires it;

(3) Amending or ratifying a charter of incorporation under 25 U.S.C. 503 of the OIWA; or

(4) Taking any other action authorized by the governing document or charter of incorporation.

(b) A federally recognized tribe, without an existing governing document, adopting a governing document under Federal statute, for the first time.

§ 81.51 How do tribal members circulate a petition to adopt or amend the tribe's governing document?

Tribal members wishing to circulate a petition to adopt or amend the tribe's governing document may submit the proposed document to the Local Bureau Official for review and comment. The Local Bureau Official may help the petitioners in drafting governing documents, bylaws, charters, amendments and revocations. The Bureau may also explain the Secretarial election process.

§ 81.52 Who may initiate a petition?

A member of the tribe who is 18 years of age or older whose tribe's governing document or charter of incorporation permits tribal members to petition the Secretary to authorize a Secretarial election.

§ 81.53 Who may sign a petition?

A member of the tribe who is 18 years of age or older may sign a petition. Where the tribe's governing document imposes additional requirements (other than age requirements) on who may petition, those requirements also apply.

§ 81.54 Who is authorized to submit a petition to the Secretary?

The petitioners must designate a spokesperson to submit the petition and act on their behalf for the petitioning process.

§ 81.55 How is the petition formatted and signed?

(a) Each page of the petition must contain:

(1) A summary of the purpose of the petition, or proposed document, or proposed amendment language;

(2) Numbered lines for each individual to print their legal name, current mailing address, date, and signature, and;

(3) The following declaration at the bottom of each page to confirm the collector was present when each signature was collected:

''I, *(Collector's Printed Name)* , hereby declare that each individual whose name appears above signed and dated the petition. To the best of my knowledge, the individual signing the petition is a member of the tribe and is 18 years or older.

(Signature of Collector)

(Notary Certification)'',

(b) Each individual must print their legal name, current mailing address, date, and sign on a numbered line.

(c) Each collector must complete and sign the declaration on each page in front of a notary, who will sign and certify.

§ 81.56 Do petitions have a minimum or maximum number of pages?

A petition can have as many pages as necessary to obtain the required signatures. However, each page must have the information shown in § 81.58 of this subpart.

§ 81.57 How do I determine how many signatures are needed for a petition to be valid?

(a) For a tribe whose governing document or charter of incorporation provides for petitioning the Secretary to call a Secretarial election:

(1) The spokesperson for the petitioners may ask the tribe or the Local Bureau Official how many signatures are required.

(2) The Local Bureau Official will:

(i) Contact the tribal governing body to obtain the current number of tribal members, 18 years of age or older, to determine the number of tribal members who must sign a petition as required by the tribe's governing document; and

(ii) Notify the petitioners' spokesperson how many signatures are required and that the number is valid for 180 days from the date of this notification.

(b) For a federally recognized tribe adopting a governing document under Federal statute for the first time, the petition must have signatures of 50 percent of the tribal members who are 18 years of age or older.

§ 81.58 How long do tribal members have to gather the signatures?

Tribal members have one year from the date of the first signature to gather the required signatures.

§ 81.59 How does the spokesperson file a petition?

The spokesperson must submit the original petition to the Local Bureau Official.

§ 81.60 How does the Local Bureau Official process the petition?

(a) The Local Bureau Official must, on the date of receipt, date stamp the petition to record the Official Filing Date, and make four copies of the petition for use as follows:

(1) Posting at the local Bureau office for 30 days from the Official Filing Date, including a statement of the proposal contained in the petition and instructions for filing a challenge;

(2) Use in determining sufficiency of petition; and

(3) For viewing at the Local Bureau Office by a member of the tribe, 18 years of age or older.

(b) The Local Bureau Official must, within one week of the Official Filing Date:

(1) Provide the spokesperson written acknowledgment of receiving the petition, which contains the Official Filing Date, the exact number of signatures submitted on the petition, and the statement ''The petitioners may not add or withdraw any signatures from the petition after the Official Filing Date''; and

(2) Provide a copy of the written acknowledgment of receipt and petition to the recognized tribal governing body.

(c) The Local Bureau Official must:

(1) Consult with the Office of the Solicitor to determine if any of the provisions that are the subject of the petition are or may be contrary to applicable law; and

(2) If it appears that a provision is or may be contrary to applicable law, notify the petitioner's spokesperson in writing (with a copy to the recognized tribal governing body) how the provision may be contrary to applicable law.

(d) The Local Bureau Official must promptly notify the petitioners (with a copy to the recognized tribal governing body) of any problems identified under paragraph (c) of this section at least 30 days before calling the election.

§ 81.61 How can signatures to the petition be challenged?

Any member of the tribe, 18 years of age or older, may challenge in writing the signatures appearing on the petition. The challenge must be submitted to the Local Bureau Official, within 30 days of the Official Filing Date of the petition and must:

(a) Identify the page and line on which a signature appears; and

(b) Provide documentation supporting a challenge that at least one of the following is true:

(1) A signature was forged;

(2) An individual was ineligible to sign the petition;

(3) A petition page is inconsistent or improperly formatted; or

(4) A petition page contains an incomplete or un-notarized declaration statement.

§ 81.62 How is the petition validated?

(a) The Local Bureau Official must:

(1) Confirm the petition has the required number of signatures;

(2) Indicate any signatures appearing more than once and include only one in the count;

(3) Make recommendations regarding any challenge to the validity of signatures based upon the documentation provided by the challenger; and

(4) Verify the petitioning procedures complied with this Subpart.

(5) Transmit within 45 calendar days of the Official Filing Date the original petition, challenges, and recommendations to the Authorizing Official.

(b) The Authorizing Official must within 60 calendar days of the Official Filing Date:

(1) Determine whether the petition complies with the requirements of this Subpart;

(2) Inform the spokesperson for the petitioners and the recognized tribal governing body, in writing, whether the petition is valid, the basis for that determination, and a statement that the decision of the Authorizing Official is a final agency action.

(i) If the petition is determined valid for the purposes of calling a Secretarial election, it will be deemed a ''tribal request'' for the purposes of this part, and the Authorizing Official will instruct the Local Bureau Official to call and conduct the Secretarial election in accordance with §§ 81.19 through 81.45 of subpart D.

(ii) If the petition is determined invalid, the Authorizing Official will notify the spokesperson for the petitioners, with a courtesy copy to the tribe's governing body, that the petition was not valid and a Secretarial election will not be called.

§ 81.63 May the same petition be used for more than one Secretarial election?

No. A petition may not be used for more than one Secretarial election. Each request for a Secretarial election requires a new petition.

PART 82—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 82.

Dated: October 2, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–26176 Filed 10–16–15; 8:45 am]

BILLING CODE 4339–15–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC–2015–01]

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adopting a final rule to apply the parole guidelines of the former District of Columbia Board of Parole that were in effect until March 4, 1985 in its parole decisionmaking for D.C. Code prisoners who committed their offenses while those guidelines were in effect.

DATES: Effective October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, U.S. Parole Commission, 90 K Street NE., Washington, DC 20530, telephone (202) 346–7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION:

Background: The U.S. Parole Commission is responsible for making parole release decisions for District of Columbia felony offenders who are eligible for parole. D.C. Code section 24–131(a). The Commission took over this responsibility on August 5, 1998 as a result of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33). The Commission immediately enacted regulations to implement its new duties, including paroling policy guidelines at 28 CFR 2.80. 63 FR 39172–39183 (July 21, 1998). In enacting these decision-making guidelines, the Commission used the basic approach and format of the 1987 guidelines of the District of Columbia Board of Parole, but made modifications to the Board's guidelines in an effort to incorporate factors that led to departures from the guidelines. 63 FR 39172–39174. In 2000, the Commission modified the guidelines for D.C. prisoners, creating suggested ranges of months to be served based on the pre- and post-incarceration factors evaluated under the guidelines, which in turn allowed the Commission to extend presumptive parole dates to prisoners up to three years from the hearing date. 65 FR 45885–45903.

Also in 2000, the U.S. Supreme Court decided the case of *Garner* v. *Jones,* 529 U.S. 244 (2000), indicating that parole rules that allow for the use of discretionary judgment may be covered by the *Ex Post Facto* Clause of the Constitution. For over twenty years, federal appellate courts had rejected claims that the Commission's use of discretionary guidelines for parole release decisions violated the constitutional ban against ex post facto laws. As a result of the Supreme Court's decision in *Garner,* the U.S. Court of Appeals for the District of Columbia Circuit held that parole release guidelines may constitute laws that are covered by the *Ex Post Facto* Clause. *Fletcher* v. *District of Columbia,* 391 F.3d 250 (D.C. Cir. 2004) (*Fletcher II*). Following upon the *Fletcher II* decision and the decision in *Fletcher* v. *Reilly,* 433 F.3d 867 (D.C. Cir. 2006) (*Fletcher III*), the U.S. District Court for the District of Columbia (Huvelle, District Judge) held that the Parole Commission's application of its 2000 paroling guidelines for several D.C. Code prisoners violated the Ex Post Facto Clause. *Sellmon* v. *Reilly,* 551 F.Supp.2d 66 (D.D.C. 2008). Several other prisoner-plaintiffs were denied relief by the district court, which showed that not every D.C. prisoner must be reconsidered under the 1987 guidelines to avoid *ex post facto* problems. Notwithstanding that ex post facto violations must be shown on a case-by-case basis, as a matter of administrative convenience, the Commission chose to apply the same rules to all similarly situated offenders. Accordingly, the Commission enacted a rule calling for application of the 1987 D.C. Board Guidelines to any offender who committed his crime between March 4, 1985 (the effective date of the ''1987 Guidelines''), and August 4, 1998 (the last day the D.C. Board exercised parole release authority) (''*Sellmon* Rule''). 74 FR 34688 (July 17, 2009) (interim rule, effective August 17, 2009) and 28 CFR 2.80(o) (November 13, 2009) (final rule).

Since the *Sellmon* decision, prisoner-plaintiffs who committed their offenses before March 1985 have sought to have the D.C. Courts find that the Commission's use of the revised 2000 parole guidelines violates the *Ex Post Facto* Clause when applied retroactively to their cases. Because of the broad discretion to grant parole which was vested in the D.C. Board of Parole under the 1972 regulations, federal courts have declined to find that Commission's use of its revised guidelines violates the *Ex Post Facto* Clause. However, the Parole Commission has decided to reconsider its use of the 2000 regulations in light of the developing case law that relates to parole guidelines and the *Ex Post Facto* Clause, and consistent with its previous decision to apply the D.C. Board of Parole's guidelines that were in effect at the time that the D.C. Code offender committed the offense, *i.e.,* the *Sellmon* rule.

Discussion of the Rule and Public Comment: On June 15, 2015, the Parole Commission published a proposed rule in the **Federal Register** proposing new parole guidelines for D.C. Code prisoners who committed their offenses before March 3, 1985. See 80 FR 34111 (June 15, 2015). After publishing the proposed rule change, the Parole Commission received comments from 3 organizations and several private individuals. The comments were generally in favor of adopting the rule, and included additional suggestions for amendments, which are highlighted below:

Rehearings: Many commenters recommended that the rule include the provision in the D.C. Board's 1972 regulations that called for annual rehearings. The final rule restates the D.C. Board's regulation calling for annual rehearings as suggested, but includes the portion of the D.C. Board's regulation that permits the Commission to establish a rehearing date ''at any time it feels such would be proper.''

Statutory criteria: Many commentators recommended that the Parole Commission include a restatement of the statutory criteria for release on parole. The statutory criteria for release of D.C. Code offenders, which applies to all D.C. Code prisoners and has not changed since the 1970's, are already contained in the regulations at 28 CFR 2.73. Instead, the final rule will incorporate another section of the D.C. Board's regulations that restated the Board's discretionary authority to grant parole.

Offenses committed on March 3, 1985: Several commenters noted that the *Sellmon* rules apply to offenses after March 3, 1985, and the proposed rule would apply the 1972 guidelines to offenses before that date, leaving a void with regard to offenses committed on March 3, 1985. This suggestion was adopted and the final rule states that the

1972 parole guidelines apply to offenses committed ''on or before March 3, 1985.''

Retroactive consideration: Several commenters recommended that the Commission follow the procedure it followed after publication of the *Sellmon* rule: That it determine what decision it would have made at the initial hearing, and each subsequent hearing, as if it had applied the 1972 rules at that time. Such a procedure was required in applying the 1987 guidelines at issue in *Sellmon,* because the grid score is computed at each hearing using the prior score as a starting point. The 1972 guidelines are not structured in such a way that this procedure is necessary.

Reasons for Denial of Parole: A few commenters recommended that the Commission modify the rule to require that the Commission provide reasons for denial of parole, which is not found in the 1972 regulations. The Parole Commission's regulations at 28 CFR 2.74(a) already require the Commission to ''provide the prisoner with a notice of action that includes an explanation of the reasons for the decision,'' so an additional requirement is not needed.

Further, the recommendation by several commenters that the Commission modify the rule to require it to inform the parole applicant of steps he needs to take to be deemed suitable for parole release was not required by the 1972 rules. Parole Commission hearing examiners may continue, as is current practice, to make such recommendations where appropriate, but are not compelled to do so in every case.

Transcripts of hearings/disclosure to inmate, counsel, and others: Some commenters recommend that records be made available to the prisoner, his attorney, or family. Although in 1972 the D.C. Board deemed records of parole hearings confidential and did not permit disclosure to prisoners, the Commission's regulations already provide for disclosure of documents. See 28 CFR 2.89 (miscellaneous provisions) and § 2.56 (disclosure of Parole Commission file).

Implementation: The Parole Commission will identify those prisoners who committed their offenses on or before March 4, 1985, and who have previously had a parole hearing at which the Parole Commission applied the 2000 parole guidelines for its decision and who have not received a parole effective date. The Commission will schedule special dockets for these prisoners as soon as possible, by videoconference if available, and with the goal of completing the hearings in 6 months.

Executive Order 13132

These regulations 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. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

The rules will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

These rules are not ''major rules'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act, now codified at 5 U.S.C. 804(2). The rules will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Final Rule

Accordingly, the U.S. Parole Commission amends 28 CFR part 2 as follows:

PART 2—[AMENDED]

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Amend § 2.80 by adding paragraph (p) to read as follows:

§ 2.80 Guidelines for D.C. Code Offenders.

* * * * *

(p)(1) A prisoner who is eligible under the criteria of paragraph (p)(2) of this section may receive a parole determination using the parole guidelines in the 1972 regulations of the former District of Columbia Board of Parole (9 DCMR section 105.1) (hereinafter ''the 1972 Board guidelines'').

(2) A prisoner must satisfy the following criteria to obtain a determination using the 1972 Board guidelines:

(i) The prisoner committed the offense of conviction on or before March 3, 1985;

(ii) The prisoner is not incarcerated as a parole violator; and

(iii) The prisoner has not been granted a parole effective date.

(3) The granting of a parole is neither a constitutional or statutory requirement, and release to parole supervision by Commission action is not mandatory.

(4) Factors considered: Among others, the U.S. Parole Commission takes into account some of the following factors in making its determination as to parole:

(i) The offense, noting the nature of the violation, mitigating or aggravating circumstances and the activities and adjustment of the offender following arrest if on bond or in the community under any pre-sentence type arrangement.

(ii) Prior history of criminality, noting the nature and pattern of any prior offenses as they may relate to the current circumstances.

(iii) Personal and social history of the offender, including such factors as his family situation, educational development, socialization, marital history, employment history, use of leisure time and prior military experience, if any.

(iv) Physical and emotional health and/or problems which may have played a role in the individual's socialization process, and efforts made to overcome any such problems.

(v) Institutional experience, including information as to the offender's overall general adjustment, his ability to handle interpersonal relationships, his behavior responses, his planning for himself,

setting meaningful goals in areas of academic schooling, vocational education or training, involvements in self-improvement activity and therapy and his utilization of available resources to overcome recognized problems. Achievements in accomplishing goals and efforts put forth in any involvements in established programs to overcome problems are carefully evaluated.

(vi) Community resources available to assist the offender with regard to his needs and problems, which will supplement treatment and training programs begun in the institution, and be available to assist the offender to further serve in his efforts to reintegrate himself back into the community and within his family unit as a productive useful individual.

(5) A prisoner who committed the offense of conviction on or before March 3, 1985 who is not incarcerated as a parole violator and is serving a maximum sentence of five years or more who was denied parole at their original hearing ordinarily will receive a rehearing one year after a hearing conducted by the U.S. Parole Commission. In all cases of rehearings, the U.S. Parole Commission may establish a rehearing date at any time it feels such would be proper, regardless of the length of sentence involved. No hearing may be set for more than five years from the date of the previous hearing.

(6) If a prisoner has been previously granted a presumptive parole date under the Commission's guidelines in paragraphs (b) through (m) of this section, the presumptive date will not be rescinded unless the Commission would rescind the date for one of the accepted bases for such action, *i.e.,* new criminal conduct, new institutional misconduct, or new adverse information.

(7) Prisoners who have previously been considered for parole under the 1987 guidelines of the former DC Board of Parole will continue to receive consideration under those guidelines.

(8) Decisions resulting from hearings under this section may not be appealed to the U.S. Parole Commission.

Dated: October 13, 2015.

J. Patricia Wilson Smoot,

Chairman, U.S. Parole Commission.

[FR Doc. 2015–26463 Filed 10–16–15; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SATS No. KY–253–FOR; Docket ID: OSM–2009–0014; S1D1S SS08011000 SX064A000 167S180110; S2D2S SS08011000 SX064A000 16X501520]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Kentucky regulatory program (the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). As a result of OSMRE's review of the Kentucky program, OSMRE has determined that two previously required amendments, 30 CFR 917.16(e) and (h), are to be removed because Kentucky's program, with regard to Ownership and Control (O&C), and Transfer, Assignment or Sale of Permit Rights (TAS) is now consistent with SMCRA and the corresponding Federal regulations.

DATES: *Effective Date:* October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Robert Evans, Field Office Director, Telephone: (859) 260–3904. Email: *bevans@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See U.S.C. 1253 (a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

OSMRE first promulgated final rules to address O&C and TAS over 20 years ago. Subsequently, OSMRE published changes to O&C and TAS, some in response to Federal Court mandates, culminating in the issuance of Federal rulemaking on December 3, 2007. 72 FR 68000. Specifically, the Federal rulemaking amended definitions pertaining to ownership, control, and transfer, assignment, or sale of permit rights and OSMRE regulatory provisions governing: Permit eligibility determinations; improvidently issued permits; ownership or control challenges; post-permit issuance actions and requirements; transfer, assignment, or sale of permit rights; application and permit information; and alternative enforcement.

Prior to the implementation of the December 2007 Federal rulemaking, OSMRE issued required amendments to the Kentucky Department of Natural Resources (KYDNR) in 1991 and 1993. These previously required amendments are codified at 30 CFR 917.16(e), as noticed in the September 23, 1991, **Federal Register** (56 FR 47907), and 30 CFR 917.16(h), as noticed in the January 12, 1993, **Federal Register** (58 FR 3833), respectively. These previously required amendments were established prior to OSMRE's final rulemaking on O&C on December 3, 2007, 72 FR 68000. On December 8, 2008, following publication in the **Federal Register,** and resolution of litigation resulting from this rulemaking, the Director of OSMRE issued a memorandum to the Regional Directors to conduct a review of the applicable provisions of all the State programs to ascertain what, if any, amendments were required to conform to the December 3, 2007, Federal rulemaking.

Following the instructions given by the Director, OSMRE's Lexington Field Office (LFO) conducted an evaluation of the Kentucky program to determine if amendments to the Kentucky program were required. Consistent with 30 CFR 732.17, LFO reviewed the Kentucky program, comparing it to the current Federal regulations using a standard no less stringent than SMCRA and no less

effective than the Federal regulations, in meeting the requirements of the Act. This review included review of the determinations in 1991, and 1993, codified at 30 CFR 917.16(e) and (h), that Kentucky must submit two required amendments relative to O&C. As part of the evaluation, LFO conducted several meetings with KYDNR and considered whether the Kentucky program was being implemented in conformity with current Federal regulations.

During the review, LFO solicited assistance from the OSMRE Applicant Violator System Office (AVSO). The AVSO is a division of OSMRE that assists regulatory authorities in making permit eligibility determinations using the Applicant Violator System (AVS) as required under section 510(c) of SMCRA for applicants of coal mining permits.

Subsequent to programmatic review by LFO and independent review by the AVSO, LFO requested removal of the two previously required amendments because LFO and AVSO independently verified and determined that Kentucky has proper statutory authority to implement the requisite O&C and TAS standards in a manner that is no less stringent than provisions in SMCRA found at 30 U.S.C. 1260(c), and no less effective than the Federal regulations at 30 CFR 778.14. Further, LFO and AVSO determined Kentucky is appropriately implementing the Federal O&C and TAS rules as required by the Federal rulemaking on December 3, 2007.

OSMRE announced the proposed decision, which would eliminate the previously required amendments, in the September 19, 2012, **Federal Register** (77 FR 58053). In the same document, OSMRE opened the public comment period and provided an opportunity for a public hearing or meeting. OSMRE did not hold a public hearing or meeting because neither was requested. The public comment period ended on October 19, 2012. OSMRE received one comment from the Kentucky Resources Council (KRC), an environmental advocacy group.

III. OSMRE's Findings

Following are the findings made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. OSMRE is approving the removal of two previously required amendments to the Kentucky program, found at 30 CFR 917.16(e) and (h), due to the following: (a) After significant review, OSMRE has determined that Kentucky has statutory authority to implement 405 Kentucky Administrative Regulations (KAR) 8:010 section 13, when coupled with the statutes and regulations referenced therein, in a manner no less stringent than SMCRA and no less effective than the Federal regulation counterpart found at 30 CFR part 774; and (b) Kentucky is implementing 405 KAR 8:010 section 13, in accordance with the Federal O&C regulations codified into law on December 3, 2007, as indicated in the **Federal Register** (72 FR 68000).

OSMRE approves the removal of the required amendment found at 30 CFR 917.16 (e) regarding the Kentucky O&C regulations. KYDNR implements the Kentucky program in a manner that is no less stringent than SMCRA and no less effective than the regulations found at 30 CFR part 774. Previously, via a **Federal Register** notice dated September 23, 1991, (56 FR 47907), OSMRE reviewed and found a program amendment submitted by Kentucky to be less effective than the Federal counterpart. Among other things, Kentucky proposed to add a regulation which prohibited ''the issuance of a permit if the applicant, operator or anyone who owns or controls the applicant, controls or has controlled any surface coal mining and reclamation operation with a demonstrated pattern of willful violations of KRS chapter 350 and regulations adopted thereto. . . .'' OSMRE disapproved the proposed revisions and required Kentucky to further amend its program to correct the deficiencies identified, adding the following required program amendment:

> 30 CFR 917.16(e). By March 23, 1992, Kentucky shall amend its rules at 405 KAR 8:010 § 13(4) to include violations of Federal regulatory programs and other State regulatory programs, not just violations of KRS chapter 350 and regulations adopted thereto.

At the time the 1991 required amendment was authored, OSMRE took the position that Kentucky was solely and independently responsible for the collection of violation data in Kentucky and other states for the purpose of determining if it was necessary to deny a Kentucky permit applicant a surface mining permit, based on outstanding violations of SMCRA or certain other environmental protection statutes and rules. OSMRE's former position did not account for the Memorandum of Understanding (MOU) between OSMRE and the Commonwealth of Kentucky that provides, among other things:

> OSMRE shall develop, maintain, and provide for the use of Kentucky the AVS, which contains or will contain ownership and control data and violator information to assist Kentucky in meeting the mandated requirements under KRS 350.085(6).

In addition to the required obligations of OSMRE, Kentucky, prior to making any decisions regarding permitting, agreed to perform an independent review of an applicant's history, then ''query AVS to determine whether the applicant is linked to a violator through ownership and control.'' MOU, page 5, paragraph IV(C)(5).

While evaluating the impact of the 2007 Federal rulemaking on O&C and TAS, OSMRE concluded that KYDNR is appropriately relying on AVS data when determining to block or approve a permit in accordance with applicable provisions of SMCRA, Federal regulations and the MOU, consistent with 30 CFR parts 773 and 774. Further, OSMRE's AVSO independently verified that KYDNR utilizes the nationwide AVS on a daily basis to determine if Kentucky applicants are permit eligible prior to issuing any permit, evidencing conformity with the MOU. Additionally, as part of the AVS review, it was determined that Kentucky denies any permit application associated with any unabated Federal violations or violations issued by other states. Moreover, OSMRE concludes Kentucky is supplying sufficient information to AVS, and KYDNR is implementing Kentucky statutes and regulations consistent with SMCRA and the Federal regulations.

OSMRE determines the current O&C program in Kentucky is implemented in a manner that ensures that no permit will be issued to an applicant who owns or controls operations with a demonstrated pattern of willful violations of the Kentucky program, SMCRA, or any other surface coal mining regulatory program, that are of such nature and duration that may result in irreparable damage to the environment as to indicate an intent not to comply with the Kentucky program, SMCRA, or with any other surface coal mining regulatory program.

Based upon the plain language contained in both SMCRA and corresponding Kentucky statutes there is an additional basis for removing the required amendment. Both the Federal and Kentucky provisions refer to violations that cause irreparable damage to the environment. These types of violations, by definition, can never be abated, because ''irreparable'' means ''[i]ncapable of being rectified, repaired, or corrected.'' Webster's II New Riverside University Dictionary 645 (1984). Violators of SMCRA, or of other state programs' provisions, whose violations cause irreparable damage would remain forever blocked on the AVS. Thus, they would be permanently blocked in Kentucky, regardless of the state in which the violations occurred, since Kentucky faithfully follows AVS

recommendations. Should it later be determined that Kentucky is not faithfully following AVS requirements as outlined in the MOU, OSMRE will take appropriate corrective action.

For these reasons, OSMRE concludes the Kentucky program is no less stringent than SMCRA and no less effective than the promulgated regulations thereunder, at 30 CFR 774.11(c). Specifically, Kentucky Revised Statute Annotated §§ 350.085 and 350.060(3)(h), and 405 KY Admin. Regs. 8:010 section 13(4), incorporating the corresponding statute by reference, in conjunction with the discussion of the meaning of ''irreparable,'' above, clarify that KYDNR must consider all violations of SMCRA and any law, rule, or regulation in effect for the protection of air or water resources when issuing permits. Thus, OSMRE is removing the required amendment at 30 CFR 917.16(e).

In addition, OSMRE approves the removal of the required amendment found at 30 CFR 917.16(h) regarding the Kentucky operator change revision regulations. Previously, OSMRE reviewed a program amendment submitted by Kentucky which proposed to ''established a new category of permit revision for operator changes that do not constitute a transfer, assignment or sale of permit rights.'' OSMRE disapproved that submission as detailed in the January 12, 1993, **Federal Register** (58 FR 3833), and added a required program amendment in its decision as follows:

> 30 CFR 917.16(h) By June 14, 1993, Kentucky shall amend its rules at 405 KAR 8:010 § 20(6)(h) by including OSM[RE] as one of the parties to be notified of the cabinet's decision to approve or deny the application for an operator change and to require that the regulatory authority be notified when the approved change is consummated.

Historically, OSMRE interpreted the Federal rules as meaning the changes in the operator of the mine—as the term is defined at 30 CFR 701.5—must be processed as a TAS, consistent with 30 CFR part 774. Following OSMRE's interpretation of the holding in *Peabody Western Coal Co.,* v. *OSMRE,* No. DV 2000–1–PR (June 15, 2000), comments received in response to OSMRE's 2005 proposed rule setting forth revisions to the definition of TAS, and further communications with state regulatory authorities, OSMRE issued a Federal rulemaking, announcing that OSMRE no longer considers a change of operator of a mine as a transfer, assignment, or sale of permit rights. 72 FR 68000 (December 3, 2007). OSMRE concluded that a change of a permittee's owners or controllers does not constitute a TAS because nothing in SMCRA imports the ownership and control concepts of section 510(c) of the Act to the definition of TAS. However, OSMRE made it clear that regulatory authorities may continue to consider the two concepts linked. Kentucky continues to process a change in permittee as a TAS, as detailed in the Federal regulations set forth in 30 CFR part 774. Additionally, as detailed above, Kentucky continues to enter all data concerning a revision of the mine operator in both AVS and the state counterpart, the Kentucky Surface Mining Information System.

For these reasons, OSMRE concludes that 405 KY Admin. Regs. 8:010 section 22 renders the Kentucky program no less stringent than SMCRA and no less effective than the promulgated regulations there under. Thus, OSMRE is removing the required amendment at 30 CFR 917.16(h).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment via the **Federal Register** on September 19, 2012, (77 FR 58053) (Administrative Record No. OSM–2009–0014–001). Neither an extension of the public comment period nor a public hearing or meeting was requested. One comment (Administrative Record No. OSMRE–2009–0014–003) was received from a representative of Kentucky Resource Council (KRC) on October 22, 2012, indicating that the KRC had no comments. The public comment period closed on October 19, 2012.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, OSMRE is required to request comments on an amendment from various Federal agencies with an actual or potential interest or special expertise related to the Kentucky program. This amendment removes two previously required amendments relative to O&C and TAS. Therefore, no request for comments is required for this amendment as no Federal agency, other than OSMRE has an actual or potential interest or special expertise in the amendment. Moreover, in reviewing Kentucky statutes and regulations relevant to these issues in a December 3, 2007, Federal rulemaking, OSMRE sought appropriate agency review. OSMRE sought the review of the AVSO, the office within OSMRE having specialized knowledge related to the issues within this amendment.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSMRE is required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. As detailed within this final rule, this amendment deals with O&C regulations; therefore, no SHPO or ACHP may be affected by these changes and their comment was not required.

Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). As detailed within this final rule, this amendment deals with O&C regulations; therefore, no water or air quality standards are under review that trigger the requirement for EPA concurrence.

V. OSMRE's Decision

Based upon the above finding, we approve the removal of two previously required amendments found at 30 CFR 917.16(e) and (h).

To implement this decision, we are amending the Federal regulations, at 30 CFR part 917, that codify decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of Interior has conducted the reviews required by section 3 of Executive Order 12988, and has determined that, to the extent allowable by law, this rule meets the applicable standards of Subsections (a) and (b). However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSMRE. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments regarding the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 requiring agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1992(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 29, 2015.

Thomas D. Shope,

Regional Director, Appalachian Region.

For the reasons set forth in the preamble, 30 CFR part 917 is amended as follows:

PART 917—KENTUCKY

■ 1. The authority citation for Part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 917.16 [Amended]

■ 2. Section 917.16 is amended in the table by removing and reserving paragraphs (e) and (h).

[FR Doc. 2015–26478 Filed 10–16–15; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–254–FOR; Docket ID: OSM–2012–0012; S1D1S SS08011000 SX066A000 156S180110; S2D2S SS08011000 SX066A000 15XS501520]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment and addition of a required regulatory program amendment.

SUMMARY: We are approving, with one additional requirement, an amendment to the Ohio regulatory program (the Ohio program) under the Surface

Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment we are approving updates the Ohio Administrative Code (OAC) to address issues raised by OSMRE regarding the consistency of Ohio's program with the final Federal rule relative to Ownership and Control, Permit and Application Information and Transfer, and Assignment or Sale of Permit Rights, which became effective on December 3, 2007. The amendment specifically revises the following regulations within the OAC: Definitions; Incorporation by reference; permit applications, requirements for legal, financial, compliance and related information; permit applications, revisions, and renewals, and transfers, assignments, and sales of permit rights; improvidently issued permits; and enforcement and individual civil penalties. Ohio submitted this amendment to ensure the Ohio program is consistent with, and in accordance with, SMCRA, and no less effective than the corresponding regulations. During the course of our review of this amendment, we determined that Ohio must amend its program to ensure the term ''violation notice'' is consistent with the approved Ohio program.

DATES: *Effective date:* October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 4605 Morse Road, Rm. 102, Columbus, Ohio 43230; Telephone: (614) 416–2238; email: *bowens@osmre.gov;* Fax: (614) 416–2248.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

Section 503(a) of the SMCRA permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . . ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program effective August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Ohio program in the August 16, 1982, **Federal Register** (47 FR 34688). You can also find later actions concerning Ohio's regulatory program and regulatory program amendments at 30 CFR 935.11, 935.15, and 935.30.

II. Description and Submission of the Proposed Amendment

Following the approval of the December 3, 2007, Federal rule, ''Ownership and Control; Permit and Application Information; Transfer, Assignment, or Sale of Permit Rights; Final Rule,'' **Federal Register** (72 FR 68000), OSMRE performed a side-by-side comparison of Ohio's regulations to ensure the OAC provisions were no less effective than the Federal regulations. Following the review of Ohio's regulations, OSMRE and Ohio discussed the implementation of Ohio regulations and potential revisions. Ohio, via a letter of September 25, 2009, (Administrative Record Number OH–2190–01) responded to the findings of the OSMRE side-by-side analysis. This response described Ohio's plan to address provisions that were determined by OSMRE to be less effective than the Federal regulations, and stated an Ohio proposed amendment would be submitted to OSMRE. By letter dated March 30, 2012, (Administrative Record Number OH 2190–01), Ohio sent OSMRE a request to approve six revised regulations. This amendment contains the changes made to the OAC as a result of the side-by-side review conducted by OSMRE. Key provisions of the approved amendment add the definitions of ''knowingly,'' ''transfer, assignment, or sale of permit rights,'' and ''violation'' to the OAC; require enhanced identification of interests; add a provision for a central repository documenting identification of interests; and alter procedures for the determination of an improvidently issued permit.

We announced receipt of the proposed amendment in the August 3, 2012, **Federal Register** (77 FR 46346). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting.

We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 4, 2012. One comment was posted in the Federal Docket Management System in response to the proposal. However, it was later determined that this comment was erroneously posted and was not related to the proposed amendment. Therefore, no comments were received.

III. OSMRE's Findings

We are approving the amendment request under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. There are a few changes that are not addressed in the Findings because they involve minor clarifications and non-substantive corrections. The following outlines the approved amendment to the OAC:

1501:13–1–02. Definitions

The definition of ''knowing'' or ''knowingly'' has been added. This definition is now substantively identical to and therefore no less effective than, its Federal counterpart definition at 30 CFR 701.5, because it substitutes the word ''person'', which is used in the Federal definition, for the word ''individual.'' Additionally, the approved amendment revises the definition in other sections of the OAC. Ohio added the definition of ''[t]ransfer, assignment, or sale of permit rights'' to the definition section. Ohio's definition of this term describes any change of a permittee, including any fundamental legal changes in the structure or nature of the permittee or a name change. The Ohio definition is substantively identical to, and therefore no less effective than, its Federal counterpart definition at 30 CFR 701.5.

The definition of ''violation'' has been added for the purposes of the following OAC sections:

- Permit applications; requirements for legal, financial, compliance and related information;
- Review, public participation, and approval or disapproval of permit applications and permit terms and conditions; and
- Improvidently issued permits.

Violation is defined as any of the following:

- Written notification from a governmental agency identifying a failure to comply with applicable Federal or state law or regulations relative to environmental air or water protection;
- Noncompliance identified by the Chief of the Division of Mineral Resources Management, OSMRE, or a comparable authority, pursuant to the Federal or state regulatory program. Notice of this noncompliance may be given via a notice of violation, cessation order, final order, bill or demand letter relative to a delinquent civil penalty; a bill or demand letter relative to delinquent reclamation fees or a

performance security or bond forfeiture order.

The Ohio definition is substantively identical to, and therefore no less effective than, the Federal counterpart definition at 30 CFR 701.5.

The definition of ''violation notice'' has been revised to apply to the following OAC sections:

- Permit applications; requirements for legal, financial, compliance and related information;
- Review, public participation, and approval or disapproval of permit applications and permit terms and conditions;
- Improvidently issued permits; and
- A violation notice is now defined as a written notification from a regulatory authority or other governmental entity of a violation, as defined in this section. This change reflects the language used to define this term in 30 CFR 701.5.

The Ohio definition is substantively identical to, and therefore, no less effective than, the Federal counterpart definition at 30 CFR 701.5.

1501:13–14–02. Enforcement

Section (A)(8) has been revised to require any permittee, within thirty days of the issuance of a cessation order, to provide accurate and current identification of interest information as defined in the Permit applications; requirements for legal, financial compliance and related information sections of the OAC. This additional language is identical to the requirement in OAC 1501:13–5–01(G)(5), which is already part of Ohio's approved program. Therefore, we are approving it. Formatting changes were made throughout section 13–14–02 to reflect changes in numbering.

1501: 13–14–06. Individual Civil Penalties

Revisions were made to remove the definition of ''knowingly'' from this section. Consequently, formatting changes were required to account for the elimination of this definition. In this same amendment, Ohio added a nearly identical definition of ''Knowing or knowingly'' to OAC 1501:13–1–02. Therefore, the definition proposed for deletion is no longer needed; the deletion is hereby approved.

1501: 13–4–03. Permit Applications; Requirements for Legal, Financial, Compliance and Related Information

Grammar and formatting changes are present that do not alter the meaning or intent of the OAC as previously structured. Multiple changes have been made to incorporate all inclusive gender references. In addition, sections (B)(2) and (3) have been revised to require submission of addresses for all owners of record, holders of record of any leasehold interests, and any purchasers of record of the property to be mined. Previously this requirement did not require the submission of addresses. The revision expands the requirements for providing addresses in order to encompass all aspects of interest. These changes render the Ohio provisions no less effective than the Federal counterpart regulation at 30 CFR 778.13(a) and they are, therefore, approved.

As discussed further below, at section (J), this section is further clarified to require submission of data when a departure or change of an individual named in a permit application occurs.

Section (B)(5)(d) is revised by deleting the requirement that, for each permit owned or controlled by an owner or controller of the applicant within a five year period preceding the submission of the application, the application must contain the dates of issuance of any Federal or state permits and Mine Safety and Health Administration (MSHA) identification numbers. Dates of issuance are not required to be submitted pursuant to the Federal regulations at 30 CFR 778.12(c). Therefore, we are approving this deletion.

Section (C)(1) requires violation history relative to an operator to be provided in the permit application. Previously, the applicant was the only individual required to submit this information. This addition renders the Ohio provision no less effective than the counterpart at 30 CFR 778.14(a), and it is, therefore, approved.

Section (C)(2) requires the applicant to provide the date of suspension or revocation of a permit, or forfeiture of a bond. The requirement to provide the date of issuance of any permit that was subsequently suspended or revoked, or for which a bond was forfeited, is proposed to be deleted. Section (C)(3) also adds a provision requiring all applications to include a listing of any of the applicant's, operator's, or owner's and controller's unabated cessation orders or notices of violation, or uncorrected air or water quality violations.

Furthermore, Section (C)(4) requires a certification by the Federal or state regulatory authority that issued the notice of violation or cessation order to confirm that the violation is being abated or corrected. It also adds a requirement to provide the identification numbers of any violation notice or cessation order. This provision does not interfere with the requirement in (C)(4)(f), which is being revised to clarify that the application shall contain information for all violations and cessation orders having an expired abatement period, and describe the action taken to abate or correct the violation or cessation order. These changes to Sections (C)(2) through (C)(4) are no less effective than their respective counterparts contained in the Federal regulations at 30 CFR 778.14(b) and (c), and they are, therefore, approved.

However, Section (C)(3) remains narrower in scope than its Federal counterpart at 30 CFR 778.14(c) because it only requires the listing of unabated cessation orders and uncorrected air and water quality violation notices received; whereas, the Federal regulation requires listing of all unabated violation notices. The term ''violation notice,'' as defined in both the Federal regulations at 30 CFR 701.5, and in the Ohio program at OAC 1501: 13–1–02, the latter of which is part of this submission, includes more than just cessation orders and air and water quality violations. For example, it includes unpaid reclamation fees or civil penalties. As such, we are requiring Ohio to amend its program to require permit applications to list all unabated ''violation notices,'' as that term is defined in the Ohio approved program.

Under Section (J), the addition of a ''Central file for identity information'' allows applicants or permittees to provide requisite information in a streamlined method whereby all ''identification of interests'' information required in permit applications, revisions and renewals and transfers, assignments and sales of permit rights provisions, is submitted to the Chief of the Division of Mineral Resources Management, and is applicable to all permits held by that applicant or permittee. These items will be maintained in a central file for reference in the event of any subsequent submission. To participate, applicants or permitees must submit a sworn or affirmed oath, in writing, verifying all the information is accurate and complete, including all ownership and permittee interests. The central file will be updated and maintained for reference, eliminating the need to provide identity information in each application. The file will be available for public review upon request.

In the event a permittee or applicant has an established central file, certification shall be made that the file is accurate and complete when submitting permit applications, revisions, renewals, transfers, assignments, and sales of permits rights

in accordance with 1501:13–4–06. Upon submission, the permittee shall submit a certification, provided by the Chief of the Division of Mineral Resources Management swearing or affirming that the information is accurate, complete, and updated. This must be in the form of a written oath. Any information that is missing, as required by the provisions set forth herein, must be submitted and accompanied by a written oath providing affirmation of a complete information repository.

The corresponding regulations refer to the central repository for identification information and incorporate by reference provisions of the statute. While proposed Section (J) of the OAC has no precise Federal counterpart, we find that it provides an alternative means for submitting, updating and maintaining ''identification of interests'' information that is consistent with the Federal regulations at 30 CFR 778.8(c), which allows OSMRE to create a central file for this type of information; we are, therefore, approving it.

1501:13–4–06. Permit Applications Revisions, and Renewals, and Transfers, Assignments and Sales of Rights

The amendment revises Section (I) by adding a provision requiring notification within 30 days of any addition, departure or change required to be shown in the permit application. This must be done in writing and must include any person's name, address, telephone number, title, and relationship to the applicant, including percentage of ownership, interest and position within the organizational structure. Information detailing commencement and departure are also required. These changes render Section (I) no less effective than the Federal regulations at 30 CFR 774.12(c).

1501:13–5–02. Improvidently Issued Permits

Pursuant to the approved amendment, should the Chief of the Division of Mineral Resources Management have reason to believe a coal mining and reclamation permit was improvidently issued, he or she shall make a preliminary finding indicating improvident issuance if:

- A determination based on the permit eligibility, in effect at the time of issuance, indicates either:

(a) The permit should not have been issued due to an unabated or uncorrected violation or,

(b) The permit was issued based on the presumption that a violation was in the process of being corrected;

- The violation remains unabated or uncorrected and the time frame for appeal is expired or a payment schedule, as approved, is not being complied with as ordered; and
- Ownership or control existing at the time of issuance demonstrates a link to the violation and remains in effect, or if the link was severed, the permittee continues to be responsible for the violation.

Upon a preliminary finding of an improvidently issued permit, the Chief may serve the permittee with written notice establishing a prima facie case indicating the permit was improvidently issued. Within thirty days, the permittee may request an informal review and may provide evidence to the contrary.

Section (C) augments references to abatement of a violation by adding the term ''correction.'' It also deletes references to penalties and fees, because these terms are now included within the definition of the term ''violation.''

Section (D) allows the Chief of the Division of Mineral Resources Management to suspend a permit as opposed to the previous regulation granting only the right to rescind the permit. Moreover, the approved amendment provides that, upon a determination indicating the permit was improvidently issued, the Chief shall serve the permittee notice of the proposed suspension and rescission, which includes the reasons for the finding and stipulates within sixty days the permit will be suspended, or in one hundred and twenty days, the permit will be rescinded, unless the permittee submits rebuttal proof and the Chief finds:

- The previous determination was incorrect;
- The violation has been abated or corrected;
- The violation is under appeal and an initial judicial decision affirming the violation is absent;
- The violation is subject to an approved abatement, correction plan or payment schedule;
- Ownership or control is severed and no continuing responsibility is apportioned to the permittee; or
- An appeal as to ownership or control exists and an initial judicial decision affirming such ownership or control is absent.

The approved amendment eliminates previous provisions allowing automatic suspension within ninety days upon proper showing. In the event the permit is deemed suspended or rescinded, the Chief shall immediately order the cessation of coal mining and reclamation operations and post written notice of the cessation order at the Division of Mineral Resources Management District Office closest to the permit area.

We find that these changes render the Ohio provisions governing improvidently issued permits no less effective than their Federal counterpart provisions found in 30 CFR 773.21, 773.22, and 773.23. Therefore, the changes are approved.

1501: 13–1–14. Incorporation by Reference

The Web site provided in the approved amendment is updated to ensure public access to Federal regulation references. The revised Web site is *www.gpo.gov/fdsys/.* Also, the dates for the Code of Federal Regulations and for the United States Code have been updated to incorporate subsequent publications of both codes. These incorporations by reference have no Federal counterparts; nevertheless, the changes are not inconsistent with SMCRA or the Federal regulations, and are therefore approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Numbers OH–2190–05 and 06), but did not receive any.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i) and § 503(b) of SMCRA, OSMRE is to request comments on an amendment when any Federal agency has an actual or potential interest or special expertise related to the program amendment. On April 12, 2012, OSMRE sent requests for comment to the following agencies (in addition to the agencies specifically outlined below): The U.S. Department of Agriculture, Natural Resource Conservation Service; the U.S. Department of Interior, Fish and Wildlife Service; and the U.S. Department of Labor, MSHA. On May 4, 2012, the MSHA responded to the request for comments (Administrative Record Number OH–2190–04), stating that they concur with the amendment and have no further comments to offer. None of the other agencies responded to the requests for comment.

Environmental Protection Agency (EPA) Concurrence

On April 12, 2012, OSMRE notified and requested comment from EPA regarding the amendment (Administrative Record Number OH–2190–02). Although OSMRE requested comments on the amendment, EPA did not respond to our request. Pursuant to 30 CFR 732.17(h)(11)(ii) we are required

to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). As detailed within this final rule, this amendment deals with ownership and control regulations; therefore, no water or air quality standards are under review that may trigger the requirement for EPA concurrence.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSMRE is required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Consistent with this regulation, on April 12, 2012, OSMRE requested comments (Administrative Record Number OH–2190–02), on Ohio's amendment from the Ohio Historic Preservation Office and the Advisory Council on Historic Preservation, but neither responded to the request.

V. OSMRE's Decision

Based on the above findings, OSMRE approves the amendment Ohio sent us on March 30, 2012. In addition, we are requiring Ohio to amend its program to require permit applications to list all unabated ''violation notices,'' as that term is defined in the Ohio approved program.

To implement this decision, we are amending the Federal regulations at 30 CFR part 935, which codify decisions concerning the Ohio program. OSMRE finds that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Ohio's program demonstrates it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988, and has determined that, to the extent allowable by law, this rule meets the applicable standards of Subsections (a) and (b). However, these standards are not applicable to the actual language of state regulatory programs and program amendments because each program is drafted and promulgated by a specific state, not by OSMRE. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and state governments regarding the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and Section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply Distribution or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 requiring agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 (Regulatory Planning and Review), and (2) likely to have significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because Section 702(d) of SMCRA (30 U.S.C. 1992(d)) provides that agency decisions on proposed state regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have significant economic impact, the Department relied upon data and assumptions for the Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, state, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact

that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the facts that the State submittal, which is the subject of this rule is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining. Underground mining. Required regulatory program amendments.

Dated: June 26, 2015.

Thomas D. Shope,

Regional Director, Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 935, is amended as set forth below:

PART 935—OHIO

■ 1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 935.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	*	* * * * *
March 30, 2012	October 19, 2015	OAC §§ 1501:13–1–02; –14–02; –14–06; –4–03; –4–06; –5–02; –1–14. Changes to Definitions, Ownership and Control, Permit and Application Information and Transfer, assignment or Sale of Permit Rights, and Improvidently Issued Permit procedures.

■ 3. Section 935.16 is added to read as follows:

§ 935.16 Required regulatory program amendments.

(a) By December 18, 2015, Ohio shall amend its program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to require permit applications to list all unabated ''violation notices'', as that term is defined in the Ohio approved program.

(b) [Reserved]

Editorial Note: This document was received for publication by the Office of Federal Register on October 14, 2015.

[FR Doc. 2015–26479 Filed 10–16–15; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA–154–FOR; Docket ID: OSM–2010–0002; S1D1S SS08011000 SX064A000 167S180110 S2D2S SS08011000 SX064A000 16XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment that we are approving involves a statutory amendment to Pennsylvania's Coal Refuse Disposal Control Act (CRDCA). The amendment adds another category of sites considered as preferred when selecting a location for the placement of coal refuse.

DATES: *Effective Date:* This rule is effective October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Telephone: (412) 937–2827, email: *bowens@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its state program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' 30 U.S.C. 1253(a)(1) and (7).

You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register**, (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16. We are providing the following background information as it is referenced in our findings and/or response to comments.

Background: Pennsylvania's Coal Refuse Disposal Control Act (CRDCA)

CRDCA and Preferred Sites: Section 4.1(a) of the CRDCA, 52 P.S. 30.54a(a) provides site selection criteria for determining where to place coal refuse following mining activities. The Act provides for coal refuse to be disposed on a ''preferred site'' unless it can be demonstrated to the Pennsylvania Department of Environmental Protection (PADEP) that another site is more suitable based upon engineering, geology, economics, transportation systems, and social factors, and is not adverse to the public interest.

Pennsylvania provided various justifications for the inclusion of such provisions: It limits sites eligible to receive coal refuse placement by prohibiting placement in certain environmentally sensitive areas; it encourages disposal of coal refuse on

areas previously affected by coal mining; and it is better to have a few large refuse disposal areas than numerous small coal refuse disposal sites. The CRDCA provided that areas that have been previously affected by mining activities within a specific area of the source mine are preferred for coal refuse disposal unless the applicant demonstrates that another site is more suitable based on site-specific conditions.

Pennsylvania had defined a preferred site as one of the following: (1) A watershed polluted by acid mine drainage; (2) a watershed containing an unreclaimed surface mine, but which has no mining discharge; (3) a watershed containing an unreclaimed surface mine with discharges that could be improved by the proposed coal refuse disposal operation; (4) unreclaimed coal refuse piles that could be improved by the proposed coal refuse disposal operation; and (5) other unreclaimed areas previously affected by mining activities. Section 4.1(a), 52 P.S. 30.54a(a) of CRDCA.

Permitting Pennsylvania Coal Refuse Disposal Sites: The CRDCA at section 4.1 and the regulations provide a two-step process for the permitting of coal refuse disposal sites. The first step is a pre-application site selection process intended to steer applicants to areas previously disturbed by mining. In the absence of previously disturbed sites, the site selection process requires an evaluation of nearby candidate sites with the goal of choosing the site that results in minimal adverse impacts. Following Pennsylvania's approval of the applicant's site selection, the applicant proceeds to the second step, which involves preparing and submitting a permit application for the selected site. Pennsylvania's regulations, at 25 Pa. Code 90.5, outline the need to conduct the mandatory site selection step prior to applying for a permit for coal refuse disposal activities, and 25 Pa. Code 90.3 and 90.11 through 90.50 outline the coal refuse disposal permitting requirements.

Pennsylvania's Coal Refuse Disposal Program Guidance [Protection of Endangered Species]: The Federal regulations at 30 CFR 816/817.97, concerning the protection of fish and wildlife and related values, require the minimization of disturbance and adverse impacts and enhancement where practicable, and consultations with State and Federal fish and wildlife resources agencies. See Other Background Information (Endangered Species for additional information). Pennsylvania's Coal Refuse Disposal Program Guidance (CRDPG), effective February 23, 1998, was intended to further clarify what PADEP stated in a March 8, 1996, letter to the Environmental Protection Agency concerning the implementation of section 4.1(b) of the CRDCA. The CRDPG specifically clarifies the intended implementation of section 4.1(b) related to threatened or endangered species. Pennsylvania's policy concerning the implementation of section 4.1(b) is as follows:

With respect to preferred sites, Pennsylvania's regulations provide that Pennsylvania will not approve (via the site selection process, *See* 25 Pa. Code § 90.202(e)(7)) or permit (via the permitting process) a site that is known or likely to contain Federally listed threatened or endangered species, unless Pennsylvania concludes and the United States Fish and Wildlife Service (USFWS) concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the ''take'' of Federally listed threatened or endangered species in violation of section 9 of the Endangered Species Act.

OSMRE Approval of CRDCA Section 4.1: We approved section 4.1 of the CRDCA (section noted above), Site Selection, on April 22, 1998, finding that while there are no direct Federal counterparts to the statutory language, the establishment of criteria to be used for selecting sites for coal refuse disposal is not inconsistent with SMCRA. *See* 30 U.S.C. 1202(d). Pennsylvania's rationale for encouraging coal mining activities that will result in the improvement of previously mined areas with preexisting pollutional discharges is reasonable and not inconsistent with SMCRA at section 102, concerning the purposes of SMCRA. *See* 63 FR 19802.

II. Description and Submission of the Amendment

By letter dated February 24, 2010 (Administrative Record No. PA 837.111), Pennsylvania sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania submitted the amendment to include changes made at its own initiative. The changes involve a recent statutory amendment to Pennsylvania's CRDCA, 52 P.S., Section 30.51 *et seq.*

With this amendment, Pennsylvania proposed a revision adding another category of sites to the list of ''preferred sites'' currently found in section 4.1(a). The proposed addition (subsection 4.1(a)(6)) would designate an ''area adjacent to or an expansion of an existing coal refuse disposal site'' as a preferred site.

In its submission, Pennsylvania indicates this amendment should be approved as consistent with Federal requirements for the following reasons:

(1) *Counterpart Federal Regulations:* There is no counterpart to section 4.1 of the CRDCA contained either in SMCRA or in OSMRE's regulations implementing Federal SMCRA;

(2) *Coal Refuse Disposal Control Act:* The amendment is consistent with the ''findings and declaration of policy'' in section 1 of the CRDCA, which states that: The accumulation and storage of coal refuse material can cause a condition which fails to comply with the established rules, regulations, or quality standards adopted to avoid air or water pollution and can create a danger to persons, property, or public roads or highways, either by reason of shifting or sliding, or by exposing persons walking onto the refuse to the danger of being burned. In order to minimize the exposure to these conditions and dangers, it is better to have a few large coal refuse disposal sites as opposed to numerous small coal refuse disposal sites. 52 P.S. 30.51(1);

(3) *Pennsylvania Regulations—Chapter 86:* All coal refuse disposal permit applications must comply with chapter 86 (regulations that apply to all coal mining activities); thus, permitting requirements remain unchanged by this statutory amendment. *See* 25 Pa. Code chapter 86;

(4) *Pennsylvania Regulations—Chapter 90:* All coal refuse disposal permit applications must comply with chapter 90 (regulations that apply to coal refuse disposal activities); the site-selection process established by the CRDCA is in addition to these requirements. *See* 25 Pa. Code chapter 90; and

(5) *Species-specific Protective Measures:* All coal refuse disposal permit applications must comply with any applicable species-specific protective measures developed by the USFWS and Pennsylvania's mining regulatory program to minimize anticipated incidental take of threatened or endangered species; thus, species-specific protective measures remain unaffected by the amendment.

III. OSMRE's Findings

For the reasons set forth below, we are approving the amendment request under SMCRA at 30 U.S.C. 1253, and the Federal regulations at 30 CFR 732.15 and 732.17.

Federal Counterparts: Five categories of preferred sites in section 4.1(a) were approved by OSMRE on April 22, 1998. *See* 63 FR 19802. As we stated in that notice, there was no direct Federal

counterpart to the proposed State language. We further noted that the establishment of criteria to be used for selecting sites for coal refuse disposal is not itself inconsistent with the intent of SMCRA. The Federal regulations do not include specific criteria for establishing coal refuse disposal areas. Allowing refuse disposal on areas adjacent to or an expansion of an existing coal refuse disposal site, provided that all other environmental and safety requirements are met, is not inconsistent with section 102(d) of SMCRA, 30 U.S.C. 1202(d), which requires surface coal mining operations to be conducted so as to protect the environment. That same rationale applies to our approval of the addition of the sixth category.

Consistent with CRDCA Policy: We note that the five preferred site categories previously identified in the CRDCA involve watershed areas previously affected by coal mining; other unreclaimed areas previously affected by mining activities; and unreclaimed coal refuse disposal sites that could be improved by the proposed coal refuse disposal operation. While the additional criterion that is the subject of this amendment would allow a previously undisturbed site to be deemed ''preferred,'' we note that the addition of ''an area adjacent to or an expansion of an existing coal refuse disposal site'' to the categories of ''preferred'' sites is consistent with the CRDCA policy as it would expand an already existing coal refuse disposal site, rather than create a new one. Also, adding this category would minimize the need to increase the number of coal refuse disposal sites.

Pennsylvania Regulations: As mentioned above, preferred sites are subject to all the permitting requirements established to ensure environmental protection. Once the selection of a site has been approved, an applicant must submit a site development plan that meets the informational requirements, permitting requirements, and performance standards in chapter 90, and also meets the requirements of chapter 86. The permitting regulations at chapter 86.31(c)(4) require Pennsylvania to notify Federal, State, and local government agencies with jurisdiction over, or an interest in, the area of the proposed activities, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies, upon receipt of an application for a mining permit. The regulations at 25 Pa. Code 90.202(e)(7) regarding site selection, provide that at preferred sites known to contain Federally listed threatened or endangered species, approval will be granted only when the Department concludes, and the USFWS concurs, that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the take of Federally listed threatened or endangered species in violation of section 9 of the Endangered Species Act of 1973, 16 U.S.C. 1538.

Pennsylvania Technical Guidance Document No. 563–2113–660, Coal Refuse Site Selection, further explains how chapter 90.202(e)(7) will be administered by PADEP. In the Background section on page 1, the guidance states that the ''District Mining Office will encourage meetings involving the applicant, the Pa. Fish and Boat Commission, the Pa. Game Commission and the U.S. Fish and Wildlife Service at key points in the review process, including: Prior to the site selection process to discuss the procedures to be used; before defining the search area; before selecting the final site; and before developing a mitigation plan. The District Mining Office will also solicit input from the Pennsylvania office of the U.S. Fish and Wildlife Service, the U.S. EPA and the U.S. Army Corps of Engineers during the site selection process and the permit application review process.''

In addition, Pennsylvania asserts that compliance with any applicable species-specific protective measures developed by the USFWS and Pennsylvania's mining regulatory program to minimize anticipated incidental take of threatened or endangered species remains unaffected by this program amendment.

Conclusion: Section 503(a) of SMCRA provides that state regulatory program laws must be in accordance with the requirements of SMCRA, and the state regulatory program regulations must be consistent with the regulations issued pursuant to SMCRA. The term ''in accordance with'' is defined at 30 CFR 730.5 as ''must be no less stringent than, meet the minimum requirements of and include all applicable provisions of [SMCRA].'' Section 505(b) of SMCRA, 30 U.S.C. 1255(b), further provides that any state program provision which provides for more stringent land use and environmental controls and regulations shall not be construed to be inconsistent with SMCRA.

There are no direct Federal counterparts to the new proposed site selection criterion. However, by providing this criterion, and by prohibiting, generally, coal refuse disposal operations on non-preferred sites, Pennsylvania imposes a more stringent environmental control of coal refuse disposal operations than is provided in either SMCRA or its implementing regulations. Moreover, Pennsylvania will continue to apply the Pennsylvania counterparts to the Federal permitting and performance standard requirements. Accordingly, for the reasons set forth above, OSMRE finds that Pennsylvania's amendment is not inconsistent with the provisions of SMCRA. We are, therefore, approving this amendment.

IV. Summary and Disposition of Comments

Public Comments

In the June 21, 2010, **Federal Register** notice announcing our receipt of this amendment, we asked for public comments (75 FR 34962). No requests for public meetings were received. We received public comments from one organization, Citizens for Pennsylvania's Future (PennFuture) on July 21, 2010, (Administrative Record No. 837.118), which are discussed below.

Comment Number 1 (Preparation Activities). PennFuture states that OSMRE may not approve a program amendment that would reduce the protection of Federally listed threatened and endangered species unless and until Pennsylvania amends its regulatory program under SMCRA to require that all site preparation activities, including timbering, be authorized in advance by the issuance of a mining permit. PennFuture provided a summary of a 2010 event whereby timbering activities were undertaken by an operator without a coal mining permit (pre-permit timbering activities). PennFuture had requested that OSMRE undertake a review of this situation. PennFuture asserted that PADEP's response to OSMRE's inquiry regarding this event (stating that timbering is not a mining activity and, therefore, not subject to permit requirements, etc.) is evidence that a programmatic deficiency needs to be corrected. PennFuture states that OSMRE must limit its approval of the amendment so that, until the programmatic deficiency is corrected, the absolute prohibition in section 4.1(b) of the CRDCA, 52 P.S. 30.54a(b) must apply to all sites, whether preferred or non-preferred, that are ''known to contain Federally listed threatened or endangered plants or animals.'' The ''absolute prohibition'' PennFuture refers to prohibits coal refuse disposal on sites known to contain Federal endangered or threatened animals or plants or State threatened or endangered animals, *unless* the site is designated a preferred site. PennFuture is asking OSMRE to

require Pennsylvania to also apply the prohibition to preferred sites until the timbering issue is resolved.

PennFuture's comments address Pennsylvania's assertion in the program amendment that compliance with any applicable species-specific protective measures developed by the USFWS and Pennsylvania's mining regulatory program to minimize anticipated incidental take of threatened or endangered species remains unaffected by this program amendment. PennFuture's comments also address Pennsylvania's assertion in the program amendment that all coal refuse disposal permit applicants must implement the measures required to implement the 1996 Biological Opinion.

PennFuture refutes these assertions by referencing Pennsylvania's actions regarding pre-permit timbering activities undertaken by the mining company, which the USFWS found to be beyond the scope of the 1996 Biological Opinion because it occurred without a SMCRA permit. PennFuture asserts that the reason PADEP's implementation of the 1996 Biological Opinion falls short is its interpretation that timbering is not a mining activity, even if it occurs on a site for which a mining permit application is pending. Under PADEP's interpretation of the State program, timbering is outside the scope of regulated mining activities that must be authorized in advance by the issuance of a SMCRA-based mining permit. PennFuture further comments that continuing to give effect to this interpretation would mean that the 1996 Biological Opinion would be inapplicable to the activity (timbering) presenting the greatest threat to a threatened and endangered species, the Indiana Bat, which the Biological Opinion is intended to protect.

OSMRE's Response

In its February 24, 2010, program amendment submission, PADEP asserts that the proposed amendment to the CRDCA does not alter provisions that implement the 1996 Biological Opinion, nor does it affect compliance with any species-specific protective measures developed by the USFWS or Pennsylvania's mining regulatory program. There are no aspects of the site selection criteria, including this amendment to the criteria that adds to the list of sites deemed ''preferred,'' that will allow operations to occur outside the scope of the approved program that was the basis for the USFWS's decision to issue the 1996 Biological Opinion. The mere selection of a site is not the equivalent of an authorization to begin coal refuse disposal, or any other pre-disposal activities that are likely to adversely affect Federally listed threatened or endangered species, or result in the ''take'' of Federally listed or endangered species. As such, this amendment will not alter the conditions that lead to the implementation of the 1996 Biological Opinion.

As noted in the findings above, Pennsylvania's coal refuse disposal site selection process is in addition to SMCRA's and the State program's permitting requirements, and, as such, provides an additional layer of environmental regulation of coal refuse disposal operations to that set forth in SMCRA and its implementing regulations. The site selection process is more stringent than SMCRA and the Federal regulations because it encourages coal refuse disposal on already disturbed sites, and also encourages construction of fewer, though larger, coal refuse disposal sites. Neither SMCRA nor the Federal regulations contains these environmentally sound incentives. While our approval of this amendment may render the site selection process less restrictive than before, that process remains more stringent than the environmental control and regulation of surface coal mining and reclamation operations contained in SMCRA.

Comment Number 2 (Section 7 Consultation with USFWS). Under section 7 of the Endangered Species Act, OSMRE must engage in consultation with USFWS about the proposed program amendment.

PennFuture states that under section 7 of the Endangered Species Act, OSMRE must engage in formal consultation with the USFWS over any action that ''may affect'' the Indiana bat or any other Federally listed threatened or endangered species, unless, after informal consultation, OSMRE determines, and the USFWS concurs, that the proposed action is not likely to adversely affect any listed species or critical habitat. PennFuture states that in light of the consultation between the two agencies that occurred when the amendment to the CRDCA was submitted to OSMRE as a program amendment, and the fact that the proposed program amendment currently under review could significantly add to the number of preferred sites, OSMRE must initiate consultation with USFWS over the proposed amendment.

OSMRE's Response

Our approval of this amendment is subject to the same restrictions contained in our April 22, 1998, approval of an amendment to the CRDCA. Namely, with respect to preferred sites, the State will not approve (via the site selection process) or permit (via requirements in chapters 86 or 90) a site that is known or likely to contain Federally listed threatened or endangered species unless the State demonstrates, and the USFWS concurs, that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the ''take'' of Federally listed threatened or endangered species in violation of section 9 of the Endangered Species Act. *See* 63 FR 19805. Further, the presence of Federally listed threatened or endangered species on a preferred site would still require Pennsylvania to conclude, and the USFWS to concur, prior to the commencement of surface mining activity, that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the taking of such species. 25 Pa. Code 90.202(e)(7). As confirmed by PADEP in the submission, the 1996 Biological Opinion, and any species-specific protective measures required by the USFWS would apply to all permits issued under this new category of preferred sites, thereby providing the required protection of Federally listed endangered and threatened species. For all of these reasons, we have determined that additional section 7 consultation for this amendment is not warranted.

Federal Agency Comments

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 837.111). The Mine Safety and Health Administration (MSHA), District 1, in a letter dated March 31, 2010, (Administrative Record No. PA 837.116), responded that it does not have any comments or concerns with this request.

Environmental Protection Agency (EPA) Concurrence and Comments

Under Federal regulations at 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The revision that Pennsylvania proposes to make in this amendment does not pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

V. OSMRE's Decision

Based on the above findings, we approve the amendment Pennsylvania sent to us on February 24, 2010, pertaining to Pennsylvania's CRDCA. However, our approval is with the understanding that, with respect to preferred sites, the State will not approve a site (via the site selection process) or permit (via requirements in chapters 86 or 90) a site that is known or likely to contain Federally listed threatened or endangered species, unless the State concludes, and the USFWS concurs, that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the ''take'' of Federally listed or endangered species in violation of section 9 of the Endangered Species Act.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSMRE. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed state regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act. (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 29, 2015.

Thomas D. Shope,

Regional Director, Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 938.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	*	*
February 24, 2010	October 19, 2015	52 P.S. 30.54a(a)(6)

[FR Doc. 2015–26477 Filed 10–16–15; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2015–0001: Internal Agency Docket No. FEMA–8405]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Bret Gates, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4133.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance

coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania: Philadelphia, City of, Philadelphia County.	420757	January 14, 1972, Emerg; June 15, 1979, Reg; November 18, 2015, Susp.	November 18, 2015.	November 18, 2015.
Region IV				
Florida:				
Highlands County, Unincorporated Areas.	120111	November 25, 1975, Emerg; February 16, 1983, Reg; November 18, 2015, Susp.	November 18, 2015.	November 18, 2015.
Lake Placid, Town of, Highlands County.	120068	N/A, Emerg; April 25, 2006, Reg; November 18, 2015, Susp.	.....do*	Do.
Sebring, City of, Highlands County	120690	September 29, 2003, Emerg; N/A, Reg; November 18, 2015, Susp.	.....do*	Do.
Region VII				
Kansas: 23 Hanover, City of, Washington County.	200502	January 25, 1977, Emerg; September 27, 1985, Reg; November 18, 2015, Susp.	.....do*	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 1, 2015.

Roy E. Wright,

Deputy Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–26449 Filed 10–16–15; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 80, No. 201
Monday, October 19, 2015

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3987; Directorate Identifier 2015–NM–066–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This proposed AD was prompted by a report of wire chafing caused by a certain left wing spoiler actuator wire not having enough separation from a certain bracket when the spoiler is in the deployed position. This proposed AD would require measuring the separation between a certain electro-mechanical actuator wire of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct wire chafing, which could result in an electrical short and potential fire in a flammable fluid leakage zone, and possible loss of several functions essential for safe flight.

DATES: We must receive comments on this proposed AD by December 3, 2015.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3987.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3987; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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: Sean J. Schauer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: *sean.schauer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–3987; Directorate Identifier 2015–NM–066–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

During an inspection in final assembly, insufficient clearance and wire chafing was found on an airplane between the wiring on the number 4 spoiler electric motor actuator (SEMA) and a bracket with the flaps fully extended and the spoiler fully drooped. This condition, if not corrected, could result in an electrical short and potential fire in a flammable fluid leakage zone, and possible loss of several functions essential for safe flight.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014. The service information describes procedures for accomplishing the following actions.

- Measuring the separation between the electro-mechanical actuator wire W801182 of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit.
- Related investigative actions and corrective actions such as doing a general visual inspection for chafing of the electro-mechanical actuator wire W801182 of the left wing, spoiler 4; adjusting the electro-mechanical actuator wire W801182 of the left wing, spoiler 4; and replacing the electro-mechanical actuator wire W801182 of the left wing, spoiler 4.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition

described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. Refer to this service information for details on the procedures.

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

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

Costs of Compliance

We estimate that this proposed AD affects 12 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
Measurement	6 work-hours × $85 per hour = $510	$0	$510	$6,120

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Related investigative and corrective actions	2 work-hours × $85 per hour = $170	$24	$194

According to the manufacturer, all 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 the available 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):

The Boeing Company: Docket No. FAA–2015–3987; Directorate Identifier 2015–NM–066–AD.

(a) Comments Due Date

We must receive comments by December 3, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to certain The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Unsafe Condition

This AD was prompted by a report of wire chafing caused by a certain left wing spoiler actuator wire not having enough separation from a certain bracket when the spoiler is in the deployed position. We are issuing this AD to detect and correct wire chafing, which could result in an electrical short and potential fire in a flammable fluid leakage zone and possible loss of several functions essential for safe flight.

(f) Compliance

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

(g) Wire Separation Measurement, Related Investigative Actions, and Corrective Actions

Within 24 months after the effective date of this AD: Measure the separation between the electro-mechanical actuator wire W801182 of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014. Do all applicable related investigative and corrective actions before further flight.

(h) Alternative Methods of Compliance (AMOCs)

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

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

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

(i) Related Information

(1) For more information about this AD, contact Sean J. Schauer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: *sean.schauer@faa.gov.*

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

Issued in Renton, Washington, on October 6, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–26221 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3990; Directorate Identifier 2014–NM–255–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: We must receive comments on this proposed AD by December 3, 2015.

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

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

For Airbus service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

For Airbus Operations GMBH service information identified in this proposed AD, contact Airbus Operations GMBH, Cabin Electronics, Lueneburger Schanze 30, 21614 Buxtehude, Germany; telephone +49 40 7437 46 32; telefax +49 40 7437 16 80; email *ruediger.jansen@airbus.com.*

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3990; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–3990; Directorate Identifier 2014–NM–255–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent

for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0256, dated November 26, 2014, (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A320–214, –232, and –233 airplanes; and Airbus Model A321–211 and –231 airplanes. The MCAI states:

> A quality issue was reported regarding incorrect installation of jiffy joint connectors on cables connected to certain Passenger Service Units (PSU), which may lead to a malfunction of the passenger oxygen container in case of connector disengagement during flight due to vibrations. All the aeroplanes that had a potentially affected PSU installed were identified. Most of those aeroplanes were corrected during a specific quality inspection on the final assembly line prior to customer delivery. Unfortunately, a limited number of aeroplanes were delivered before the quality inspection was implemented.
>
> This condition, if not detected and corrected, could lead to failure of the door of the passenger oxygen container and open in case of aeroplane decompression, possibly resulting in lack of oxygen supply and consequent injury to occupants.
>
> For the reasons described above, this [EASA] AD requires identification of the affected PSU and, depending on the findings, * * * related investigative and corrective actions.

Related investigative actions include a detailed inspection to determine if the jiffy joint connector works properly. Corrective actions include rework or replacement of the jiffy joint connectors. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3990.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information.

- Airbus Service Bulletin A320–25–1B20, dated October 9, 2014. This service information describes procedures for inspecting for affected PSU part numbers and serial numbers, and depending on findings, doing applicable related investigative and corrective actions. Related investigative actions include a detailed inspection to determine if the jiffy joint connector works properly. Corrective actions include rework or replacement of the jiffy joint connectors.
- Airbus Operations GmbH Vendor Service Bulletin Z315H–25–004, dated September 26, 2014. This service information describes procedures for inspecting for the connection of the jiffy joint connectors, and depending on findings, doing rework or replacement of the jiffy joint connectors.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Explanation of ''RC'' Procedures and Tests in Service Information

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

As specified in a Note under the Accomplishment Instructions of Airbus Service Bulletin A320–25–1B20, dated October 9, 2014, procedures and tests that are identified as RC in any service information must be done to comply with the proposed AD. However, procedures and tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the procedures and tests identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to procedures or tests identified as RC will require approval of an AMOC.

Costs of Compliance

We estimate that this proposed AD affects 7 airplanes of U.S. registry.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2015–3990; Directorate Identifier 2014–NM–255–AD.

(a) Comments Due Date

We must receive comments by December 3, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A320–214, –232, and –233 airplanes; and Airbus Model A321–211 and –231 airplanes, certificated in any category, having manufacturer serial numbers (MSNs) 5583, 5598, 5602, 5604, 5608, 5610, 5613 through 5622 inclusive, 5624 through 5627 inclusive, 5629 through 5632 inclusive, 5634 through 5636 inclusive, 5638, 5640 through 5644 inclusive, 5646 through 5649 inclusive, 5651 through 5653 inclusive, 5655, 5657 through 5661 inclusive, 5663, 5665, 5667, 5670, 5672, 5673, and 5675.

(d) Subject

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

(e) Reason

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

(f) Compliance

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

(g) Inspection and Related Investigative and Corrective Actions

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

(h) Clarification of Vendor Service Information

Appendix 1 of Airbus Operations GmbH Vendor Service Bulletin Z315H–25–004, dated September 26, 2014, identifies Attachment 1 as the list of affected PSU part numbers and serial numbers. Also, the ''List of Attachments'' in Appendix 1, specifies Attachment 1 as Table 4, however ''Attachment 1'' and ''Table 4'' do not appear on any of the pages of the list of affected PSU part numbers and serial numbers, nor does a date. Furthermore, the pagination of the list of affected PSU part numbers and serial numbers is independent of the pagination of Airbus Operations GmbH Vendor Service Bulletin Z315H–25–004, dated September 26, 2014.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0256, dated November 26, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3990.

(2) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* For Airbus Operations GMBH service information identified in this AD, contact Airbus Operations GMBH, Cabin Electronics, Lueneburger Schanze 30, 21614 Buxtehude, Germany; telephone +49 40 7437 46 32; telefax +49 40 7437 16 80; email *ruediger.jansen@airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 6, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–26223 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3989; Directorate Identifier 2014–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A318; A319; A320; and A321 series airplanes. This proposed AD was prompted by reports of premature aging of certain passenger chemical oxygen generators that resulted in the generators failing to activate. This proposed AD would require an inspection to determine if certain passenger chemical oxygen generators are installed and replacement of affected passenger chemical oxygen generators. We are proposing this AD to prevent failure of the passenger chemical oxygen generator to activate and consequently not deliver oxygen during an emergency, possibly resulting in injury to the airplane occupants.

DATES: We must receive comments on this proposed AD by December 3, 2015.

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

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

For Airbus service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

For B/E Aerospace service information identified in this proposed AD, contact B/E Aerospace Inc., 10800 Pflumm Road, Lenexa, KS 66215; telephone: 913–338–9800; fax: 913–469–8419; Internet *http://beaerospace.com/home/globalsupport.*

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3989; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–3989; Directorate Identifier 2014–NM–250–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015–0117, dated June 24, 2015; corrected August 7, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318; A319; A320; and A321 series airplanes. The MCAI states:

> Reports have been received indicating premature ageing of certain chemical oxygen generators, Part Number (P/N) 117042–XX (XX representing any numerical value), manufactured by B/E Aerospace. Some operators reported that when they tried to activate generators, some older units failed to activate. Given the number of failed units reported, all generators manufactured in 1999, 2000 and 2001 were considered unreliable.
>
> This condition, if not corrected, could lead to failure of the generator to activate and consequently not deliver oxygen during an emergency, possibly resulting in injury to aeroplane occupants.
>
> To address this potential unsafe condition, Airbus issued Alert Operators Transmission (AOT) A35N006–14, making reference to B/E Aerospace Service Information Letter (SIL) D1019–01 (currently at Revision 1) and B/E Aerospace Service Bulletin (SB) 117042–35–001.
>
> Consequently, EASA issued AD * * * (later revised) to require identification and replacement of the affected oxygen generators.
>
> Since EASA AD 2014–0275R1 [*http://ad.easa.europa.eu/ad/2014-0275R1*] was issued, and following new investigation results, EASA have decided to introduce a life limitation concerning all P/N 117042–XX chemical oxygen generators, manufactured by B/E Aerospace.
>
> For the reason described above, this [EASA] AD retains the requirements of the EASA AD 2014–0275R1, which is superseded, expands the scope of the [EASA] AD to include chemical oxygen generators manufactured after 2001, and requires their removal from service before exceeding 10 years since date of manufacture.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3989.

Related Service Information Under 1 CFR Part 51

Airbus has issued Alert AOT A35N006–14, dated December 10, 2014, including Appendix 01.

B/E Aerospace Inc. has issued Service Bulletin 117042–35–001, dated December 10, 2014.

This service information describes procedures to replace certain passenger chemical oxygen generators. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 953 airplanes of U.S. registry.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $390 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $533,680, or $560 per product.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2015–3989; Directorate Identifier 2014–NM–250–AD.

(a) Comments Due Date

We must receive comments by December 3, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD; all manufacturer serial numbers, except those that have embodied Airbus modification 33125 (gaseous system for all oxygen containers) in production.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by reports of premature aging of certain passenger chemical oxygen generators that resulted in the generators failing to activate. We are issuing this AD to prevent failure of the passenger chemical oxygen generator to activate and consequently not deliver oxygen during an emergency, possibly resulting in injury to the airplane occupants.

(f) Compliance

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

(g) Part Number Inspection

Within 30 days after the effective date of this AD, do a one-time inspection of passenger chemical oxygen generators, part numbers (P/N) 117042–02 (15 minutes (min)–2 masks), 117042–03 (15 min–3 masks), 117042–04 (15 min–4 masks), 117042–22 (22 min–2 masks), 117042–23 (22 min–3 masks), and 117042–24 (22 min–4 masks) to determine the date of manufacture as specified in Airbus Alert Operators Transmission (AOT) A35N006–14, dated December 10, 2014, including Appendix 01. Refer to figure 1 and figure 2 to paragraph (g) of this AD for the location of the date. A review of airplane maintenance records is acceptable for the inspection required by paragraph (g) of this AD, provided the date of manufacture can be conclusively determined by that review.

Figure 1 to paragraph (g) of this AD - location of date (MM-YY)

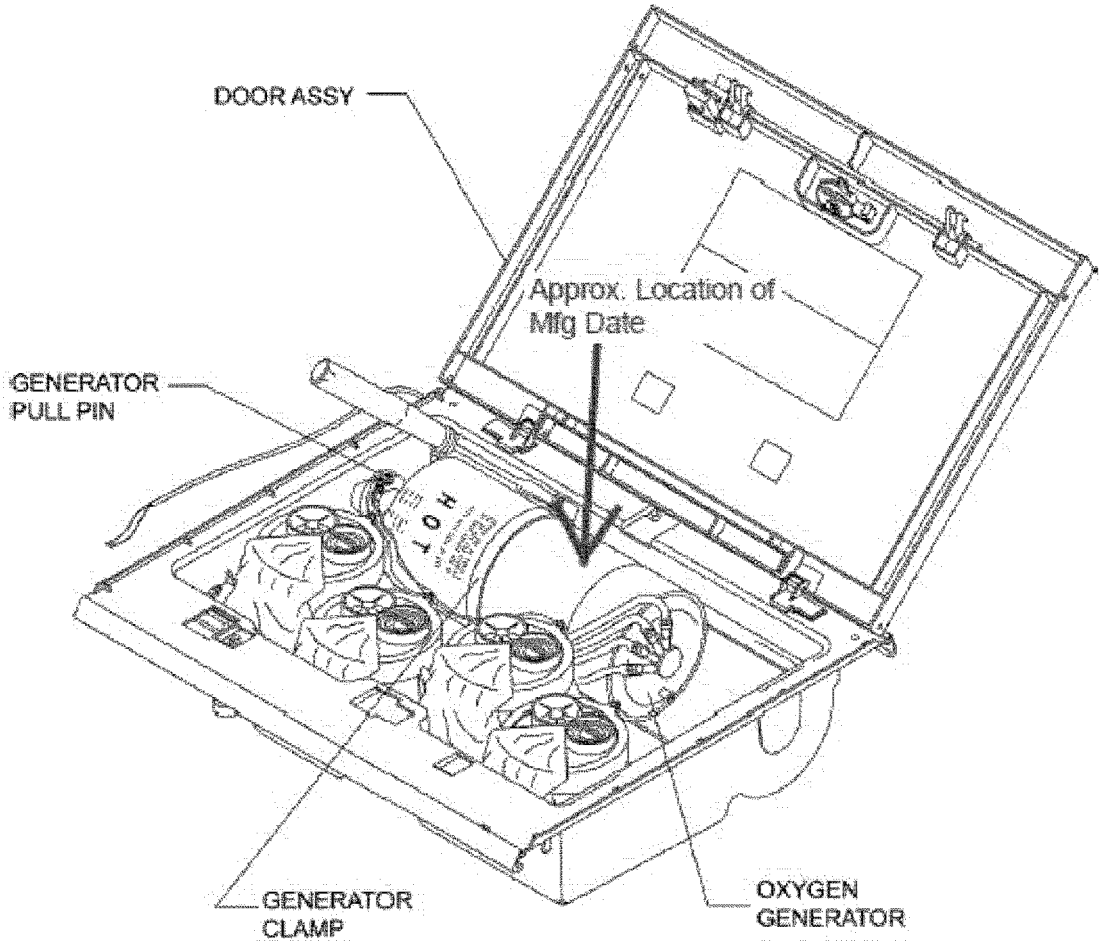
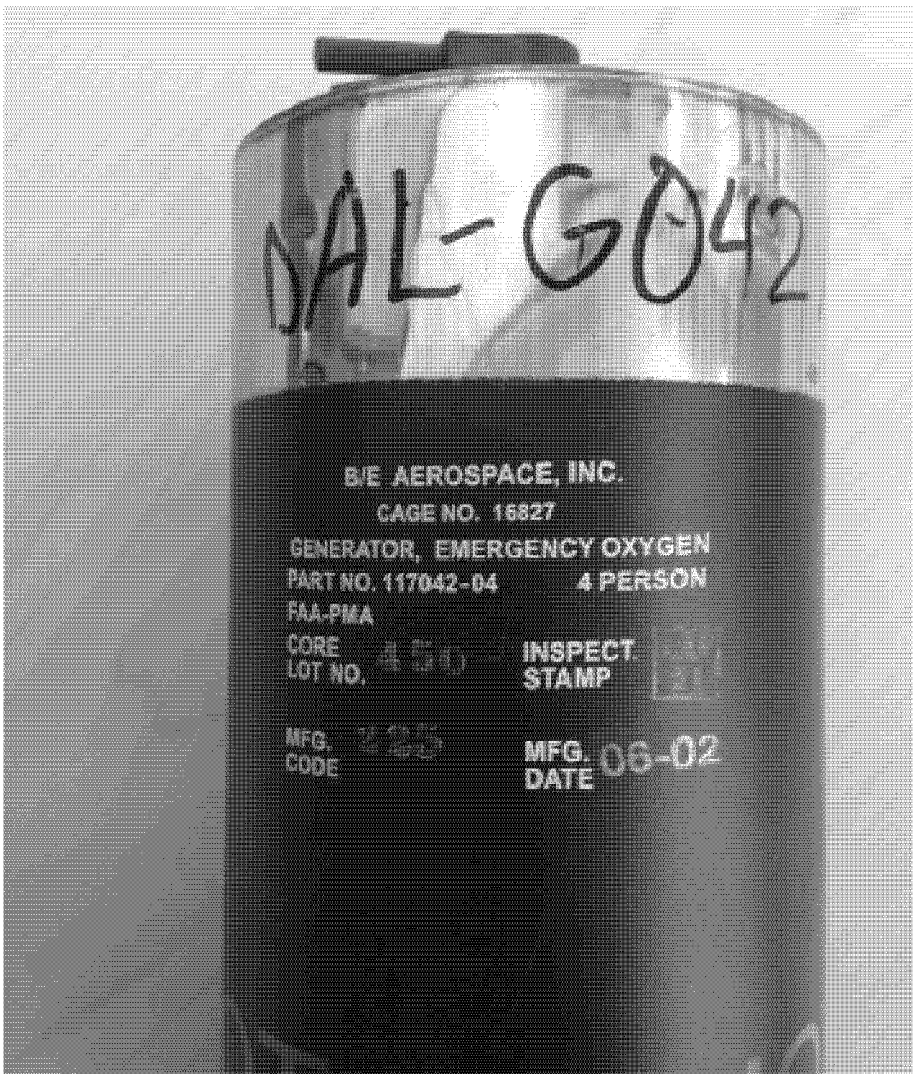


Figure 2 to paragraph (g) of this AD - MFG.DATE (06-02 = June 2002) example



(h) Replacement of Passenger Chemical Oxygen Generators Manufactured in 1999, 2000, or 2001

If, during any inspection required by paragraph (g) of this AD, any passenger chemical oxygen generator having a date of manufacture in 1999, 2000, or 2001 is found: At the applicable time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, remove and replace the affected passenger chemical oxygen generator with a serviceable unit, in accordance with the Accomplishment Instructions of B/E Aerospace Service Bulletin 117042–35–001, dated December 10, 2014 (for 15 minute passenger chemical oxygen generators); and Airbus AOT A35N006–14, dated December 10, 2014, including Appendix 01 (for 22 minute passenger chemical oxygen generators).

(1) For passenger chemical oxygen generators that have a date of manufacture in 1999: Within 30 days after the effective date of this AD.

(2) For passenger chemical oxygen generators that have a date of manufacture in 2000: Within 6 months after the effective date of this AD.

(3) For passenger chemical oxygen generators that have a date of manufacture in 2001: Within 12 months after the effective date of this AD.

(i) Replacement of Passenger Chemical Oxygen Generators Manufactured in 2002 and Later

If, during any inspection required by paragraph (g) of this AD, any passenger chemical oxygen generator having a date specified in table 1 to paragraph (i) of this AD is found: At the applicable time specified in table 1 to paragraph (i) of this AD, remove and replace the affected passenger chemical oxygen generator with a serviceable unit, in accordance with the Accomplishment Instructions of B/E Aerospace Service Bulletin 117042–35–001, dated December 10, 2014 (for 15 minute passenger chemical oxygen generators) and Airbus AOT A35N006–14, dated December 10, 2014, including Appendix 01 (for 22 minute passenger chemical oxygen generators).

TABLE 1 TO PARAGRAPH (i) OF THIS AD—REPLACEMENT COMPLIANCE TIMES

Year of manufacture	Compliance time
2002	Within 12 months after the effective date of this AD.
2003	Within 16 months after the effective date of this AD.
2004	Within 20 months after the effective date of this AD.
2005	Within 24 months after the effective date of this AD.
2006	Within 28 months after the effective date of this AD.
2007	Within 32 months after the effective date of this AD.
2008	Within 36 months after the effective date of this AD.

TABLE 1 TO PARAGRAPH (i) OF THIS AD—REPLACEMENT COMPLIANCE TIMES—Continued

Year of manufacture	Compliance time
2009	Before exceeding 10 years since date of manufacture of the passenger chemical oxygen generator.

(j) Definition of Serviceable

For the purpose of this AD, a serviceable unit is a passenger chemical oxygen generator having P/N 117042–XX with a manufacturing date not older than 10 years, or any other approved part number, provided that the generator has not exceeded the life limit established for that generator by the manufacturer.

(k) Reporting

At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD, submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD, in accordance with paragraph 7., ''Reporting,'' of Airbus AOT A35N006–14, dated December 10, 2014, including Appendix 01. The report must include the information specified in Appendix 1 of Airbus AOT A35N006–14, dated December 10, 2014.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(l) Parts Installation Limitation

As of the effective date of this AD, no person may install a passenger chemical oxygen generator, unless it is determined, prior to installation, that the oxygen generator is a serviceable unit as specified in paragraph (j) of this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive EASA AD 2015–0117, dated June 24, 2015; corrected August 7, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3989.

(2) For Airbus service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* For BE service identified in this proposed AD, contact B/E Aerospace Inc., 10800 Pflumm Road, Lenexa, KS 66215; telephone: 913–338–9800; fax: 913–469–8419; Internet *http://beaerospace.com/home/globalsupport.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 6, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–26220 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3988; Directorate Identifier 2015–NM–005–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2014–17–51, for certain Bombardier, Inc. Model CL–600–2B16 airplanes. AD 2014–17–51 currently requires inspecting the inboard flap fasteners of the hinge-box forward fitting at Wing Station (WS) 76.50 and WS 127.25 to determine the orientation and condition of the fasteners, as applicable, and replacement or repetitive inspections of the fasteners if necessary. AD 2014–17–51 also provides for optional terminating action for the requirements of that AD. Since we issued AD 2014–17–51, we have determined that additional action is necessary. This proposed AD would also require accomplishment of the previously optional terminating action. We are proposing this AD to detect and correct incorrectly oriented or fractured fasteners, which could result in premature failure of the fasteners attaching the inboard flap hinge-box forward fitting; failure of the fasteners could lead to the detachment of the flap hinge box and the flap surface, and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by December 3, 2015.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3988; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–3988; Directorate Identifier 2015–NM–005–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On October 13, 2014, we issued AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014). AD 2014–17–51 requires actions intended to address an unsafe condition on certain Bombardier, Inc. Model CL–600–2B16 airplanes.

The preamble to AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014), explains that we consider the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–27R1, dated August 29, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2B16 airplanes. The MCAI states:

> There have been three in-service reports on 604 Variant aeroplanes of a fractured fastener head on the inboard flap hinge-box forward fitting at Wing Station (WS) 76.50, found during a routine maintenance inspection. Investigation revealed that the installation of these fasteners on the inboard flap hinge-box forward fittings at WS 76.50 and WS 127.25, on both wings, does not conform to the engineering drawings. Incorrect installation may result in premature failure of the fasteners attaching the inboard flap hinge-box forward fitting. Failure of the fasteners could lead to the detachment of the flap hinge box and consequently the detachment of the flap surface. The loss of a flap surface could adversely affect the continued safe operation of the aeroplane.
>
> The original issue of [Canadian] AD CF–2013–39 [*http://www.regulations.gov/#!documentDetail;D=FAA-2014-0054-0002*] [which corresponds to FAA AD 2014–03–17, Amendment 39–17754 (79 FR 9389, February 19, 2014)] mandated a detailed visual inspection (DVI) of each inboard flap hinge-box forward fitting, on both wings, and rectification as required. Incorrectly oriented fasteners require repetitive inspections until the terminating action is accomplished.
>
> After the issuance of [Canadian] AD CF–2013–39, there has been one reported incident on a 604 Variant aeroplane where four fasteners were found fractured on the same flap hinge-box forward fitting. The investigation determined that the fasteners were incorrectly installed.
>
> The original issue of this [Canadian] AD was issued to reduce the initial and repetitive inspection intervals previously mandated in [Canadian] AD CF–2013–39, and to impose replacement of the incorrectly oriented fasteners within 24 months. The CL–600–1A11, –2A12 and –2B16 (601–3A/–3R Variant) aeroplanes are addressed through [Canadian] AD CF–2013–39R1.
>
> Revision 1 of this [Canadian] AD is issued to clarify the requirements for the initial and repetitive inspections.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3988.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Alert Service Bulletins:

- A604–57–006, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013,
- A605–57–004, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013, and

The service information describes detailed visual inspection of each inboard flap fastener of the hinge-box forward fitting at WS 76.50 and WS 127.25, on both wings, and, if necessary, replacement of the fasteners. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 285 airplanes of U.S. registry.

The actions required by AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that are required by AD 2014–17–51 is $85 per product.

We also estimate that it would take about 58 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $753 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,619,655, or $5,683 per product.

In addition, we estimate that any necessary follow-on actions would take about 58 work-hours and require parts costing $753, for a cost of $5,683 per product. We have no way of determining the number of aircraft that might need this action.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2015–3988; Directorate Identifier 2015–NM–005–AD.

(a) Comments Due Date

We must receive comments by December 3, 2015.

(b) Affected ADs

(1) This AD replaces AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014).

(2) This AD affects AD 2014–03–17, Amendment 39–17754 (79 FR 9389, February 19, 2014), only for the airplanes identified in paragraph (c) of this AD.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B16 airplanes, certificated in any category, serial numbers 5301 through 5665 inclusive, and 5701 through 5920 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by reports of fractured fastener heads on the inboard flap hinge-box forward fitting at Wing Station (WS) 76.50 due to incorrect installation. We are issuing this AD to detect and correct incorrectly oriented or fractured fasteners, which could result in premature failure of the fasteners attaching the inboard flap hinge-box forward fitting; failure of the fasteners could lead to the detachment of the flap hinge box and the flap surface, and consequent loss of control of the airplane.

(f) Compliance

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

(g) Retained Inspection, With New Service Information: Airplanes Not Previously Inspected

This paragraph restates the requirements of paragraph (g) of AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014), with new service information. For airplanes on which the actions required by AD 2014–03–17, Amendment 39–17754 (79 FR 9389, February 19, 2014), have not been done as of November 12, 2014 (the effective date of AD 2014–17–51): Within 10 flight cycles after November 12, 2014, or within 100 flight cycles after March 6, 2014 (the effective date of AD 2014–03–17, Amendment 39–17754 (79 FR 9389, February 19, 2014)), whichever occurs first, do a detailed visual inspection of each inboard flap fastener of the hinge-box forward fitting at WS 76.50 and WS 127.25, on both wings, to determine if the fasteners are correctly oriented and intact (non-fractured, with intact fastener head). Do the inspection in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A604–57–006, Revision 01, dated September 26, 2013, including Appendices 1 and 2, dated September 26, 2013, Revision 02, dated January 22, 2014, including Appendices 1 and 2, dated September 26, 2013, or Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013 (for serial numbers 5301 through 5665 inclusive); or Bombardier Alert Service Bulletin A605–57–004, Revision 01, dated September 26, 2013, including Appendices 1 and 2, dated September 26, 2013, Revision 02, dated January 22, 2014, including Appendices 1 and 2, dated September 26, 2013, or Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013 (for serial numbers 5701 through 5920 inclusive). As of the effective date of this AD, only use Bombardier Alert Service Bulletin A604–57–006, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013; or Bombardier Alert Service Bulletin A605–57–004, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013; as applicable; for the actions required by this paragraph.

(1) If all fasteners are found intact and correctly oriented, no further action is required by this AD.

(2) If any fastener is found fractured: Before further flight, remove and replace all forward and aft fasteners at WS 76.50 and WS 127.25, regardless of condition or orientation, on both wings, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD. As of the effective date of this AD, only use Bombardier Alert Service Bulletin A604–57–006, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013; or Bombardier Alert Service Bulletin A605–57–004, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013; as applicable; for the actions required by this paragraph. After replacement of all fasteners as required by this paragraph of this AD, no further action is required by this AD.

(3) If any incorrectly oriented but intact fastener is found, and no fractured fastener is found, repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 10 flight cycles, until the requirements of paragraph (i)(1) or (k) of this AD have been done.

(h) Retained Actions, With New Service Information: Airplanes Previously Inspected, Having Incorrectly Oriented Fastener(s)

This paragraph restates the requirements of paragraph (h) of AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014), with new service information. For airplanes on which an inspection required by paragraph (g) or (j) of AD 2014–03–17, Amendment 39–17754 (79 FR 9389, February 19, 2014), has been done as of November 12, 2014 (the effective date of AD 2014–17–51), and on which any incorrectly oriented fastener, but no fractured fastener, was found: Except as provided by paragraph (i)(3) of this AD, do a detailed visual inspection of all inboard flap fasteners of the hinge-box forward fitting at WS 76.50 and WS 127.25, on both wings, to determine if the fasteners are intact (non-fractured, with intact fastener head). Inspect within 10 flight cycles after November 12, 2014, or within 100 flight cycles after the most recent inspection done as required by AD 2014–03–17, whichever occurs first. Inspect in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD. As of the effective date of this AD, only use Bombardier Alert Service Bulletin A604–57–006, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013; or Bombardier Alert Service Bulletin A605–57–004, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013; as applicable; for the actions required by this paragraph.

(1) If all fasteners are found intact, repeat the inspection thereafter at intervals not to exceed 10 flight cycles, until the requirements of paragraph (i)(1) or (k) of this AD have been done.

(2) If any fastener is found fractured: Before further flight, remove and replace all forward and aft fasteners at WS 76.50 and WS 127.25, regardless of condition or orientation, on both wings, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD. As of the effective date of this AD, only use Bombardier Alert Service Bulletin A604–57–006, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013; or Bombardier Alert Service Bulletin A605–57–004, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013; as applicable; for the actions required by this paragraph. After replacement of all fasteners as required by this paragraph, no further action is required by this AD.

(i) Retained Terminating Action, With New Service Information

This paragraph restates the terminating action specified in paragraph (i) of AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014), with new service information.

(1) Replacement of all forward and aft fasteners at WS 76.50 and WS 127.25, on both wings, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD, terminates the requirements of this AD. As of the effective date of this AD, only use Bombardier Alert Service Bulletin A604–57–006, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013; or Bombardier Alert Service Bulletin A605–57–004, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013; as applicable; for the actions specified in this paragraph.

(2) Accomplishment of the applicable requirements of this AD constitutes terminating action for the requirements of AD 2014–03–17, Amendment 39–17754 (79 FR 9389, February 19, 2014), for that airplane only.

(3) Replacement of all fractured and incorrectly oriented fasteners before November 12, 2014 (the effective date of AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014)), as provided by paragraph (i) or (k) of AD 2014–03–17, Amendment 39–17754 (79 FR 9389, February 19, 2014), is acceptable for compliance with the requirements of this AD.

(j) Retained Special Flight Permit Prohibition

This paragraph restates the requirements of paragraph (j) of AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014). Special flight permits to operate the airplane to a location where the airplane can be repaired in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) are not allowed.

(k) New Requirement of This AD: Post-Inspection Fastener Replacement

For airplanes on which incorrectly oriented fasteners were found during any inspection required by paragraph (g), (g)(3), (h), or (h)(1) of this AD, but none were found to be fractured: Within 24 months after the effective date of this AD, remove and replace all forward and aft fasteners at WS 76.50 and WS 127.25, regardless of condition or orientation, on both wings, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A604–57–006, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013 (for serial numbers 5301 through 5665 inclusive); or Bombardier Alert Service Bulletin A605–57–004, Revision 04, dated November 12, 2014, including Appendices 1 and 2, dated September 26, 2013 (for serial numbers 5701 through 5920 inclusive). Accomplishing the requirements of this paragraph terminates the requirements of this AD.

(l) Credit for Previous Actions

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

(i) Bombardier Alert Service Bulletin A604–57–006, Revision 03, dated August 19, 2014, including Appendices 1 and 2, dated September 26, 2013.

(ii) Bombardier Alert Service Bulletin A605–57–004, Revision 03, dated August 19, 2014, including Appendices 1 and 2, dated September 26, 2013.

(2) This paragraph provides credit for actions required by paragraph (k) of this AD, if those actions were done before the effective date of this AD using the applicable service information identified in paragraphs (l)(2)(i) through (l)(2)(iv) of this AD.

(i) Bombardier Alert Service Bulletin A604–57–006, Revision 01, dated September 26, 2013, including Appendices 1 and 2, dated September 26, 2013, which is incorporated by reference in AD 2014–03–17, Amendment 39–17754 (79 FR 9389, February 19, 2014).

(ii) Bombardier Alert Service Bulletin A604–57–006, Revision 02, dated January 22, 2014, including Appendices 1 and 2, dated September 26, 2013, which is incorporated by reference in AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014).

(iii) Bombardier Alert Service Bulletin A605–57–004, Revision 01, dated September 26, 2013, including Appendices 1 and 2, dated September 26, 2013, which is incorporated by reference in AD 2014–03–17, Amendment 39–17754 (79 FR 9389, February 19, 2014).

(iv) Bombardier Alert Service Bulletin A604–57–004, Revision 02, dated January 22, 2014, including Appendices 1 and 2, dated September 26, 2013, which is incorporated by reference in AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014).

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(ii) AMOCs previously approved for AD 2014–17–51, Amendment 39–17999 (79 FR 64088, October 28, 2014), are acceptable for the corresponding requirements of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from

a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Emergency Airworthiness Directive CF–2014–27R1, dated August 29, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3988.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514 855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 6, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–26222 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4112; Directorate Identifier 2014–SW–043–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (previously Eurocopter France)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2010–23–02 for Eurocopter France (now Airbus Helicopters) Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters. AD 2010–23–02 currently requires amending the Limitations section of the Rotorcraft Flight Manual (RFM) to limit the never-exceed velocity (VNE) to 150 Knots Indicated Air Speed (KIAS) and to add a 1,500 ft/minute rate of descent (R/D) limitation beyond 140 KIAS. Since we issued AD 2010–23–02, a design change designated as modification (MOD) 0755B28 improved the dynamic behavior of the horizontal stabilizer such that AD actions are not required. This proposed AD would retain the requirements of AD 2010–23–01 and revise the applicability to exclude helicopters with MOD 0755B28. These proposed actions are intended to exclude certain helicopters from the applicability and restrict the VNE on other helicopters to prevent failure of the horizontal stabilizer and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by December 18, 2015.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–4112; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, Texas 76177.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 10101 Hillwood Pkwy., Fort Worth, Texas 76177; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

On October 15, 2010, we issued AD 2010–23–02, Amendment 39–16491 (75 FR 68169, November 5, 2010) for Eurocopter France (now Airbus Helicopters) Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters. AD 2010–23–02 requires amending the Limitations section of the RFM to limit the VNE to 150 KIAS and to add a 1,500 ft/minute R/D limitation beyond 140 KIAS and installing one or more placards on the cockpit instrument panel in full view of the pilot and copilot. AD 2010–23–01 was prompted by failures of the horizontal stabilizers on then-recently delivered Model AS 365 N3 helicopters due to a vibration phenomenon that may arise during the descent flight phases at high speed regardless of the stabilizer installed. Those actions were intended to prevent failure of the horizontal stabilizer and subsequent loss of control of the helicopter.

Actions Since AD 2010–23–02 Was Issued

Since we issued AD 2010–23–01 (75 FR 68169, November 5, 2010), Eurocopter France changed its name to Airbus Helicopters. EASA, which is the

Technical Agent for the Member States of the European Union, issued EASA AD No. 2008–0204R1, Revision 1, dated May 21, 2014, to correct an unsafe condition for Airbus Helicopters Model SA–365N, SA–365N1, SA–365N2 and AS 365 N3 helicopters, all serial numbers, except those that have ''embodied'' MOD 07 55B28. EASA advises that Airbus Helicopters developed MOD 07 55B28 to improve the dynamic behavior of the horizontal stabilizer and thus reduce the vibration levels during high speed descent. EASA revised a prior AD and issued AD No. 2008–0204R1 to exclude helicopters with MOD 07 55B28 from the applicability.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of these same type designs.

Related Service Information

We reviewed a Eurocopter Emergency Alert Service Bulletin (EASB) with three numbers (01.00.60, 01.00.16, and 01.28), Revision 1, dated December 2, 2008. EASB No. 01.00.60 applies to U.S. type-certificated Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters and also to military Model AS365F, Fs, Fi, and K helicopters that are not certificated in the United States. EASB 01.00.16 applies to military Model AS565AA, MA, MB, SA, SB, and UB helicopters that are not type certificated in the United States. EASB 01.28 applies to the Model SA–366G1 helicopter. The EASB specifies bonding one or more locally-produced labels to the instrument panel stating that the VNE is limited to 150 KIAS and the R/D must not exceed 1,500 ft/min beyond 140 KIAS. Eurocopter states in the EASB that it is working on an enhanced definition that will be proposed as soon as possible. EASA classified this EASB as mandatory and issued AD No. 2008–0204–E, dated December 4, 2008, and revised with Revision 1, dated May 21, 2014, to ensure the continued airworthiness of these helicopters.

We also reviewed Airbus Helicopters Service Bulletin (SB) No. AS365–55.00.06, Revision 0, dated November 14, 2014, which Airbus Helicopters identifies as MOD 0755B28. The SB specifies repairing the stabilizer for suppression of the flutter phenomenon.

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2010–23–02, Amendment 39–16491 (75 FR 68169, November 5, 2010) to amend the Limitations section of the RFM to limit the VNE to 150 KIAS and to add a 1,500 ft/minute R/D limitation for airspeeds beyond 140 KIAS and installing one or more placards on the cockpit instrument panel in full view of the pilot and copilot stating the limitations. This proposed AD would also revise the applicability to exclude those helicopters with MOD 0755B28 installed.

Costs of Compliance

We estimate that this proposed AD would affect 33 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per hour. We estimate about ½ work-hour per helicopter to make copies to include in the RFM and to make and install the placards. The parts costs are minimal. Based on these figures, we estimate the cost of this AD on U.S. operators would be $1,403 for the fleet.

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, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2010–23–02, Amendment 39–16491 (75 FR 68169, November 5, 2010), and adding the following new AD:

Airbus Helicopters (previously Eurocopter France): Docket No. FAA–2015–4112; Directorate Identifier 2014–SW–043–AD.

(a) Applicability

This AD applies to Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, with a horizontal stabilizer, part number 365A13–3030–1901, –1902, –1903, –1904, –1905, –1906, –1908, –1909; 365A13–3036–00, –0001, –0002, –0003; or 365A13–3038–00, installed, except those with modification 0755B28 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as vibration during descent at high speed. This condition could result in failure of the horizontal stabilizer and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD replaces AD 2010–23–02, Amendment 39–16491 (75 FR 68169, November 5, 2010).

(d) Comments Due Date

We must receive comments by December 18, 2015.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

Before further flight:

(1) Revise the airspeed operating limitation in the Limitations section of the Rotorcraft Flight Manual (RFM) by making pen and ink changes or by inserting a copy of this AD into the RFM stating: ''The never-exceed speed (VNE) is limited to 150 knots indicated airspeed (KIAS)'' and ''The rate-of-descent (R/D) must not exceed 1,500 ft/min when the airspeed is beyond 140 KIAS.''

(2) Install one or more self-adhesive placards, with 6 millimeter red letters on white background, on the cockpit instrument panel in full view of the pilot and co-pilot to read as follows: ''VNE LIMITED TO 150 KIAS'' and ''R/D MUST NOT EXCEED 1,500 ft/min when airspeed is beyond 140 KIAS''

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, Texas 76177; telephone (817) 222–5110; email *9-asw-ftw-amoc-requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Eurocopter Emergency Alert Service Bulletin (EASB) No. 01.00.60, 01.00.16, and 01.28, Revision 1, dated December 2, 2008, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, Texas 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2008–0204R1, dated May 21, 2014. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–4112.

(j) Subject

Joint Aircraft Service Component (JASC) Code 5310: Horizontal Stabilizer Structure.

Issued in Fort Worth, Texas, on October 1, 2015.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–26229 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3986; Directorate Identifier 2015–NM–057–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes. This proposed AD was prompted by reports of chafing damage due to insufficient clearance on the main landing gear (MLG) stabilizer brace, the nacelle A-frame structure, and the adjacent electrical wiring harnesses. An insufficient fillet radius may also exist on certain airplanes. This proposed AD would require, depending on airplane configuration, an inspection of the nacelle A-frame structure for insufficient fillet radius; an inspection for cracking of affected structure, and rework or repair if necessary, and rework of the nacelle A-frame structure; repetitive inspections of the nacelle A-frame structure and the MLG stabilizer brace for insufficient clearance and damage, and repair if necessary, and rework of the nacelle A-frame structure, which would terminate the repetitive inspections; installation of new stop brackets and a shim on each MLG stabilizer brace assembly; and rework of the electrical wiring harnesses in the nacelle area. We are proposing this AD to detect and correct chafing damage and subsequent premature cracking and fracture of the nacelle A-frame structure, which could result in failure of the MLG stabilizer brace and loss of the MLG down-lock indication, which could adversely affect the safe landing of the airplane.

DATES: We must receive comments on this proposed AD by December 3, 2015.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3986; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–3986; Directorate Identifier 2015–NM–057–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–45, dated December 23, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on certain Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes. The MCAI states:

> The aeroplane manufacturer has discovered that an insufficient fillet radius may exist on the flange of the nacelle A-frame structure on certain aeroplanes. There have also been several in-service reports of chafing damage on the main landing gear (MLG) stabilizer brace, the nacelle A-frame structure and its adjacent electrical wiring harnesses due to insufficient clearance.
>
> An insufficient fillet radius and chafing damage on the nacelle A-frame structure and MLG stabilizer brace could lead to premature cracking. Fracture of the nacelle A-frame structure or failure of the MLG stabilizer brace could adversely affect the safe landing of the aeroplane. The damage to the electrical wiring harnesses could result in the loss of the MLG downlock indication.
>
> This [Canadian] AD mandates the inspection and rework of the nacelle A-frame structure, and the rework of the forward MLG stabilizer brace assembly and the electrical harnesses in the nacelle area adjacent to the A-frame structure.

Required actions include, depending on airplane configuration, the following actions:

- A detailed inspection of the nacelle A-frame structure for insufficient fillet radius, an eddy current or fluorescent dye penetrant inspection for cracking of affected structure, and rework or repair if necessary.
- Rework of the left-hand (LH) side and right-hand (RH) side nacelle A-frame structure, including doing a measurement of the clearance between the fasteners/A-frame structure and MLG stabilizer brace assembly and making sure no fouling condition exists, and repair if necessary.
- Repetitive detailed inspections of the nacelle A-frame structure and the MLG stabilizer brace for insufficient clearance and damage, and repair if necessary.
- Rework of the nacelle A-frame structure, including a measurement of the clearance between the A-frame structure and MLG stabilizer brace assembly and a fluorescent dye penetrant inspection or high frequency eddy current inspection for cracking and repair if necessary, which would terminate the repetitive inspections.
- Installation of new stop brackets and a shim on each MLG stabilizer brace assembly.
- Rework of the electrical wiring harnesses in the nacelle area. The rework includes a detailed inspection of the conduit assembly for certain conditions and repair if any condition is found, replacement of damaged conduit, a measurement of the clearance between the stabilizer brace and electrical harness on both LH and RH nacelles to make sure there is 0.100 inch (2.54 millimeters (mm)) minimum clearance between the MLG stabilizer brace, and a check for damage on the A-frame structure and MLG stabilizer brace and repair if necessary.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3986.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information.

- ModSum IS4Q2400028, Revision B, dated June 22, 2012; and ModSum IS4Q240029, Revision A, dated July 6, 2014. These modsums describe procedures for rerouting certain electrical harnesses and installing grommets.
- ModSum IS4Q5450002, Revision B, dated April 30, 2012. This modsum describes procedures for installing specified fasteners on the MLG A-frame, in both the LH and RH nacelles.
- ModSum IS4Q5450003, Revision C, released November 29, 2012. This modsum describes procedures for trimming the horizontal and vertical stiffeners on the MLG A frame in both the LH and RH nacelles.
- Service Bulletin 84–32–112, Revision B, dated September 12, 2014, and Goodrich Service Bulletin 46400–32–102R1, Revision 1, dated June 24, 2013, as referenced in Bombardier Service Bulletin 84–32–112, Revision B, dated September 12, 2014. This service information describes procedures for incorporating Bombardier ModSum 4–902416 by installing new stop brackets and new stop shims for all MLG stabilizer brace assemblies.
- Service Bulletin 84–32–114, Revision A, dated September 18, 2013. This service information describes procedures for rework of the electrical wiring harnesses in the nacelle area. The rework includes a detailed inspection of the conduit assembly for certain conditions and repair, replacement of damaged conduit, a measurement of the clearance to make sure there is 0.100 inch (2.54 mm) minimum clearance between the MLG stabilizer brace, and a check for damage on the A-frame structure and MLG stabilizer brace and repair.
- Service Bulletin 84–54–19, dated April 18, 2013. This service information describes procedures for detailed inspections of the nacelle A-frame structure for insufficient fillet radius, an eddy current or fluorescent dye penetrant inspection for cracking of affected structure, and rework or repair.
- Service Bulletin 84–54–20, Revision B, dated October 2, 2014. This service information describes procedures for detailed inspections of the nacelle A-frame structure and the MLG stabilizer brace for insufficient clearance and damage, and repair. This service information also describes procedures for rework of the nacelle A-frame structure, including a measurement of the clearance between the A-frame structure and MLG stabilizer brace assembly, and a fluorescent dye penetrant inspection or high frequency eddy current inspection for cracking and repair, which would end the inspections.
- Service Bulletin 84–54–21, dated May 9, 2013. This service information describes procedures for rework of the LH side and RH side nacelle A-frame structure, including a measurement of the clearance between the fasteners/A-frame structure and MLG stabilizer brace assembly and to make sure no fouling condition exists, and repair.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of this Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or

develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 80 airplanes of U.S. registry.

We also estimate that it would take up to 50 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost $8,452 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be up to $1,016,160, or $12,702 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2015–3986; Directorate Identifier 2015–NM–057–AD.

(a) Comments Due Date

We must receive comments by December 3, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers (S/Ns) 4001 through 4431 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports of chafing damage due to insufficient clearance on the main landing gear (MLG) stabilizer brace, the nacelle A-frame structure, and the adjacent electrical wiring harnesses. An insufficient fillet radius might also exist on certain airplanes. We are issuing this AD to detect and correct chafing damage and subsequent premature cracking and fracture of the nacelle A-frame structure, which could result in failure of the MLG stabilizer brace and loss of the MLG down-lock indication, which could adversely affect the safe landing of the airplane.

(f) Compliance

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

(g) Inspection, Corrective Actions if Necessary, and Rework

For airplanes having S/Ns 4001 through 4055 inclusive: Do the actions required by paragraphs (g)(1) and (g)(2) of this AD.

(1) Within 600 flight hours or 100 days after the effective date of this AD, whichever occurs first: Do a detailed inspection of the left-hand (LH) side and right-hand (RH) side nacelle A-frame structure for insufficient fillet radius, in accordance with ''Part A—Inspection'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–19, dated April 18, 2013. If an insufficient fillet radius exists, before further flight, do an eddy current or fluorescent dye penetrant inspection for cracking, in accordance with ''Part A—Inspection'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–19, dated April 18, 2013.

(i) If any cracking is found: Before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(ii) If no cracking is found: Before further flight, rework the structure, in accordance ''Part B—Rectification'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–19, dated April 18, 2013.

(2) Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Rework the LH side and RH side nacelle A-frame structure, including doing a measurement of the clearance between the fasteners/A-frame structure and MLG stabilizer brace assembly and making sure no fouling condition exists, in accordance with paragraph 3.B. ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–21, dated May 9, 2013. If the clearance is found to be less than 0.100 inch (2.54 millimeters (mm)) between the fasteners/A-frame structure and MLG stabilizer brace assembly after the rework is done, or a fouling condition exists during the extension of the MLG after rework is done, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(h) Repetitive Inspections and Corrective Actions if Necessary

For airplanes having S/Ns 4056 through 4426 inclusive: Within 600 flight hours or 100 days after the effective date of this AD, whichever occurs first: Do a detailed inspection of the LH side and RH side nacelle A-frame structure and upper surface of the MLG stabilizer brace for insufficient clearance and damage (*e.g.,* cracking), in accordance with ''Part A—Inspection,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–20, Revision B, dated October 2, 2014. If no damage is found and clearance is sufficient: Repeat the inspection thereafter at intervals not to exceed 600 flight hours until the terminating action required by paragraph (i) of this AD has been done.

(1) If a clearance less than 0.100 inch (2.54 mm) exists between the A-frame structure and the MLG stabilizer brace assembly in the retracted position, after the rework is done, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(2) If any damage is found: Before further flight, repair using a method approved by the

Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(i) Terminating Action for Certain Airplanes

For airplanes having S/Ns 4056 through 4426 inclusive: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first; Rework the LH side and RH side nacelle A-frame structure, including doing a measurement of the clearance between the A-frame structure and MLG stabilizer brace assembly and doing a fluorescent dye penetrant inspection or high frequency eddy current inspection for cracking, in accordance with ''Part B-Rework,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–20, Revision B, dated October 2, 2014. Accomplishment of the actions required by this paragraph terminates the repetitive inspections required by paragraph (h) of this AD.

(1) If a clearance less than 0.100 inch (2.54 mm) exists between the A-frame structure and the MLG stabilizer brace assembly in the retracted position after the rework is done, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(2) If any cracking is found: Before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(j) Modification of MLG Stabilizer Brace Assembly

For airplanes having S/Ns 4001 through 4431 inclusive with a MLG stabilizer brace assembly having part number 46400–27 installed: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first; incorporate Bombardier ModSum 4–902416 by installing new stop brackets and a new shim on each MLG stabilizer brace assembly, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–112, Revision B, dated September 12, 2014, and Goodrich Service Bulletin 46400–32–102R1, Revision 1, dated June 24, 2013, as referenced in Bombardier Service Bulletin 84–32–112, Revision B, dated September 12, 2014.

(k) Rework of the Electrical Wiring Harnesses

For airplanes having S/Ns 4001 through 4411 inclusive: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first; rework the LH and RH sides of the electrical wiring harnesses in the nacelle area adjacent to the A-frame structure, including doing the actions specified in paragraphs (k)(1) through (k)(4) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–114, Revision A, dated September 18, 2013. If any damage is found on the A-frame structure or MLG stabilizer brace, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(1) Doing a detailed inspection of the conduit assembly for the conditions specified in Bombardier Service Bulletin 84–32–114, Revision A, dated September 18, 2013, and, before further flight, repairing if any condition is found.

(2) Replacing damaged conduit.

(3) Measuring the clearance between the stabilizer brace and electrical harness on both LH and RH nacelles to make sure there is 0.100 inch (2.54 mm) minimum clearance between the MLG stabilizer brace.

(4) Checking for damage on the A-frame structure and MLG stabilizer brace.

(l) Optional Installations

(1) Installing specified fasteners on the MLG A-frame, in both LH and RH nacelles, in accordance with Bombardier ModSum IS4Q5450002, Revision B, dated April 30, 2012, is acceptable for compliance with the actions specified in paragraph (g) of this AD, provided the actions specified in Bombardier ModSum IS4Q5450002 are done within the compliance time specified in paragraph (g) of this AD, except where ModSum IS4Q5450002, Revision B, dated April 30, 2012, specifies to contact Bombardier for reduced clearances, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(2) Trimming the horizontal and vertical stiffeners on MLG A-frame in both LH and RH nacelles, in accordance with Bombardier ModSum IS4Q5450003, Revision C, released November 29, 2012, is acceptable for compliance with the actions specified in paragraph (i) of this AD, provided the actions specified in Bombardier ModSum IS4Q5450003 are done within the compliance time specified in paragraph (i) of this AD, except where ModSum IS4Q5450003, Revision C, released November 29, 2012, specifies to contact Bombardier for reduced clearances, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(3) Rerouting certain electrical harnesses and installing grommets, in accordance with Bombardier ModSum IS4Q2400028, Revision B, dated June 22, 2012 (for S/Ns 4001 through 4098 inclusive) or Bombardier ModSum IS4Q2400029, Revision A, dated July 6, 2014 (for S/Ns 4090 through 4411 inclusive), is acceptable for compliance with the actions specified in paragraph (k) of this AD, provided the actions specified in the applicable modsum are done within the compliance time specified in paragraph (k) of this AD, except where Bombardier ModSum IS4Q2400028, Revision B, dated June 22, 2012; and Bombardier ModSum IS4Q2400029, Revision A, dated July 6, 2014; specify to contact Bombardier to report stabilizer brace or structural damaged findings, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(m) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraph (m)(1)(i) or (m)(1)(ii) of this AD. This service information is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 84–54–20, dated April 25, 2013.

(ii) Bombardier Service Bulletin 84–54–20, Revision A, dated April 9, 2014.

(2) This paragraph provides credit for actions required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraph (m)(2)(i) or (m)(2)(ii) of this AD. This service information is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 84–32–112, dated December 20, 2012.

(ii) Bombardier Service Bulletin 84–32–112, Revision A, dated April 16, 2014.

(3) This paragraph provides credit for actions required by paragraph (k) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–32–114, dated June 6, 2013. This service information is not incorporated by reference in this AD.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–45, dated December 23, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3986.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601

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

Issued in Renton, Washington, on October 5, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–26217 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4213; Directorate Identifier 2015–CE–022–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Piper Aircraft, Inc. Model PA–46–500TP airplanes. This proposed AD was prompted by a report of the wing upper skin joints being manufactured without sealant, which allows water to enter and stay in sealed, bonded stringers. This proposed AD would require inspecting the upper wing surface for sealant; inspecting the wing stringers for water intrusion; inspecting for deformation and corrosion if evidence of water intrusion exists; and taking corrective actions as necessary. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by December 3, 2015.

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

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

For service information identified in this proposed AD, contact Piper Aircraft, Inc., Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (877) 879–0275; fax: none; email: *customer.service@piper.com;* Internet: *www.piper.com.* You may review the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4213; 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: Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–4213; Directorate Identifier 2015–CE–022–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 received a report of wing upper skin joints on Piper Aircraft, Inc. Model PA–46–500TP airplanes being manufactured without sealant, which allows water to enter and stay in sealed, bonded stringers. This condition, if not corrected, could result in water entering the stringers common to the upper wing skin. Left uncorrected, corrosion could develop, and freeze/thaw cycles of water at this location could cause deformation of the skin with follow-on disbonding between the stringer flanges and the inner surface of the wing skin. Consequently, the corrosion or disbonding could reduce the structural integrity of the wing.

Related Service Information Under 1 CFR Part 51

We reviewed Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015. The service bulletin provides instructions for inspecting the upper wing surface for sealant and sealing or resealing (if necessary). This service bulletin also provides instructions for inspecting the wing stringers for water intrusion, and, if water intrusion was found as a result of the inspection, inspecting for corrosion or deformation. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 440 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 for sealant	2 work-hours × $85 per hour = $170	Not Applicable	$170	$74,800

We estimate the following costs to do any additional necessary inspections, rework of the stringers, and installation of sealant that would be required based on the results of the proposed initial inspection. We have no way of determining the number of airplanes that might need this rework of the stringers and installation of sealant:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Rework stringers and seal skin joints	12 work-hours × $85 per hour = $1,020	$200	$1,220

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):

Piper Aircraft, Inc.: Docket No. FAA–2015–4213; Directorate Identifier 2015–CE–022–AD.

(a) Comments Due Date

We must receive comments by December 3, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piper Aircraft, Inc. Model PA–46–500TP airplanes, serial numbers 4697001 through 4697528, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5700, Wings.

(e) Unsafe Condition

This AD was prompted by a report of wing upper skin joints being manufactured without sealant, which allows water to enter and stay in sealed, bonded stringers. We are issuing this AD to prevent water from entering the stringers common to the upper wing skin. Left uncorrected, corrosion could develop, and freeze/thaw cycles of water at this location could cause deformation of the skin with follow-on disbonding between the stringer flanges and the inner surface of the wing skin. Consequently, the corrosion or disbonding could reduce the structural integrity of the wing.

(f) Compliance

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

(g) Inspect the Upper Skin Joints for Adequate Sealant

Within the next 100 hours time-in-service (TIS) after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first, inspect the upper skin joints for adequate sealant following Part I of Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015. No further action per this AD is required if adequate sealant is already applied.

(h) Inspect for Evidence of Water Intrusion/Moisture

If you find missing or inadequate sealant during the inspection required by paragraph (g) of this AD, before further flight, inspect for evidence of water intrusion/moisture following Part II of Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015.

(1) If no evidence of water intrusion/moisture is found during the inspection required in paragraph (h) of this AD, before further flight, rework the stringers and apply sealant as required in paragraph (k) of this AD.

(2) If evidence of water intrusion/moisture is found during the inspection required in

paragraph (h) of this AD, before further flight, do the actions required in paragraphs (i) and (j) of this AD.

(i) Inspect for Corrosion

If you find, as a result of the inspection required by paragraph (h) of this AD, evidence of water intrusion/moisture, before further flight, inspect for corrosion following Part II of Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015.

(1) If no evidence of corrosion is found during the inspection required in paragraph (i) of this AD, before further flight, rework the stringers and apply sealant as required in paragraph (k) of this AD.

(2) If evidence of corrosion is found during the inspection required in paragraph (i) of this AD, before further flight, obtain and implement an FAA-approved corrective action, approved specifically for this AD. At the operator's discretion, assistance may be provided by contacting Piper Aircraft, Inc. at the address identified in paragraph (o)(2) of this AD. After obtaining and implementing an FAA-approved corrective action, approved specifically for this AD, before further flight, rework the stringers and apply sealant as required in paragraph (k) of this AD.

(j) Inspect for Deformation

If you find, as a result of the inspection required by paragraph (h) of this AD, evidence of water intrusion/moisture, before further flight, do a visual inspection for skin or stringer deformation.

(1) If no evidence of deformation is found during the inspection required in paragraph (j) of this AD, before further flight, rework the stringers and apply sealant as required in paragraph (k) of this AD.

(2) If any visible deformation is found during the inspection required in paragraph (j) of this AD, before further flight, obtain and implement an FAA-approved corrective action, approved specifically for this AD. At the operator's discretion, assistance may be provided by contacting Piper Aircraft, Inc. at the address identified in paragraph (o)(2) of this AD. After obtaining and implementing an FAA-approved corrective action, approved specifically for this AD, before further flight, rework the stringers and apply sealant as required in paragraph (k) of this AD.

(k) Rework Stringers and Seal Skin Joints

If any inspection required by paragraphs (g) through (j) of this AD reveals discrepancies (no sealant/inadequate sealant, evidence of water intrusion/moisture, corrosion, or deformation), before further flight, after completing any necessary corrective actions, rework wing stringers and seal skin joints following Part II of Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015.

(l) Credit for Actions Done in Accordance With Previous Service Information

Actions done before the effective date of this AD following Part I and Part II of Piper Aircraft, Inc. Service Bulletin No. 1262, dated October 16, 2013; or Part I and Part II of Piper Aircraft, Inc. Service Bulletin No. 1262A, dated November 14, 2013, as applicable, are considered acceptable for compliance with the corresponding actions specified in paragraphs (g), (h), (i), and (k) (including subparagraphs) of this AD. Additional inspections beyond Service Bulletin No. 1262 are required to fully comply with paragraph (j) of this AD.

(m) Special Flight Permit

(1) In accordance with 14 CFR 39.23, a single flight is allowed to a location to do the actions in paragraph (g) of this AD.

(2) In accordance with 14 CFR 39.23, a single flight is allowed to a location to do the inspections, rework and installation of sealant required in paragraphs (h) through (k) of this AD. Prior to the flight to perform the inspections, rework, and installation of sealant, the following inspection must be performed: If the inspection required by paragraph (g) of this AD reveals no sealant, inspect for evidence of wing damage (skin or stringer deformation, *e.g.* buckling). Any wing damage that is found must be repaired before further flight and before any special flight permit is authorized.

(n) Alternative Methods of Compliance (AMOCs)

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

(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.

(o) Related Information

(1) For more information about this AD, contact Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov.*

(2) For service information identified in this AD, contact Piper Aircraft, Inc., Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (877) 879–0275; fax: none; email: *customer.service@piper.com;* Internet: *www.piper.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 October 7, 2015.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–26230 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2015–3680; Airspace Docket No. 13–ASW–15]

RIN 2120–AA66

Proposed Establishment of and Modification to Restricted Areas; Fort Sill, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish 2 new restricted areas (R–5601G and R–5601H) to expand the special use airspace (SUA) complex located at Fort Sill, OK, to provide additional maneuvering airspace for current and planned training activities determined to be hazardous to non-participating aircraft. Specifically, the proposed restricted areas would provide participating fighter or bomber aircraft with laser-firing and maneuvering airspace when training at the Falcon Bombing Range contained in R–5601C, at the West Range Target Area contained in R–5601B, or at the East Range Target Area contained in R–5601A. In addition, the using agency for all Fort Sill restricted areas would be updated to reflect the current organization tasked with that responsibility. The U.S. Army requested that the FAA take this action to allow realistic training on current tactics developed and refined during recent combat operations for employing hazardous targeting laser systems and weapons capabilities at longer ranges from the target area.

DATES: Comments must be received on or before December 3, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2015–3680 and Airspace Docket No. 13–ASW–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* Comments on environmental and land use aspects to should be directed to: Mr. Glen Wheat, U.S. Army Garrison, Directorate of Public Works, IMWE–SIL–PWE, 5503 NW. Currie Road, Fort Sill, OK 73503–9051; email: *glen.wheat@us.army.mil* and telephone: (580) 442–2715.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would restructure the restricted airspace at Fort Sill, OK, to enhance safety and accommodate essential military training.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2015–3680 and Airspace Docket No. 13–ASW–15) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2015–3680 and Airspace Docket No. 13–ASW–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Military use of the airspace at Fort Sill, OK, can be traced back to 1949. Today, the Fort Sill SUA complex consists of six restricted areas, designated R–5601A, R–5601B, R–5601C, R–5601D, R–5601E, and R–5601F. The three ranges (Falcon Range, West Range, and East Range) contained within the Fort Sill SUA complex are used for a wide variety of military air and ground activities; including, but not limited to, air-to-surface weapons delivery training, laser systems, artillery, and joint air and ground forces exercises. Weapons events include high-, medium-, and low-altitude bombing runs, to include level, climbing, and diving deliveries. Today, real-world combat tactics for employing targeting lasers and weapons systems at distances farther from the target are driving the requirement for increased lateral dimensions of the Fort Sill SUA complex to support aircrew training in laser employment and weapons delivery tactics. Although the R–5601A, R–5601B, R–5601C, and R–5601F airspace areas extend to a maximum altitude of 40,000 feet mean sea level (MSL), the relatively small north to south dimensions of the restricted areas (approximately 9 nautical miles (NM) at its widest point) is not sufficient to provide the required distance from targets needed by aircrews employing current combat laser targeting or weapons deliveries tactics. Since there is no alternative SUA complex within 200 NM where combat lasers may be employed, aircrew training is significantly restricted at the Fort Sill ranges.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to establish 2 new restricted areas (designated R–5601G and R–5601H) at Fort Sill, OK. This action would establish restricted area R–5601G with a ceiling to, but not including, 8,000 feet MSL under the Washita Military Operations Area (MOA), and establish restricted area R–5601H with a ceiling of Flight Level (FL) 400 to match the adjacent restricted areas; thus, expanding the lateral limits of restricted area airspace at the Fort Sill SUA complex. Restricted area R–5601G would abut the existing restricted area complex to the north, underlying the Washita MOA, and extend from 500 feet above ground level (AGL) to, but not including, 8,000 feet MSL. R–5601G would extend approximately three quarters of the existing restricted area complex northward, between 5 NM to 11 NM, to provide the required expanded lateral space from the current range boundaries. Restricted area R–5601H would extend from the surface to FL400. R–5601H would fill a small airspace area surrounded by two continuously active restricted areas (R–5601A and R–5601B) extending from the surface to FL400 and a MOA extending from 8,000 feet MSL to, but not including, FL180. Additionally, when active, R–5601H would overlay the Fort Sill post and a portion of the Class D airspace supporting the non-joint use military airfield located at Fort Sill.

The two new restricted areas would allow participating aircraft to maneuver within the current Fort Sill Approach Control Airspace and contain the hazardous combat laser energy (not eye-safe) within restricted airspace. As proposed, R–5601G would only be used for aircraft maneuvering and combat laser targeting employment and R–5601H would only be used for aircraft conducting Close Air Support (CAS) training. There would be no changes to

the existing pattern of firing, ordnance delivery runs, or weapons impact areas and all weapons release would continue to occur in R–5601A, R–5601B, or R–5601C, as they are now. Additionally, no supersonic flight will occur.

In addition to the proposed establishment of R–5601G and R–5601H, the following minor changes to the descriptions of the six existing Fort Sill restricted areas would be made. The using agency for R–5601A–E would be changed from ''U.S. Army, Commanding General, Fort Sill, OK,'' to ''U.S. Army, Commanding General, U.S. Army Fires Center of Excellence (USAFCOE), Fort Sill, OK.'' The using agency for R–5601F would be changed from ''Commanding General, United States Army Field Artillery Center (USAFACFS), Fort Sill, OK,'' to ''U.S. Army, Commanding General, U.S. Army Fires Center of Excellence (USAFCOE), Fort Sill, OK.'' This change would reflect the current organizational responsibilities. The new using agency would also apply to the proposed R–5601G and R–5601H. The boundaries, designated altitudes, times of designation, and controlling agency information for restricted areas R–5601A–F would not be changed by this proposal.

The FAA does not anticipate any aeronautical impacts as a result of this proposed action since Fort Sill Approach Control has radar coverage over the proposed restricted areas and already controls the airspace from surface to 7,000 feet MSL. Procedures will be established to continue allowing non-participating aircraft access to the airspace even when the restricted areas are in use. Pilots seeking information about the activity status of R–5601G and R–5601H should contact Fort Sill Approach Control on the frequency listed in the ''Special Use Airspace'' panel of the Dallas—Ft. Worth Sectional Aeronautical Chart. Fort Sill Approach Control will continue to provide VFR traffic advisories, as they do today, to non-participating aircraft requesting them.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

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

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.56 (Amended)

■ 2. § 73.56 is amended as follows:

R–5601A Fort Sill, OK [Amended]

By removing the current using agency and substituting the following:

Using agency. U.S. Army, Commanding General, U.S. Army Fires Center of Excellence (USAFCOE), Fort Sill, OK.

R–5601B Fort Sill, OK [Amended]

By removing the current using agency and substituting the following:

Using agency. U.S. Army, Commanding General, U.S. Army Fires Center of Excellence (USAFCOE), Fort Sill, OK.

R–5601C Fort Sill, OK [Amended]

By removing the current using agency and substituting the following:

Using agency. U.S. Army, Commanding General, U.S. Army Fires Center of Excellence (USAFCOE), Fort Sill, OK.

R–5601D Fort Sill, OK [Amended]

By removing the current using agency and substituting the following:

Using agency. U.S. Army, Commanding General, U.S. Army Fires Center of Excellence (USAFCOE), Fort Sill, OK.

R–5601E Fort Sill, OK [Amended]

By removing the current using agency and substituting the following:

Using agency. U.S. Army, Commanding General, U.S. Army Fires Center of Excellence (USAFCOE), Fort Sill, OK.

R–5601F Fort Sill, OK [Amended]

By removing the current using agency and substituting the following:

Using agency. U.S. Army, Commanding General, U.S. Army Fires Center of Excellence (USAFCOE), Fort Sill, OK.

R–5601G Fort Sill, OK [New]

Boundaries. Beginning at Lat. 34°46′07″ N., long. 98°25′50″ W.; to Lat. 34°45′03″ N., long. 98°29′46″ W.; thence counterclockwise via the 46 NM arc of SPS VORTAC to Lat. 34°43′46″ N., long. 98°49′55″ W.; to Lat. 34°47′00″ N., long. 98°51′00″ W.; to Lat. 34°50′30″ N., long. 98°46′02″ W.; to Lat. 34°57′51″ N., long. 98°25′47″ W.; to the point of beginning.

Designated altitudes. 500 feet AGL to, but not including, 8,000 feet MSL.

Time of designation. Sunrise to 2200 local time, Monday–Friday; other times by NOTAM.

Controlling agency. FAA, Fort Worth ARTCC.

Using agency. U.S. Army, Commanding General, U.S. Army Fires Center of Excellence (USAFCOE), Fort Sill, OK.

R–5601H Fort Sill, OK [New]

Boundaries. Beginning at Lat. 34°38′15″ N., long. 98°20′56″ W.; to Lat. 34°38′30″ N., long. 98°21′41″ W.; to Lat. 34°38′50″ N., long. 98°22′06″ W.; to Lat. 34°39′53″ N., long. 98°22′16″ W.; to Lat. 34°40′47″ N., long. 98°23′09″ W.; thence counterclockwise along an arc, 3-mile radius centered at Lat. 34°38′18″ N., long. 98°24′07″ W.; to Lat. 34°40′12″ N., long. 98°26′18″ W.; to Lat. 34°38′15″ N., long. 98°26′19″ W.; to the point of beginning.

Designated altitudes. Surface to FL 400.

Time of designation. By NOTAM.

Controlling agency. FAA, Fort Worth Center.

Using agency. U.S. Army, Commanding General, U.S. Army Fires Center of Excellence (USAFCOE), Fort Sill, OK.

Issued in Washington, DC on October 8, 2015.

Gary A. Norek,

Manager, Airspace Policy Group.

[FR Doc. 2015–26499 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112, 1130, and 1232

[Docket No. CPSC–2015–0029]

Safety Standard for Children's Folding Chairs and Stools

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Danny Keysar Child Product Safety Notification Act, Section 104 of the Consumer Product Safety Improvement Act of 2008 (''CPSIA'') requires the United States Consumer

Product Safety Commission (''Commission'' or ''CPSC'') to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety standard for children's folding chairs and stools in response to the direction under Section 104(b) of the CPSIA. In addition, the Commission is proposing an amendment to 16 CFR part 1112 to include 16 CFR part 1232 in the list of notice of requirements (''NORs'') issued by the Commission and an amendment to 16 CFR part 1130 to identify children's folding stools as a durable infant or toddler product.

DATES: Submit comments by January 4, 2016.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature requirements of the proposed mandatory standard for children's folding chairs and stools should be directed to the Office of Information and Regulatory Affairs, the Office of Management and Budget, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.*

Other comments, identified by Docket No. CPSC–2015–0029, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2015–0029, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Patricia Edwards, Project Manager, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; email: *pedwards@cpsc.gov;* telephone: (301) 987–2224.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

The CPSIA was enacted on August 14, 2008. Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to: (1) Examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant and toddler products. Standards issued under section 104 are to be ''substantially the same as'' the applicable voluntary standards or more stringent than the voluntary standard if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product.

The term ''durable infant or toddler product'' is defined in section 104(f)(1) of the CPSIA as ''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.'' Although section 104(f)(2) does not specifically identify children's folding chairs, high chairs, booster chairs and hook-on chairs are explicitly deemed to be ''durable infant or toddler products.'' Because folding chairs and folding stools serve functions and have characteristics similar to the listed types of chairs, folding chairs and folding stools likewise should be considered to be ''durable infant or toddler products.'' This conclusion is consistent with the Commission's prior determination that ''children's folding chairs'' fall within the definition of a ''durable infant or toddler product'' and are covered by product registration card rule promulgated under CPSIA section 104(d).[1]

Although the product registration card rule does not specifically mention children's folding stools, the Commission considers folding stools to be a subset of folding chairs. Thus, the Commission proposes to include children's folding stools within the scope of the proposed standard. The Commission proposes to amend the product registration card rule so the scope of that rule will be clear that children's folding chairs and folding stools are identified as durable infant or toddler products for purposes of registration card requirements.

As required by section 104(b)(1)(A), the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public in the development of this notice of proposed rulemaking (''NPR''), largely through the standards development process of ASTM International (formerly the American Society for Testing and Materials) (''ASTM''). The proposed rule is based on the current voluntary standard developed by ASTM, ASTM F2613–14, *Standard Consumer Safety Specification for Children's Chairs and Stools* (''ASTM F2613–14''), with several modifications.

The testing and certification requirements of section 14(a) of the Consumer Product Safety Act (''CPSA'') apply to product safety standards promulgated under section 104 of the CPSIA. Section 14(a)(3) of the CPSA requires the Commission to publish an NOR for the accreditation of third party conformity assessment bodies (test laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. The children's folding chairs and stools standard, if issued as a final rule, will be a children's product safety rule that requires the issuance of an NOR. To meet the requirement that the Commission issue an NOR for the children's folding chairs and stools standard, this NPR proposes to amend 16 CFR part 1112 to include 16 CFR part 1232, the CFR section where the children's folding chairs and stools standard will be codified, if the standard becomes final.

[1] Requirements for Consumer Registration of Durable Infant or Toddler Products; Final Rule, 74 FR 68668 (Dec. 29, 2009); 16 CFR 1130.2(a)(13).

II. Product Description

ASTM F2613–14 defines a ''children's chair'' as ''seating furniture with a rigid frame that is intended to be used as a support for the body, limbs, or feet of a child when sitting or resting in an upright or reclining position.'' A ''children's stool'' is defined as a ''children's chair without back, or armrest.'' ASTM further defines ''folding chair'' and ''folding stool'' as ''a children's chair or stool which can be folded for transport or storage.'' ASTM F2613–14, Section 3. The standard covers a chair or stool intended to be used by a single child who can get in and get out of the product unassisted and with a seat height 15 inches or less, with or without a rocking base. The Commission proposes to limit the scope of the mandatory standard to folding chairs and folding stools because the hazards presented by folding chairs and folding stools are different from non-folding chairs and stools, as discussed further in section V of the preamble.

There are two primary designs associated with children's folding chairs and folding stools: (1) Straight tube versions that contact the surface in three or more capped-tube legs, and (2) bent tube versions that contact the ground along a substantial portion of the tubular frame. Although there are a variety of other designs used for children's folding chairs and folding stools, the primary characteristic that applies to all of the products is the folding mechanism of the chair and stool that is used for transport or storage of the product.

III. Incident Data

CPSC staff received reports of 98 injuries, 45 non-injury incidents, and another 39 recall-related complaints associated with children's folding chairs or stools in the Consumer Product Safety Risk Management System (''CPSRMS'') database for the period January 1, 2003 through December 31, 2014. Only one of the reported incidents involved a folding stool, while the remainder involved folding chairs. There were no fatalities reported in the data. Reporting is ongoing, and thus, the number of reported injury and non-injury incidents from the CPSRMS system may change in the future.

1. Incidents With Injuries

Ninety-eight (98) nonfatal incident injuries were reported, some not medically treated. Injuries involving chairs designed for the under 5 age range (51%) were the most frequently reported incidents. The most frequent injuries (76) involved fingers, thumbs, or other parts of the hand, with most of the remaining incidents (14) affecting the head or face. The youngest injury victim was 12 months old. Some victims exceeded the intended age range of the chair, but their injuries demonstrated hazards with chairs relevant to the standard (*i.e.,* intended for children under 5). Two injured adults were included among the 98 nonfatal incidents, as were several children over 5 years of age. Reports in which the submitter suggested injuries from the same repeating hazard on multiple occasions and/or affecting multiple victims were counted as a single injury incident. These injury counts, therefore, may be considered conservative.

2. Incidents With No Injury Reported

Forty-five (45) incidents did not report an injury. However, these reports illustrate a potential for injuries. These reports included incidents in which the chair was occupied or used by a child, plus incidents in which a parent or submitter detected a malfunction or hazardous issue while the chair was not in use.

3. Non-Incident Complaints

Thirty-nine (39) reports did not describe incidents, but merely reflected concerns regarding recalls. These concerns involved questions about recalled products (*e.g.,* determining whether a product was subject to recall), or concerns regarding apparent similarities in design between recalled and non-recalled products.

4. National Electronic Injury Surveillance System Estimates

CPSC also evaluates data reported through the National Electronic Injury Surveillance System (''NEISS''), which gathers summary injury data from hospital emergency departments selected as a probability sample of all the U.S. hospitals with emergency departments. This surveillance information enables CPSC staff to make timely national estimates of the number of injuries associated with specific consumer products. Based on a review of emergency department visits from January 1, 2003 through December 31, 2014, CPSC staff determined that there were an estimated 17,500 children younger than 5 years of age treated in emergency departments for injuries related to folding chairs and stools.

Information from hospital records, however, does not contain sufficient information to determine which injuries involved chairs specially designed for children under age 5. A known proportion of these injuries may have involved folding chairs or stools designed for children older than 5, or adults. Accordingly, CPSC staff focused on incident reports with specific information (*e.g.,* make and model of the product, photos, or a sufficiently detailed description) that allowed staff to characterize incidents involving chairs specifically intended or reasonably expected to be used by children under age 5. Reports indicating that the product was a folding chair but lacking information necessary for staff to determine the age for which the product is intended were excluded.

A. Hazard Pattern Identification

CPSC staff considered all 182 reports and complaints to identify four different hazard patterns associated with children's folding chairs and stools. One hundred forty-three reports involved incidents, and 39 reports involved complaints (without incident).

1. *Pinch/Shear Hazards*—Ninety (90) incidents demonstrated pinching or shearing hazards (including the possibility of crushing or scissoring when the chair folds or unfolds, regardless of intent). Victims were injured while transitioning the chair between its folded and unfolded states. Victims were also injured following unexpected folding or unfolding of the chair (generally described as ''collapse''), or because of some malfunction or issue relevant to these hazards (such as a failed locking mechanism). Although most of these injuries involved pinched/sheared fingers or other body parts, there were two incidents in which the child was injured, but avoided being pinched or sheared. In these two incidents, the injuries resulted when a child's head or face struck the floor as a consequence of the child falling out of the collapsing chair.

Fingers and hands were the body parts most commonly involved in pinching or shearing hazards. In two incidents, other body parts were pinched/sheared from unexpected folding/collapsing (1 neck incident and 1 leg incident). Out of all 90 pinch/shear hazard incidents, including incidents without actual pinch/shear injuries, at least eight incidents involved recalled products (6 injured; 2 without injuries).

2. *Undetermined Hazard Finger Injuries*—Fourteen (14) incidents involved finger injuries that were caused by an undetermined hazard. In seven of these incidents, there was evidence that the victim's finger was caught in a chair mechanism. For these incidents, the hazard likely is either pinch/shear related or entrapment related. In the other seven incidents, the child suffered finger injuries, but there

was insufficient information to determine the cause of injury. In general, these injuries were severe (such as amputation or fracture). Two of the incidents involved recalled chairs.

3. *Stability/Tipover*—Twenty-two (22) incidents involved the chair tipping over without indication of chair collapse. Fifteen (15) of these incidents resulted in injuries. CPSC staff was unable to determine if any of the chairs involved in these stability/tipover incidents were recalled models.

4. *Miscellaneous*—Seventeen (17) incidents related to various other folding chair or stool issues. These incidents included exposures to high levels of lead or other hazardous substances; a collapsing table associated with the chair; or loose parts, sharp points, and seat issues.

C. Recall Activities

Since January 1, 1997, there have been 11 children's folding chair or stool recalls involving 10 different firms, and 5,394,600 units of product. The hazards include pinching, bruising, fractures, finger amputations, and lead paint violations.

IV. The ASTM Standard

A. History of ASTM F2613

Section 104(b)(1)(A) of the CPSIA requires the Commission to consult representatives of ''consumer groups, juvenile product manufacturers, and independent child product engineers and experts'' to ''examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler products.'' As a result of incidents arising from children's folding chairs, CPSC staff requested that ASTM develop voluntary requirements to address the hazard patterns related to the use of folding chairs. Through the ASTM process, CPSC staff consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public.

ASTM F2613 was first published in 2007, and since then, the voluntary standard has been revised five times (2009, 2010, 2011, 2013, and 2014). The scope of products covered by the original version, F2613–07, was limited to ''children's folding chairs'' with a seat height of 15 inches or less. Significant revisions were made in 2013, in ASTM F2613–13, that were designed to expand the scope of the voluntary standard to all children's chairs and stools. In addition, the ASTM 2613–13 standard added definitions for ''children's chair'' and ''children's stool,'' and clarified the definition of a ''folding chair'' and ''folding stool.'' Specifically, ''stools'' were defined as a specific subset of a chair (''a children's chair without back or armrests''). ASTM 2613–13 also added stability requirements, a test method for stability, and clarified that locking mechanism requirements are applicable only for folding chairs and folding stools.

The current version, ASTM F2613–14, was approved on October 1, 2014, and published in October 2014. ASTM F2613–14 excludes products that do not have a rigid frame (such as bean bag chairs or foam chairs), seats with restraint systems, products intended for use by more than a single child, and products in which the child could not get in and out of the product unassisted. ASTM F2613–14 also includes products ''with or without a rocking base'' and contains many general requirements that are common to other juvenile product standards, such as requirements for sharp edges or points, small parts, and lead in paint. There are also specific performance requirements to address incidents that may result in lacerations, fractures, pinches, amputations, and other injuries. ASTM F2613–14 also contains requirements for marking and labeling.

B. International Standards for Children's Folding Chairs and Folding Stools

CPSC staff compared the performance requirements of ASTM F2613–14 to the performance requirements of international standards: FIRA C001:2008 Furniture—Children's Domestic Furniture—General Safety Requirements and FIRA C002:2008 Furniture—Children's Domestic Furniture Seating—Requirements for Strength, Stability, and Durability, which address children's chairs.

CPSC staff's review showed that ASTM F2613–14 is the most comprehensive of the standards to address the incident hazards because ASTM F2613–14 includes requirements for labeling, pinch/shear, locking devices, entrapment, stability, strength, and small parts. FIRA C001/C002 standards include some requirements not found in ASTM F2613–14, such as a requirement for materials to be clean and free from infestation, and requirements that deal with corrosion-resistant metals, prohibition of glass and glass mirrors, retention of magnets, partially bound and V-shaped openings above 23.5 inches, moisture content of timber components, and powered-mechanism shear/pinch hazards. However, the hazard patterns identified in CPSC staff's review of the incident data did not indicate that similar requirements need to be added to ASTM F2613–14. However, CPSC staff will continue to monitor hazard patterns and recommend future changes, if necessary.

V. Assessment of Voluntary Standard ASTM F2163–14

CPSC staff considered the fatalities, injuries, and non-injury incidents associated with children's folding chairs and folding stools, and evaluated ASTM F2163–14 to determine whether the current ASTM standard adequately addresses the incidents, or whether more stringent standards would further reduce the risk of injury associated with these products. Based on CPSC staff's assessment, the Commission proposes the following modifications to ASTM F2163–14: (1) Limit the scope of the proposed mandatory standard to children's folding chairs and folding stools; (2) change the stability test method to add a new performance requirement and test method to address sideways stability incidents in addition to rearwards stability incidents; and (3) revise the marking and labeling sections.

A. Scope

ASTM F2613–13 expanded the scope of the standard beyond children's folding chairs to include all children's chairs and stools. CPSC staff conducted a preliminary review of the incident data involving all children's chairs and stools. CPSC staff determined that, based on the total number of incidents, the number of incidents over time (years), the body parts injured, and the incident victim's average age reported, the hazards associated with children's folding chairs or stools are substantially different from the hazards reported for children's non-folding chairs or stools. Accordingly, the NPR encompasses both folding chairs and folding stools, but does not include *all* children's chairs and stools. However, CPSC staff will continue to review incidents from children's non-folding chairs and stools to monitor whether hazards associated with non-folding chairs and stools also need to be addressed.

ASTM defines ''children's chair'' as ''seating furniture with a rigid frame that is intended to be used as a support for the body, limbs, or feet of a child when sitting or resting in an upright or reclining position.'' A ''children's stool'' is defined as a ''children's chair without back, or armrest.'' ASTM defines ''children's folding chair'' and ''children's folding stool'' as ''a children's chair or stool which can be folded for transport or storage.'' ASTM's definition considers children's folding stools to be a subset of children's

folding chairs, albeit without a back or armrest. CPSC staff also agrees that stools are a subset of chairs. Significantly, folding chairs and folding stools have similar configurations, and the same potential hazards are presented in the folding mechanisms. One reported incident in the injury data involved folding stools and a pinching injury to a child's fingers when the stool's locking mechanism failed and caused the stool to fold. This is the same scenario that occurs with folding chairs. The configuration of folding stools is similar to folding chairs, even though stools lack a backrest and arms. Like folding chairs, folding stools can fold unexpectedly or collapse unexpectedly during use, if there is a faulty locking mechanism—or no locking mechanism at all—and result in serious injuries to fingers if there is a lack of adequate clearance. Although CPSC staff is not aware of any reported stability-related incidents associated with folding stools, ASTM F2613–14 currently requires folding stools to be tested to the same rearward stability test as required for folding chairs. The sideways stability test would be equally applicable to folding stools. CPSC staff's review indicated that the test methods for loading, locking mechanisms, clearances, stability testing, and labeling requirements for folding stools would be the same for folding chairs.

Based on CPSC staff's review of the configurations of children's folding chairs and folding stools and the hazards presented by them, the Commission proposes to include children's folding stools, along with children's folding chairs, in the scope of the proposed rule. However, the Commission seeks public comments regarding the inclusion of children's folding stools in the proposed standard.

B. Hazards

CPSC believes that ASTM F2613–14 adequately addresses many of the general hazards associated with durable nursery products, such as lead in paint and surface coatings, sharp edges/sharp points, small parts, wood part splinters, openings/entrapments, flammable solids, and attached toy accessories. The standard covers specific requirements for folding chairs and stools, including requirements for adequate clearances or locking mechanisms to address pinch/shear hazards related to folding of the chair, load requirements to address structural integrity, stability requirements to address rearward tipover and warning and labeling requirements to inform the user of the hazards associated with children's folding chairs and stools. CPSC believes that these requirements adequately address the majority of incidents associated with folding chairs and folding stools. However, as discussed below, the Commission proposes to change the stability test method to include a sideways stability test method, as well as changes to the warning and labeling requirements to further reduce the risk of injury associated with folding chairs and stools.

Pinch/Shear Hazards—ASTM F2613–14 includes requirements to prevent injury to the occupant from scissoring, shearing, or pinching when structural members or components rotate about a common axis, slide, pivot, fold, or otherwise move relative to one another. CPSC staff's review concluded that the current mechanical requirements adequately address the pinch and shear hazards in children's folding chairs and stools. The number of reported incidents has continued to decline since ASTM F2613 was first published in 2007, with reported incidents continuing to occur on chairs that are either noncompliant or not readily identifiable as folding chairs or folding stools. Although these injuries and incidents have declined, CPSC believes that strengthening the warning and labeling requirements for finger amputation hazards may make caregivers more aware of the hazard, and possibly reduce the likelihood that these types of incidents will occur in the future.

Undetermined Hazard Finger Injuries—CPSC staff's review of the incident data indicates that some of the undetermined hazard finger injuries are likely due to pinching and shearing issues discussed above in in the hazard patterns and finger entrapments. However, CPSC staff did not obtain enough information in the incident reports to make a definitive determination. Other than pinching/shearing, fingers can be caught between non-moving parts, in circular holes, or in grooves or slots. Finger entrapment in circular holes results in cutting off circulation, which does not generally occur with grooves or slots. The current standard includes requirements to avoid finger entrapment in circular holes by establishing allowable dimensions for circular holes. At this time, the Commission is not proposing any changes to ASTM F2613–14 to address these undetermined incidents.

Stability/Tipover Hazard—A review of incident data reveals 22 occurrences of chairs tipping over with no evidence of the chair collapsing. The incident descriptions often state that the child was leaning over or reaching to one side when the chair tipped over. ASTM F2613–14 contains a requirement to address the rearward stability of the chair or stool, but sets forth no requirement to address tipovers from lack of sideways stability. The majority of the tipover incidents were due to sideways tipovers. Even though most of the injuries sustained were minor, due to the short height of the chair, there is the potential for more severe injuries to occur, if the child falls onto a nearby object. Accordingly, CPSC staff performed testing to various stability test methods and found that the stability method currently in ASTM F2613–14 could be used to determine both rearward and sideways stability with modifications.

CPSC staff compared the existing ASTM F2613–14 stability test to the stability requirements found in the European standard EN 1022 Domestic Furniture Seating—Determination of Stability. However, the requirements in EN 1022 are applicable to adult-sized furniture, not children's furniture. Accordingly, CPSC staff reviewed a standard developed by the UK Furniture Industry Research Association (''FIRA''), FIRA C002:2008 Furniture—Children's Domestic Furniture Seating—Requirements for Strength, Stability, and Durability. FIRA C002 specifies the EN 1022 test method, but adjusts the test loads based on the weight of the intended child occupant. FIRA C002 further references EN 1729–2 Furniture—Chairs and Tables for Educational Institutions Part 2, for determining the loading points for the test loads. After testing both methods (ASTM F2613–14 and EN 1022) for sideways stability on sample children's folding chairs, CPSC staff determined that both methods were valid and the results were comparable between the two methods. However, the ASTM F2613–14 test method already is being used to test rearwards stability, and CPSC staff found that the test method could be used also to test sideways stability with modifications, to reduce the incidents of tipovers.

On July 24, 2015, ASTM balloted the sideways stability requirement, which received five negative votes and several comments, most of which contained editorial comments to the ballot. The negatives all pertain to a common style non-folding chair without arms that fails the balloted requirement, but is not associated with any incidents. However, the proposed rule does not include non-folding chairs and stools, and non-folding chairs and stools are outside the scope of the proposed rule. Accordingly, the Commission proposes to change the stability test method in ASTM F2613–14

to include a sideways stability test method, in addition to rearward stability testing, to reduce the number of tip-over-related incidents for folding chairs and folding stools.

Miscellaneous Hazards—CPSC staff's review of the incident data included 17 incidents involving miscellaneous hazards. Three incidents related to elevated levels of hazardous materials (*e.g.,* lead, bromine, or mercury). One of the incidents appears to be ''non-product-related,'' and the remaining 13 incidents involved various integrity issues, such as loose screws, loose plastic pieces, or a detached seat pad.

ASTM 2613–14 contains requirements prohibiting certain hazardous substances, including lead and flammable substances. In addition, ASTM 2613–14 also includes requirements for sharp points and edges, which were noted in some incidents. CPSC staff's review also indicated that the static load and fatigue tests in ASTM 2613–14 also would minimize integrity issues. Accordingly, the Commission is not proposing any changes to the existing ASTM F2613–14 standard to address these miscellaneous incidents at this time.

Marking and Labeling—CPSC staff's review of the warning labels in ASTM 2613–14 indicates that the existing warning labels found in the 2014 version of the standard can be improved in terms of content and format, by improving three areas: (1) Noticing the label; (2) processing the safety message; and (3) motivating behavior changes.

Noticing the Label—Currently, many folding chairs and folding stools place the warning label on the bottom of the seating surface of the chair. CPSC staff believes that consumers are less likely to notice the warnings on the bottom of the chair for several reasons. First, consumers are not likely to notice the warning when the chair is unfolded and in the upright position. Second, a child's folding chair or stool has no obvious hazards. If the perception of hazard associated with a product is low, consumers are less likely to look for a warning. Third, in many instances, even if consumers looked for a warning on a currently-marketed folding chair or stool, the consumer may not notice the warning because the warning is embedded or buried among non-safety messages.

Although CPSC staff believes that the ideal placement of the label is on the front of the chair, such placement may detract from the appearance of the product and make consumers remove the label. Accordingly, CPSC staff looked at other locations for appropriate label placement. For example, one area that may be separate and distinct label on a folding chair is on the back of the chair's back rest away from warnings on the underside of the chair. An example of separate and distinct label on a folding stool is on a visible location such as on the legs in such a way that the label does not wrap around the legs.

Processing the Safety Message—Currently, ASTM2613–14 requires that the warnings be easy to read and understand. However, this requirement is vague and gives no guidance on how to implement these requirements. CPSC staff's research indicates that warnings in a bullet point, outline-type list are rated higher by subjects on perceived effectiveness than when in paragraph format. Similarly, text arranged in a list format, rather than horizontally, makes instructions easier to follow. Other changes, such as using ''white space'' to break up text into ''chunks'' of information, using sans serif typestyle for short word messages, and a mixture of upper and lower case lettering, can be less confusing and easier to read than all uppercase lettering because there is more variation among the letter shapes. CPSC staff's evaluation indicated that if these elements are included, warning labels will be easier to read and understand.

Motivating Behavioral Change—CPSC staff's research indicates that if a consumer notices the label, and reads and understands the safety messages, the label should motivate a change in behavior. To motivate consumers to comply with the warning, the warning should tell consumers why they need to comply. Therefore, the way in which the warning describes the hazard, as well as a statement about the consequences of ignoring the warning, may have an influence on compliance rates. Further, the label needs to tell consumers what to do to avoid the hazard.

CPSC staff developed suggested wording and formatting changes for children's folding chairs and folding stools that CPSC staff believed would improve the warning label sections of the voluntary standard. CPSC staff circulated these proposed wording and formatting changes to the ASTM subcommittee responsible for ASTM F2613–14, and discussed the proposed changes at public ASTM meetings in January and May 2015. In response to feedback received from ASTM and stakeholders, CPSC staff made adjustments to staff's proposed warning labels.

Based on staff's evaluation, the Commission now proposes to adopt ASTM F2613–14, with modifications to some of the warning labels for children's folding chairs and stools, to provide specific guidance for a more consistent and prominent presentation of hazard information through the use of clear and conspicuous text. In addition, the proposed rule recommends that the warnings be separate and distinct from other written material or graphics, so that the label is clearly visible when consumers approach the folding chair or folding stool.

VI. The Proposed Rule

A. CPSC's Proposed Standard for Children's Folding Chairs and Stools

The Commission is proposing to incorporate by reference ASTM F2613–14, with certain modifications to strengthen the standard. As discussed in the previous section, the Commission concludes that these modifications will further reduce the risk of injury associated with children's folding chairs and stools.

The proposed rule would limit the scope of the rule to children's folding chairs and folding stools under section 1232.1. The definition of ''children's folding chair'' and ''folding stool'' is provided in ASTM F2613–14 in section 3.1.4. In addition, section 1232.2(a) would incorporate by reference ASTM F2613–14, with the exception of certain provisions that the Commission proposes to modify. Section 1232.2(b) would detail the changes and modifications to ASTM F2613–14 that the Commission has determined would further reduce the risk of injury from children's folding chairs and folding stools.

In particular, we would revise section 5.13 (Stability), to specify that all products shall not tip over backwards or sideways when tested in accordance with the stability test methods and provide that tip over shall consist of the product moving past equilibrium and begin to overturn. In addition, we propose to revise Section 6.8 (Stability Test Method) to include a test method for sideways stability testing, as well as rearward stability testing. We also propose to add Section 6.8.1 to provide the requirements for the test equipment and preparation, and specify the test surface area, test cylinders, and measurement of product seating surface height.

The proposed rule would add section 6.8.2. to provide the test method for rearward stability and section 6.8.3 to provide the test method for sideways stability. Those sections would also specify the product orientation, the application of the load, cylinder positioning for folding chairs, and cylinder positioning for folding stools.

We also propose revisions to the marking and labeling section in section 7.2. Specifically, section 7.2 would be changed to state that each folding chair and each folding stool requires warning statements. New proposed requirements would provide specific instructions so that warnings are easier to read and are more conspicuous. Some of these requirements include putting the warnings in the English language, using highly contrasting color(s) in non-condensed sans serif type, text size, and placing the label separate and distinct from any other graphic or written material on the product. Other proposed requirements would provide specific language for the warning statements including the use of the safety alert symbol

and the signal words ''WARNING,'' and ''AMPUTATION HAZARD''.

B. Other Provisions of the Proposed Rule

The Commission is also proposing to amend 16 CFR part 1112 to include 16 CFR part 1232 in the list of notice of requirements (''NORs'') issued by the Commission, as discussed in section VIII of the preamble.

In addition, for consistency in deeming both children's folding chairs and folding stools to be ''durable infant or toddler products,'' the Commission also is proposing to amend 16 CFR 1130.2 to make the scope of the registration card rule applicable to both children's folding chairs and folding stools. As discussed in section V of the preamble, although the registration card rule specifically lists children's folding chairs, the rule is silent on children's folding stools (16 CFR 1130.2(a)(13)). The Commission considers folding stools to be a subset of folding chairs, and therefore, proposes to include children's folding stools within the scope of the proposed standard. Accordingly, the Commission proposes to amend § 1130.2 by revising paragraph (a)(13) to include both children's folding chairs and folding stools.

VII. Incorporation by Reference

Section 1232.2(a) of the proposed rule incorporates by reference ASTM F2670–13. The Office of the Federal Register (''OFR'') has regulations concerning incorporation by reference. 1 CFR part 51. The OFR regulations require that, for a proposed rule, agencies must discuss in the preamble to the NPR, ways that the materials the agency proposes to incorporate by reference are reasonably available to interested persons, or explain how the agency worked to make the materials reasonably available. In addition, the preamble to the proposed rule must summarize the material. 1 CFR 51.5(a).

In accordance with the OFR's requirements, section V of this preamble summarizes the provisions of ASTM F2613–14 that the Commission proposes to incorporate by reference. ASTM F2613–14 is copyrighted. By permission of ASTM, the standard can be viewed as a read-only document during the comment period on this NPR, at: *http://www.astm.org/cpsc.htm.* Interested persons may also purchase a copy of ASTM F2613–14 from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org.* One may also inspect a copy at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923.

VIII. Amendment of 16 CFR Part 1112 To Include NOR for Children's Folding Chairs and Stools

The CPSA establishes certain requirements for product certification and testing. Products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* 2063(a)(2). The Commission must publish a NOR for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. *Id.* 2063(a)(3). Thus, the proposed rule for 16 CFR part 1232, Safety Standard for Children's Folding Chairs and Stools, if issued as a final rule, would be a children's product safety rule requiring the issuance of a NOR.

The Commission published a final rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies,* 78 FR 15836 (March 12, 2013), codified at 16 CFR part 1112 (''part 1112'') and effective on June 10, 2013, establishing requirements for CPSC acceptance of third party conformity assessment bodies to test for conformance with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also codifies all of the NORs previously issued by the Commission.

All new NORs for new children's product safety rules, such as the children's folding chairs and stools standard, require an amendment to part 1112. To meet the requirement that the Commission issue a NOR for the proposed children's folding chairs and stools standard, as part of this NPR, the Commission proposes to amend the existing rule that codifies the list of all NORs issued by the Commission to add children's folding chairs and stools to the list of children's product safety rules for which the CPSC has issued a NOR.

Test laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard for children's folding chairs and stools would be required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to the CPSC to have 16 CFR part 1232, *Standard Consumer Safety Specification for Children's Folding Chairs and Stools,* included in the laboratory's scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC Web site at: *www.cpsc.gov/labsearch.*

IX. Effective Date

The Administrative Procedure Act (''APA'') generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission is proposing an effective date of 6 months after publication of the final rule in the **Federal Register** for products manufactured or imported on or after that date. The proposed rule would require manufacturers to make design or manufacturing changes to address the proposed sideways stability testing requirements. The warning label changes do not affect the design and manufacturing of the folding chairs or folding stools, but rather, require printing new labels. The Commission believes that most firms should be able to comply within the 6-month time frame and allow ample time for manufacturers and importers to arrange for third party testing, consistent with the timeframe adopted in a number of other section 104 rules. However, the Commission seeks comments regarding the economic impact on small manufacturers and importers on meeting the side stability testing requirements as well as meeting the third party testing requirements discussed in section X below. In addition, we ask for comments on the proposed 6-month effective date.

X. Regulatory Flexibility Act

A. Introduction

The Regulatory Flexibility Act (''RFA'') requires agencies to consider the impact of proposed rules on small entities, including small businesses. The RFA generally requires agencies to review proposed rules for their potential impact on small entities and prepare an initial regulatory flexibility analysis (''IRFA'') unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 605. Because CPSC staff was unable to estimate precisely all costs of the proposed rule, staff conducted such an analysis. The IRFA must describe the impact of the proposed rule on small entities and identify significant alternatives that accomplish the statutory objectives and minimize any significant economic impact of the proposed rule on small entities. Specifically, the IRFA must contain:

- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- a description of the reasons why action by the agency is being considered;
- a succinct statement of the objectives of, and legal basis for, the proposed rule;
- a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for the preparation of reports or records; and
- identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and
- a description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and minimize the rule's economic impact on small entities.

B. Market

CPSC staff is aware of four domestic firms manufacturing and ten domestic firms importing children's folding chairs and/or stools in the United States. Most firms only supply one model of chair; two supply two models, and one supplies five distinct models. All four manufacturers and six importers are categorized as ''small firms'' under the guidelines of the U.S. Small Business Administration (''SBA''). One importer's size could not be determined.

The Juvenile Products Manufacturers Association (''JPMA'') maintains a certification program for children's folding chairs and folding stools but at this time there are no active participants. JPMA does not maintain a list of firms complying with the voluntary standard for children's chairs; compliance of firms with the voluntary standard is self-reported and several firms report compliance with ASTM standards. Some of the firms in the market participate actively in the ASTM standard process and those firms are likely to comply with the voluntary standard.

C. Reason for Agency Action and Legal Basis for Proposed Rule

Section 104(b) of the CPSIA requires the CPSC to promulgate a mandatory standard for children's folding chairs and stools that is substantially the same as, or more stringent than, the voluntary standard if the Commission determines that a more stringent standard would further reduce the risk of injury associated with such products. The Commission is proposing a safety standard for children's folding chairs and stools in response to the requirements of section 104(b).

D. Other Federal Rules

The Commission has not identified any federal or state rule that duplicates, overlaps, or conflicts with the proposed rule.

E. Impact of the New Standards and Testing Requirements on Small Businesses

Under SBA guidelines, a manufacturer of children's folding chairs and stools is categorized as ''small'' if it has 500 or fewer employees, and importers and wholesalers are considered ''small'' if they have 100 or fewer employees. Staff has identified four firms currently manufacturing and ten firms importing children's folding chairs and stools in the United States. All four manufacturers and six of the importers are categorized as small businesses. One importer's size could not be determined.

Small Manufacturers

Of the four identified small manufacturers of children's folding chairs and stools in the United States, two claim compliance with the voluntary standard, and at least one participates in the ASTM process. Of the two remaining manufacturers, one does not comply with warning label requirement and possibly other requirements; the compliance of the other could not be determined. Regardless of conformance to the voluntary standard, the proportion of chairs that might need modifications to comply with side stability requirements could be high. In testing conducted by CPSC Engineering Sciences (''ES'') staff, 7 models out of 9 model samples (from both small and large firms) failed the proposed test for side stability.

If a folding chair or a folding stool must be modified to comply with the staff's proposed side-stability requirements, costs will vary with the necessary modification. CPSC ES staff has identified the addition of a small plastic stabilizer to each corner as a possible modification for chairs or stools with rounded tube frames, based on one model tested which passed with these stabilizers and failed the test with them removed. Similarly designed models found in Europe, where side stability requirements exist for children's folding chairs, also contain these stabilizers. The costs of adding these small pieces of plastic would likely be low, due to the size and material.

For chairs with other frame types and arms that extend farther out from the seating area, for which the plastic stabilizers are either not possible or not sufficient, a redesign may be necessary to eliminate the arms or otherwise modify the chair's design for compliance with the requirements. One manufacturer estimates the costs to redesign a non-compliant chair to be $10,000, including 9 to 12 months of labor and development time. This cost could be significant for one manufacturer, if a redesign were required for all models. The costs for a non-compliant folding chair that does not require a full redesign would likely be lower. The costs for redesign of warning labels is expected to be 1 hour of labor time at current labor rates, as discussed in section XII below.

At this time, CPSC staff does not have sufficient information to determine what proportion of folding chair or folding stool models currently in the market will be able to meet the side-stability requirements through a simple and inexpensive fix like adding a plastic stabilizer versus the proportion of models that will require a more costly redesign. Without this information, the economic impact that the four small manufacturers will experience due to the proposed side-stability requirements is difficult to assess. Therefore, we cannot rule out a significant economic impact for small folding chair manufacturers.

The Commission seeks information on the modifications that manufacturers expect are needed for existing folding chair or folding stool models to meet the side-stability requirements as well as any data regarding the expected costs of such modifications. In particular, the Commission seeks comments on the likely costs of compliance with the side-stability requirements and the extent to which the total cost of any necessary modifications might exceed one percent of the manufacturer's gross revenue.

Three of the small manufacturers of children's folding chairs and folding stools have diversified product lines. If the cost of compliance with the proposed rule is too high, these firms might discontinue production, thus avoiding significant economic harm. However, because revenue data for these firms was not sufficiently detailed, CPSC staff cannot determine with any certainty whether exit from the market is an economically viable option. The remaining manufacturer supplies a folding chair as an accessory with its one main product. This manufacturer's folding chair does not currently comply with the voluntary standard. Although the firm might be able to offer its product line without a folding chair, CPSC staff cannot determine whether ceasing the sale of its folding chair would have a significant adverse impact on the firm, and thus, CPSC staff is unable to rule out a significant economic impact based on this manufacturer's ability to exit the market.

To better assess the economic impact on small manufacturers, the Commission is interested in obtaining data on the importance of children's folding chairs and stools relative to a manufacturer's overall product line and gross revenues, and feedback regarding the desirability of exit as a strategy for averting regulatory compliance costs. For example, do sales of children's folding chairs or folding stools constitute a small proportion of a manufacturer's overall revenue (*i.e.* less than one percent of gross revenue)? Would a typical manufacturer of children's folding chairs or folding stools be able to discontinue production without experiencing significant economic hardship?

Under section 14 of the CPSA, children's folding chairs and stools are subject to third party testing and certification. Once the new requirements become effective, all manufacturers will be subject to the additional costs associated with the third party testing and certification requirements under the testing rule, Testing and Labeling Pertaining to Product Certification (16 CFR part 1107). Third party testing will include physical and mechanical test requirements specified in the folding chairs final rule; lead testing is already required. Third party testing costs are in addition to the direct costs of meeting the standard.

CPSC staff contacted two small manufacturers regarding testing costs and one firm estimated that chemical and structural testing of one unit of a children's folding chair costs around $1,000 annually. No other firms were willing or able to supply the requested testing cost information. Estimates provided by suppliers for other section 104 rulemakings indicate that around 40 to 50 percent of testing costs can be attributed to structural requirements, with the remaining 50 to 60 percent resulting from chemical testing (lead testing). CPSC staff estimates that testing to structural components of the ASTM voluntary standard could cost about $400 to $500 per sample tested ($1,000 $\times$ .4 to $1,000 $\times$ .5). These costs are consistent with testing cost estimates for products with standards of similar complexity.

CPSC staff's review of the children's folding chairs and folding stools market shows that three small domestic manufacturers supply one model of children's folding chair or folding stool to the U.S. market annually. The fourth small manufacturer supplies five models of children's folding chairs and folding stools. Therefore, if third party testing were conducted every year, third party testing costs for three manufacturers with only one model would be about $400–$500 annually per model tested, and $2,000–$2,500 for the other manufacturer ($400–$500 per model, five models), if only one sample were tested for each model.

The testing and labeling rule (16 CFR part 1107) is not explicit regarding the number of samples firms will need to test to meet the ''high degree of assurance'' criterion. However, based on an examination of each small domestic manufacturer's revenues from recent Dun & Bradstreet or Reference USA reports, testing costs are likely to be under one percent of gross revenue for these small manufacturers. Thus, it seems unlikely that testing costs, by themselves, would be economically significant for the small manufacturers unless a very high number of samples per model were needed to meet the ''high degree of assurance'' criterion. The Commission seeks comments on the typical number of samples that are tested to satisfy third party testing requirements, and whether third party testing would lead to significant economic impact.

Small Domestic Importers. Of the six or seven small importers, only one claims that its products comply with the ASTM standard. The state of compliance for the remainder could not be determined. For the importer or importers currently in compliance with the voluntary standard, if their products pass the sideways stability test, there should be minimal burden associated with compliance. As most of the imported chairs tested by CPSC engineering staff failed the proposed sideways stability test, it is probable that many importers' products would not comply with the proposed rule.

Whether there is a significant economic impact on small importers will depend upon the extent of the changes required to come into compliance and the response of their supplying firms. In general, if the supplying firm comes into compliance, the importer could elect to continue importing the compliant product. Any increase in production costs experienced by suppliers as a result of changes made to meet the mandatory standard could be passed on to the importers. If an importer is unwilling or unable to accept the increased costs, or if the importer's supplier decides not to comply with the mandatory standard, the importer could find another supplier of children's folding chairs and stools or stop importing children's folding chairs and stools. Because no small importers responded to requests for information, however, staff could not estimate the economic impact on these firms and cannot rule out a significant economic impact.

To assist with further analysis of the impact of the rule on small importers, the Commission seeks information on the degree to which supplying firms tend to pass on increases in production and regulatory costs to importers. To what extent is the ability to pass on these costs limited by the ease with which importers can switch suppliers or substitute an alternative product for children's folding chairs and stools?

As with manufacturers, all importers will be subject to third party testing and certification requirements, and consequently, will be subject to costs similar to those for manufacturers if the importer's supplying foreign firm(s) does not perform third party testing. These testing costs are not likely, by themselves, to exceed one percent of gross revenue for the six small domestic importers for which revenue information is available. The impact on the other importer is unknown. Again, the Commission is interested in the size

of the economic impact third party testing poses for importers, and whether testing costs would constitute a small proportion of a manufacturer's overall revenue (*i.e.* less than one percent of gross revenue).

Alternatives. CPSC staff reviewed the alternatives to the proposed mandatory standard. Adopting ASTM F2613–14 with respect to children's folding chairs and stools, but without any further modifications to the performance requirements is one alternative. This alternative would reduce the impact on all of the known small businesses supplying children's folding chairs and stools to the U.S. market by not including the additional requirements and tests for sideways stability and additional labeling requirements. Another alternative would be to set a later effective date than the 6 month effective date proposed in the NPR. The NPR requests comments on the economic impacts of the proposed rule, as well as comments on the 6 month effective date.

F. Impact of Proposed 16 CFR Part 1112 Amendment on Small Businesses

As required by the RFA, staff conducted a Final Regulatory Flexibility Analysis (''FRFA'') when the Commission issued the part 1112 rule (78 FR 15836, 15855–58). Briefly, the FRFA concluded that the accreditation requirements would not have a significant adverse impact on a substantial number of small testing laboratories because no requirements were imposed on test laboratories that did not intend to provide third party testing services. The only test laboratories that were expected to provide such services were those that anticipated receiving sufficient revenue from the mandated testing to justify accepting the requirements as a business decision.

Based on similar reasoning, amending 16 CFR part 1112 to include the NOR for the children's folding chair and stool standard will not have a significant adverse impact on small test laboratories. Moreover, based upon the number of test laboratories in the United States that have applied for CPSC acceptance of accreditation to test for conformance to other mandatory juvenile product standards, we expect that only a few test laboratories will seek CPSC acceptance of their accreditation to test for conformance with the children's folding chair and stool standard. Most of these test laboratories will have already been accredited to test for conformance to other mandatory juvenile product standards, and the only costs to them would be the cost of adding the children's folding chair and stool standard to their scope of accreditation. As a consequence, the Commission certifies that the NOR amending 16 CFR part 1112 to include the children's folding chair and stool standard will not have a significant impact on a substantial number of small entities.

XI. Environmental Considerations

The Commission's regulations address whether we are required to prepare an environmental assessment or an environmental impact statement. Under these regulations, a rule that has ''little or no potential for affecting the human environment'' is categorically exempt from this requirement. 16 CFR 1021.5(c)(1). The proposed rule falls within the categorical exemption.

XII. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- A title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the OMB.

Title: Safety Standard for Children's Folding Chairs and Stools.

Description: The proposed rule would require each folding chair and folding stool to comply with ASTM F2613–14, with the changes proposed in this Notice, which contains requirements for marking and labeling. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import children's folding chairs and folding stools.

Estimated Burden: We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR Section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1232.2	14	1.4	20	1	20

Our estimate is based on the following:

There are 14 known firms supplying children's folding chairs or folding stools to the U.S. market. All firms are assumed to use labels on both their products and their packaging already, but they might need to make some modifications to their existing labels. The estimated time required to make these modifications is about 1 hour per model. Each of these firms supplies an average of 1.4 different models of children's folding chairs or folding stools; therefore, the estimated burden hours associated with labels is 1 hour × 14 firms × 1.4 models per firm = 20 annual hours.

We estimate that hourly compensation for the time required to create and update labels is $30.09 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' December 2014, Table 9, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*). Therefore, the estimated annual cost associated with the proposed requirements is $602 ($30.09 per hour × 20 hours = $601.80).

In compliance with the PRA (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments regarding information collection to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this notice).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

• Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
• the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
• ways to enhance the quality, utility, and clarity of the information to be collected;
• ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
• the estimated burden hours associated with label modification, including any alternative estimates.

XIII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules.'' Therefore, the preemption provision of section 26(a) of the CPSA would apply to a rule issued under section 104.

XIV. Request for Comments

This NPR begins a rulemaking proceeding under section 104(b) of the CPSIA to issue a consumer product safety standard for children's folding chairs and stools, and to amend part 1112 to add children's folding chairs and stools to the list of children's product safety rules for which the CPSC has issued an NOR. We invite all interested persons to submit comments on any aspect of the proposed mandatory safety standard for children's folding chairs and stools and on the proposed amendment to part 1112. Specifically, the Commission requests comments on the costs of compliance with, and testing to, the proposed mandatory children's folding chairs and stools standard, the proposed 6-month effective date for the new mandatory children's folding chairs and stools standard, and the amendment to part 1112. In addition, the Commission requests comments on the proposed amendment to part 1130, to include folding stools in the proposed rule.

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

16 CFR Part 1232

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, and Toys.

For the reasons discussed in the preamble, the Commission proposes to amend 16 CFR chapter II, as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(43) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

* * * * *

(b) * * *

(43) 16 CFR part 1232, Safety Standard for Children's Folding Chairs and Stools.

* * * * *

■ 3. Amend § 1130.2 by revising paragraph (a)(13) to read as follows:

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

§ 1130.2 Definitions.

* * * * *

(a) * * *

(13) Children's folding chairs and stools;

* * * * *

■ 4. Add part 1232 to read as follows:

PART 1232—SAFETY STANDARD FOR CHILDREN'S FOLDING CHAIRS AND STOOLS

Sec.
1232.1 Scope.
1232.2 Requirements for children's folding chairs and stools.

Authority: Sec. 104, Public Law 110–314, 122 Stat. 3016.

§ 1232.1 Scope.

This part establishes a consumer product safety standard for children's folding chairs and stools.

§ 1232.2 Requirements for children's folding chairs and stools.

(a) Except as provided in paragraph (b) of this section, each children's folding chair and stool shall comply with all applicable provisions of ASTM F2613–14, *Standard Consumer Safety Specification for Children's Chairs and Stools,* approved October 1, 2014. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

(b) Comply with ASTM F2613–14 with the following additions or exclusions:

(1) Instead of complying with section 5.13 of ASTM F2613–14, comply with the following:

(i) 5.13 *Stability*—All chairs shall not tip over backward or sideways when tested in accordance with 6.8. Tip over shall consist of the product moving past equilibrium and begin to overturn.

(ii) [Reserved]

(2) Instead of complying with section 6.8 of ASTM F2613–14, comply with the following:

(i) 6.8 *Stability Test Method*—(A) 6.8.1 *Test equipment and preparation—(1)* 6.8.1.1 Test surface—any rigid material covered with a high pressure laminate of unspecified color with a smooth matte finish and inclined at an angle of 10° (± 0.5°) to the horizontal plane.

(2) 6.8.1.2 50 lb. test cylinder—cylinder weighing 50.0 ± 0.5 lbs. (22.7 ± 0.2 kg) that is 12.0 ± 0.1 in. (305 ± 2

mm) high with a diameter of 6.0 ± 0.1 in. (152 ± 2 mm) and a center of gravity of 6.0 ± 0.1 in. (152 ± 2 mm) from either face (see Fig. 5). This cylinder shall be applied to a product seating surface whose height is 10 in. (254 mm) or less from the floor.

(3) 6.8.1.3 100 lb. test cylinder—cylinder weighing 100.0 ± 0.5 lbs. (45.4 ± 0.2 kg) that is 12.0 ± 0.1 in. (305 ± 2 mm) high with a diameter of 6.0 ± 0.1 in. (152 ± 2 mm) and a center of gravity of 6.0 ± 0.1 in. (152 ± 2 mm) from either face (see Fig. 5). This cylinder shall be applied to a product seating surface whose height is greater than 10 in. (254 mm) above the floor.

(4) 6.8.1.4 Measurement of the product seating surface height—This height shall be measured from the floor to the midpoint on the upper surface of the front edge of the seating surface, when a 2 lb. (0.9 kg) load is applied vertically downward using a ½″ (13 mm) diameter disk onto the midpoint on the upper surface of the front edge of the seat (see Fig X).

Note X—Use of stops to prevent sliding: If necessary to prevent the product from sliding down the incline, either by its own weight when initially placed on the incline or during the conduct of the test in the following sections, stops can be placed against the product's legs. Stops shall be the minimum height required to prevent sliding and shall not inhibit overturning.

(B) 6.8.2 *Rearward stability*

(1) 6.8.2.1 Product orientation: Place the product on the test surface with the front of the product facing the upward slope.

(2) 6.8.2.2 Application of the load: Place the applicable test cylinder so that it is centered side to side on the product seating surface, oriented perpendicular to the plane of this surface, and allow the cylinder to come to rest.

(3) 6.8.2.3 Cylinder Positioning for Chairs: Place the cylinder as far back or downslope on the seating surface as permitted by the seat back or chair frame (see Fig. 4).

(4) 6.8.2.4 Cylinder Positioning for Stools: Place the cylinder as far back or downslope as permitted by the seating surface without allowing any part of the cylinder to extend beyond the rearmost or downslope edge of the stool.

(C) 6.8.3 *Sideways stability*

(1) 6.8.3.1 Product orientation: Place the product on the test surface in the most unfavorable position with a side of the product facing the upward slope.

(2) 6.8.3.2 Application of the load: Place the applicable test cylinder so that it is centered front to back on the product seating surface, oriented perpendicular to the plane of this surface, and allow the cylinder to come to rest.

(3) 6.8.3.3 Cylinder Positioning for Chairs: Place the cylinder as far back or downslope on the seating surface as permitted by the chair frame or arms (see Fig. Y).

(4) 6.8.3.4 Cylinder Positioning for Stools: Place the cylinder as far back or downslope as permitted by the seating surface without allowing for any part of the cylinder to extend beyond the rearmost or downslope edge of the stool.

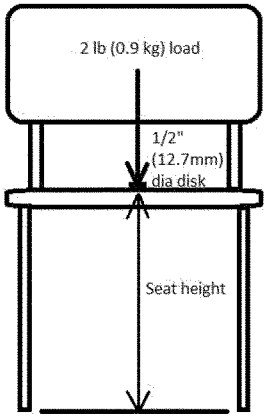


Figure X. Seating Surface Height Measurement

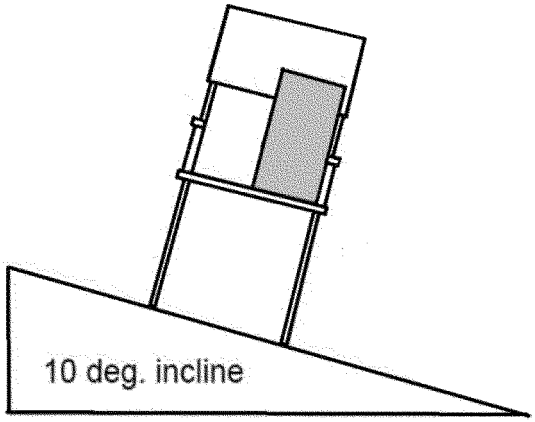


Figure Y. Sideways Stability Test Showing Orientation of Chair and Test Cylinder

(3) Instead of complying with section 7.2 of ASTM F2613–14, including all subsections of section 7.2, comply with the following:

(i) 7.2 Warning Statements: Each folding chair and each folding stool shall have warning statements.

(A) 7.2.1 The warnings shall be easy to read and understand and be in the English language at a minimum.

(B) 7.2.2 The warning statements shall be conspicuous in highly contrasting color(s) (*e.g.,* black text on white background), in non-condensed sans serif type, permanent and applied so they are in a prominent location, visible to the caregiver when the product is in the manufacturer's use position.

(C) 7.2.3 The specified warnings shall be separate and distinct from any other graphic or written material on the product and surrounded by a black border. Note: Separate and distinct, for example, on the back of the chair's back rest away from warnings on the underside of the chair so that it is clearly visible to a consumer approaching the chair from the back. For stools, where possible, the label shall be placed in a visible location such as on the legs in such a way that the label does not wrap around the legs.

(D) 7.2.4 Any labels or written instructions provided in addition to those required by this section shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer.

(E) 7.2.5 The safety alert symbol

"⚠"

and, the signal word ''WARNING'', and the words ''AMPUTATION HAZARD'' shall precede the warning statements.

(F) 7.2.6 The safety alert symbol

"⚠"

and the signal word ''WARNING'' shall not be less than 0.2-in. (5-mm) high and the remainder of the text shall be in characters whose upper case is at least 0.1-in. (2.5-mm) high except as specified.

(G) 7.2.7 The signal word WARNING shall be in black letters on an orange panel surrounded by a black border.

Note 1—When special circumstances preclude the use of the color orange, yellow or red may be used, whichever contrasts best against the product background.

(H) 7.2.8 The solid triangle portion of the safety alert symbol shall be the same color as the signal word lettering, and the exclamation mark shall be the same color as the signal word panel.

(I) 7.2.9 The words ''AMPUTATION HAZARD'' shall be in bold black letters.

(J) 7.2.10 The precautionary statements shall be indented from the hazard statements, preceded with bullet points, and appear as shown in Figs. 6 and 7.

(K) 7.2.11 The warning label shall contain sufficient white space as shown as shown in Figs. 6 and 7.

(L) 7.2.12 Overall height and width of the label may be modified as necessary to fit on the product, but still meet requirements for conspicuousness. An example of the warning label format described in this section is shown in Figs. 6 and 7.

(M) 7.2.13 For folding chairs and folding stools with latch(es), warnings shall address the following:

(1) 7.2.13.1 Amputation hazard:

Hazard and Consequence Statement:

AMPUTATION HAZARD

Chair can fold or collapse if lock not fully engaged. Moving parts can amputate child's fingers if chair folds or collapses.

Precautionary Statements:

- Keep fingers away from moving parts.
- Completely unfold chair and fully engage locks before allowing child to sit in chair.
- Never allow child to fold or unfold chair.

(2) [Reserved]

(N) 7.2.14 For folding chairs and folding stools without latch(es), warnings shall address the following:

(1) 7.2.14.1 Amputation hazard:

Hazard and Consequence Statement

AMPUTATION HAZARD

Moving parts can amputate child's fingers.

Precautionary Statements:

- Keep fingers away from moving parts.
- Completely unfold chair before allowing child to sit in chair.
- Never allow child to fold or unfold chair.

(2) [Reserved]

(4) In addition to the figures in ASTM F2613–14, use the following figure 6:

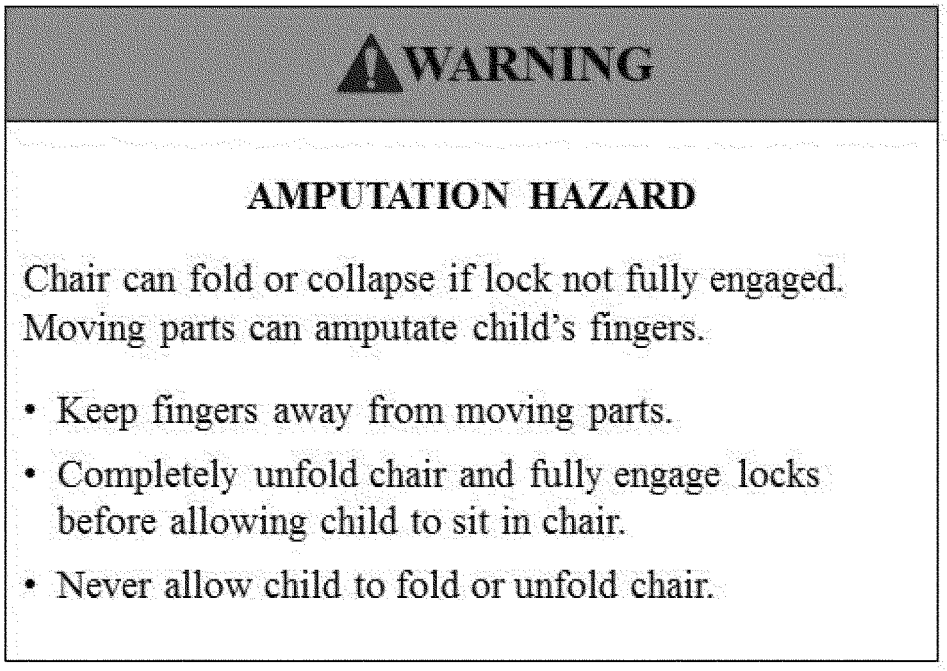


Figure 6 Recommended Label for Chairs (Stools) with Lock(s)

(5) In addition to the figures in ASTM F2613–14, use the following figure 7:

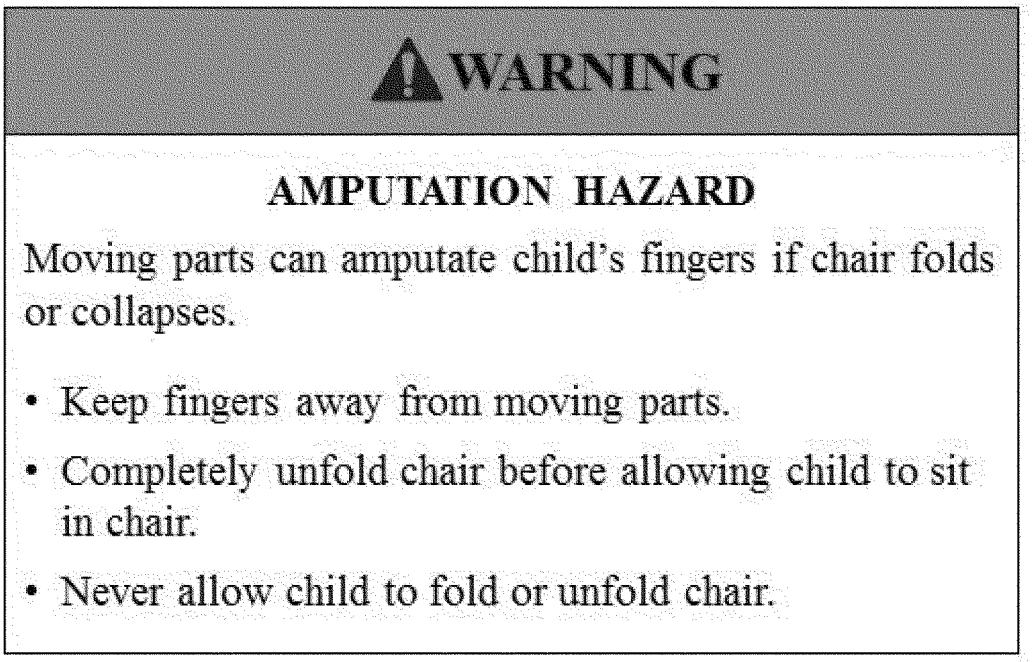


Figure 7 Recommended Label for Chairs (Stools) without Latch(es)

Dated: October 13, 2015.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2015–26385 Filed 10–16–15; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1229

[Docket No. CPSC–2015–0028]

Safety Standard for Infant Bouncer Seats

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), requires the United States Consumer Product Safety Commission (''Commission'' or ''CPSC'') to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety standard for infant bouncer seats (''bouncer seats'') in response to the direction of section 104(b) of the CPSIA. In addition, the Commission is proposing an amendment to 16 CFR part 1112 to include 16 CFR part 1229 in the list of notice of requirements (''NORs'') issued by the Commission.

DATES: Submit comments by January 4, 2016.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature requirements of the proposed mandatory standard for bouncer seats should be directed to the Office of Information and Regulatory Affairs, the Office of Management and Budget, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.*

Other comments, identified by Docket No. CPSC–2015–0028, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2015–0028, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Suad Wanna-Nakamura, Ph.D., Project Manager, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2550; email: *snakamura@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

The CPSIA was enacted on August 14, 2008. Section 104(b) of the CPSIA, part of the Danny Keysar Child Product

Safety Notification Act, requires the Commission to: (1) Examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant and toddler products. Standards issued under section 104 are to be ''substantially the same as'' the applicable voluntary standards or more stringent than the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product.

The term ''durable infant or toddler product'' is defined in section 104(f)(1) of the CPSIA as ''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years,'' and the statute specifies twelve categories of products that are included in the definition, including walkers, carriers and various types of children's chairs. In issuing regulations governing product registration under section 104, the Commission determined that an ''infant bouncer'' falls within the definition of a ''durable infant or toddler product.'' 74 FR 68668 (Dec. 29, 2009); 16 CFR 1130.2(a)(15).

Pursuant to section 104(b)(1)(A) of the CPSIA, the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public in the development of this notice of proposed rulemaking (''NPR''), largely through the ASTM process. The NPR is based on the most recent voluntary standard developed by ASTM International (formerly the American Society for Testing and Materials), ASTM F2167–15, *Standard Consumer Safety Specification for Infant Bouncer Seats* (''ASTM F2167–15''), with specific modifications to improve and strengthen the requirements for on-product warnings and instructional materials provided with bouncer seats.

The testing and certification requirements of section 14(a) of the Consumer Product Safety Act (''CPSA'') apply to the standards promulgated under section 104 of the CPSIA. Section 14(a)(3) of the CPSA requires the Commission to publish an NOR for the accreditation of third party conformity assessment bodies (''test laboratories'') to assess conformity with a children's product safety rule to which a children's product is subject. The proposed rule for bouncer seats, if issued as a final rule, would be a children's product safety rule that requires the issuance of an NOR. To meet the requirement that the Commission issue an NOR for the bouncer seat standard, this NPR also proposes to amend 16 CFR part 1112 to include 16 CFR part 1229, the CFR section where the bouncer seat standard will be codified, if the standard becomes final.

II. Product Description

A. Definition of ''Bouncer Seats''

The scope section of ASTM F2167–15 defines an ''infant bouncer seat'' as: ''a freestanding product intended to support an occupant in a reclined position to facilitate bouncing by the occupant, with the aid of a caregiver or by other means.'' ASTM F2167–15 states that infant bouncer seats are intended for ''infants who have not developed the ability to sit up unassisted (approximately 0 to 6 months of age).''

Bouncer seats vary widely in style and complexity, but typically, bouncer seats consist of a cloth cover stretched over a wire or tubular frame. Wire frame bouncers have two designs. The forward bend design is constructed with the seating area supported from the front side of the product. The second wire frame design is a rear bend design. In the rear bend design, the seat is supported from the rear side of the product. Other bouncer designs are also currently available, including, but not limited to, products with individual wire legs, solid bases, and spring designs. These infant bouncer designs use different methods to support the seat and are intended for ''bouncing,'' as defined in ASTM F2167.

All bouncer seats support the child in an inclined position, and some brands have adjustable seat backs. Various bouncer seat models include a ''soothing unit'' that vibrates or bounces the chair, and may play music or other sounds. Most bouncer seats also feature an accessory bar with attached toys that are, or at some point will be, within the child's reach. Most of the bouncer seat models examined by Commission staff provide a 3-point restraint system consisting of wide cloth crotch restraints, and short adjustable waist straps with plastic buckles. Only two models of bouncer seats reviewed by CPSC employed upper body restraints. Many bouncer seat brands also include an ''infant insert,'' intended for use to support smaller babies. See Tabs C and D, Staff Briefing Package: Infant Bouncer Seats Notice of Proposed Rulemaking, dated September 30, 2015 (''Staff NPR Briefing Package''), available at: *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/ProposedRuleSafetyStandardforInfantBouncerSeatSeptember302.pdf.*

B. Market Description

Although additional suppliers may exist, CPSC staff identified 22 firms supplying infant bouncer seats to the U.S. market. The 22 identified firms primarily specialize in the manufacture and/or distribution of children's products, including durable nursery products. The majority of the 22 known firms are domestic (including 8 manufacturers and 10 importers). The remaining four firms are foreign manufacturers.[1] In 2013, the CPSC conducted a Durable Nursery Product Exposure Survey (''DNPES'') of U.S. households with children under age 6. Data from the DNPES indicate that an estimated 6.75 million infant bouncers are in U.S. households (with 95% probability that the actual value is between 5.78 million and 7.72 million). Data collected also indicate that about 31 percent of the infant bouncers in U.S. households are currently in use (an estimated 2.09 million infant bouncers, with 95 percent probability that the actual value is between about 1.5 million and 2.68 million). Tab F, Staff NPR Briefing Package.

III. Incident Data

CPSC's Directorate for Epidemiology, Division of Hazard Analysis is aware of 277 reported incidents involving bouncer seats, including 11 fatalities and 51 injuries, occurring between January 1, 2006 and February 2, 2015. The incidents are based on reports involving victims 12 months and younger in the Injury or Potential Injury Incident (''IPII''), In-Depth Investigation (''INDP''), and Death Certificates (''DTHS'') databases (collectively referred to as Consumer Product Safety Risk Management System data, or ''CPSRMS'' data). Additionally, CPSC staff found 672 bouncer-related incidents, including two fatalities, reported in the National Electronic Injury Surveillance System (''NEISS'') records retrieved for bouncer incidents from January 1, 2006 to December 31, 2013, involving children 12 months old and younger. A detailed review of the incident data and analysis associated with bouncer seats can be found in Tabs A, B, and D of the Staff NPR Briefing Package.

[1] Determinations were made using information from Dun & Bradstreet and ReferenceUSAGov, as well as firm Web sites.

A. Fatalities

For the reporting periods described in the preceding paragraph, CPSC staff found 11 reported fatalities in the CPSRMS data, and two reported fatalities in the NEISS data. A brief description of each incident follows:

• 120427HCC1640: A 6-month-old died of blunt force trauma to the head when the infant's father lifted him in the bouncer seat. The bouncer collapsed and the child fell out of the back onto carpeted floor. He suffered a linear skull fracture and died the following day.

• 121001HCC2002: A 3-month-old was fed and left to sleep in her bouncer seat. The child's father reported that he found her face down, unrestrained, in the seat. The seat was on the floor, and the child's mother and 2-year-old sister had been asleep on a couch nearby.[2] Cause of death was positional asphyxia.

• 070214CCC1300: A 2-month-old who suffered from reflux and a respiratory infection was placed, unrestrained, to sleep in a bouncer that was lined with a blanket; the bouncer was on the floor next to the couch where his mother slept for the night. The child turned over in the seat, and was found unresponsive, face down against seat back. Cause of death was positional asphyxia.

• 110726CAA3941: A 3-month-old was placed on an adult bed in an infant bouncer seat, unrestrained, for a nap. The mother reported that the child had fallen out of the seat and she found her face down on the bed. The child was diagnosed with an irreversible anoxic brain injury and died 19 days later.

• 726037034: A 3-month-old was left in a ''bouncey (*sic*) seat on an adult bed.'' Cause of death was probable asphyxia due to suffocation. No further information is available.

• 1051041332: A 4-month-old ''suffocated when face down in soft bedding on bouncey (*sic*) seat at home.'' No further information is available.

• 101012HCC3049: A 6-month-old (born several weeks premature) was placed in a bouncer on the floor (in front of a television) as he was falling asleep while his mother showered. She placed a pillow under the rear legs of the bouncer to raise it. She found the child unresponsive, turned with his face against the side of the bouncer, one leg out of the restraints. Cause of death was positional asphyxia.

• 080917HBB3900: A 2-month-old in a bouncer was placed in a crib to sleep. She was found suspended, partially upside down, over the side of the bouncer with one leg entwined in the restraints. A depression in the mattress suggests that the child's face was against it. Cause of death was mechanical asphyxia.

• X1490229A: A 4-month-old was swaddled and placed for a nap, unrestrained, in a bouncer, which was then placed on the floor; the child reportedly just started to roll over, but had not done so completely on her own. Her parents found her unresponsive ''with her face against the back of the infant seat and half way off the chair from the waist level down . . .''; she could not be resuscitated. Cause of death was positional asphyxia.

• 140102HWE0001: A 6-month-old was sleeping, strapped into a bouncer and when she awoke, was moved in the bouncer to a bedroom and left briefly with two toddlers, and possibly a pet dog. When the caregiver returned, she found the chair overturned on the floor with the victim's neck lying over the chair's [toy bar]. The report is inconsistent regarding whether the bouncer was placed initially on the bed or on the floor. HS staff considers the injuries described in the ME's report to be consistent with a fall rather than a tip-over at floor level. The child died five days later. Cause of death was positional asphyxia.

• 140422CAA1573: A 3-month-old was placed to sleep for the evening, unrestrained, in a bouncer on the floor in a room with several other children. Her mother found her five hours later face down in front of the bouncer on the floor and not breathing.

• NEISS: 120328281: The parents of a 5-month-old found him unresponsive, flipped over in the bouncer seat with his leg still through one leg hole. The cause listed was cardiac arrest.[3]

• NEISS: 130645295: A 2-month-old child had been asleep in a ''bouncy''; his father awoke to find the child unresponsive on the floor. The cause of death was cardiac arrest.[4]

Most of the infants' deaths involved the presence of excess bedding in or under the bouncer; placement of the bouncer on a soft surface such as an adult bed; placement of the bouncer in a crib; and carrying or placing the bouncer at an elevated height. Most of the bouncer seat deaths also involved the infant being placed in the bouncer to sleep unrestrained, which allowed the infant unsupervised time and movement within the hazardous environment which contributed to the death. Tab B, Staff NPR Briefing Package. In nine cases, the child was reported as napping or sleeping and without restraints in five of the nine incidents. In two cases, the child was partially out of the restraints when found; in the case when the bouncer was inside the crib, the child was partially suspended upside down over the side of the bouncer with one leg in the restraints. Moreover, in at least four cases, the child's emerging ability to turn over, resulted in the child's face resting against the conforming surface of the seat back, and this appears to have been a significant factor in causing the child's death. Tab D, Staff NPR Briefing Package.

B. Non-Fatalities

Of the 277 CPSRMS bouncer-related incidents involving children 12 months old and younger, 266 incidents were nonfatal. Fifty-one (51) of these nonfatal incidents reported injuries. Four of the 51 reported injuries involved serious head injuries related to falls from a bouncer placed on an elevated surface. Other reported injuries included skull fractures, leg fractures, head contusions, eye bruises, facial bruises and scratches, a split lip and torn upper frenulum, a finger bruise, leg cuts, leg bruises, heel lacerations, and a blood blister. Because reporting is ongoing, the number of injuries and fatalities associated with bouncer seats are subject to change. See Tab A, Staff NPR Briefing Package.

Incidents involving the infant occupant falling from the bouncer are of most concern to CPSC because falls have the greatest potential for a serious injury. According to Health Sciences staff's analysis, 77 of the 266 nonfatal incidents involved the infant occupant falling from the bouncer. In five of these incidents, the infant occupant fell from a bouncer placed at an elevated height, such as on a kitchen countertop or dining table, or the bouncer was being carried by the caregiver; in four (80%) of these elevated-height incidents, the infant fell from the bouncer and sustained a severe head injury. Severe head injuries, such as concussions and fractured skulls, could cause extensive brain damage and affect the infant's motor development, emotional development, speech, ability to think and learn, and overall quality of life, long after the incident has occurred. The majority of the remaining 189 nonfatal incidents that did not involve a fall

[2] Both a car seat and an infant bouncer were present at the scene. CPSC Health Sciences staff found the information in the report insufficient to determine the hazard that contributed to the fatality in this incident.

[3] CPSC staff found the information in this incident insufficient to determine the hazard that contributed to the fatality because the term ''leg hole'' was deemed inconsistent with the features of an infant bouncer and because of the lack of detail provided.

[4] CPSC staff found the information in this incident insufficient to determine the hazard that contributed to the fatality.

resulted in no injuries or minor injuries. Only one incident resulted in a moderate injury; in that incident a 3-month-old infant shifted in the bouncer and sustained a fractured leg. See Tab B, Staff NPR Briefing Package.

C. Hazard Pattern Identification for CPSRMS Incidents

To identify hazard patterns associated with infant bouncer seats, CPSC staff considered all 277 reported incidents in CPSRMS involving product-related issues. Tab A, Staff NPR Briefing Package. Product-related issues associated with these incidents include:

Product Design—Seventy-five (75) incident reports describe issues related to bouncer product design. Design issues described in these incident reports consist of sharp plastic rods, uncushioned side metal bars, overhead attachments not clipping properly, sharp pieces of fabric, lack of padding in the footing area, bouncer frames that easily entrap arms/legs/fingers, easily movable feet cushion flaps, sharp plastic grooves from a musical component, sagging seat belts, and lopsided or low-riding bouncer frames. Sixteen of the 75 incidents resulted in injuries, all of which were minor.

Structural Integrity—Seventy (70) incident reports describe issues related to the structural integrity of bouncer components, such as bouncer seats collapsing when picked up, collapsing during use, and releasing fabric from the plastic frame, plus various other structural issues involving broken sides, recline adjustment pieces, wire bases, front tube retainers, and rubber feet. Twelve of the 70 incidents resulted in minor injuries.

Toy Bar-Related—Thirty-six (36) incident reports involve problems with the toy bar or toys attached to the toy bar. These reports describe the following types of issues: Toy bars that fail to snap into place, toy bars breaking after being used as a handle, toys breaking off the bar, toys on the bar swinging back to hit the victim, toys scratching and pinching fingers or toes, and children getting hands or feet caught on the toy attachments. Ten of the 36 incidents resulted in minor injuries.

Stability—Stability issues comprise thirty-three (33) tip-over incidents involving a bouncer seat placed on the floor. While 26 bouncer tip-over incidents resulted in no reported injuries, seven incident reports include injuries such as a split lip, head contusions, and facial bruises.

Chemical/Electric Hazards—Thirty (30) incident reports describe issues related to chemical or electrical hazards, including two reported injuries (a thigh welt and a rash). One incident involved a bouncer seat emanating a toxic smell; another incident involved a victim who developed a rash after directly touching the bouncer; and 28 incidents involved batteries or the vibration motors. Twenty-four of the battery/motor incidents included reports of leaking, cracking, or exploding batteries. Four of the battery/motor incident reports specifically described motor-related issues, which include overheating motors, motors making strange noises, and motors catching on fire, resulting in burning plastic and structural burn marks.

Restraints—Twenty (20) incidents, including two reported minor injuries, involve issues with bouncer restraints, including falling out of bouncer seats despite being strapped in, tearing/fraying straps, non-latching seat belts, and breaking seat buckles.

Hazardous Placement—Eleven (11) incidents involved a hazardous placement of the bouncer where victims in bouncer seats fell from elevated surfaces, fell face down onto soft bedding, or suffocated while attempting to slip out of a bouncer seat placed on an unstable surface. One incident included a reported skull fracture injury; another incident involved a fatality resulting from blunt force head trauma; and nine incidents involved fatalities due to asphyxia.

Unknown—Two (2) incidents involved an unknown hazard, including one that involved a reported injury, and one that resulted in a death from positional asphyxia.

D. NEISS Data Analysis

CPSC staff retrieved 672 NEISS records (estimated total of 17,200 injuries) describing infant bouncer seat incidents between January 1, 2006 and December 31, 2013. See Tab A, Staff NPR Briefing Package. Injury estimates are derived from NEISS data, where sampling weights are used to project the number of cases reported by NEISS hospitals to national estimates. A statistically significant upward trend exists in the estimated emergency department-treated injuries involving bouncer seats for victims under 1-year-old from 2006 to 2013.

An estimated 15,500 patients were treated and released for bouncer injuries, and an estimated 1,300 patients were treated and admitted, treated and transferred to another hospital, or held for observation. An estimated 15,100 (92%) bouncer injuries involved the head and face, while 1,300 estimated injuries involved an unknown area, or the rest of the body (appendages, torso, internal). Two cases involved a victim who died from cardiac arrest. One victim died after flipping over in an infant bouncer seat with his leg still through one leg opening, and the other victim was found on the floor unresponsive after being asleep in the bouncer. These two fatalities are in addition to the 11 fatalities reported in CPSRMS.

Of the 672 NEISS records describing bouncer injuries, 287 incidents took place on the floor or an unknown location. The remaining 385 incidents, or an estimated 9,200 injuries, involved hazardous placements: 342 of these incidents, or an estimated 8,100 injuries, resulted from falls. Hazardous placements included counters, tables, and other elevated surfaces (*e.g.,* beds, carried or lifted positions, chairs, couches, dressers, stairs, and appliances). An estimated 6,800 injuries, or 74 percent of all estimated bouncer injuries associated with a hazardous placement, involved the bouncer being placed on a counter or table. Health Sciences staff analysis determined that 50 of these hazardous placement incidents resulted in a severe head injury, such as a concussion or fractured skull. Twelve severe head injuries were the result of the caregiver carrying the infant in the bouncer. See Tab B, Staff's NPR Briefing Package. CPSC staff noted two other factors in the fall-related NEISS data. In 54 of the reports, the incident occurred when someone was carrying or picking up the child in the infant bouncer. In 33 of the cases, the child was reported to be unrestrained at the time of the incident; the number of cases of children falling while unrestrained is likely to be underreported.

Eighty-one percent of the incidents resulted in injuries (n=532; estimate=13,900). CPSC staff reviewed the NEISS cases and determined the severity of the reported injuries. Based on that analysis, 11 percent of the injuries were severe, such as skull fractures and intracranial hemorrhages; and 41 percent were moderate, such as less serious head injuries and fractures involving other body parts. CPSC staff concluded that infants were more likely to sustain a severe head injury when they fell from elevated heights, and that the potential for severe head injury increases if the child is being carried in the bouncer, and/or if they are unrestrained in the bouncer.

E. Product Recalls

Since January 1, 2006, Compliance staff conducted two bouncer seat recalls involving two different firms. The first recall, in April 2007, involved 1,400

units of Oeuf, LLC, infant bouncer seats.[5] The bouncer seat was recalled after six reports of tubular steel frame breakage. The second recall of bouncer seats, in July of 2009, involved 6,500 units of BabySwede LLC BabyBjörn® Babysitter Balance and Babysitter Balance Air bouncer seats.[6] Bouncer seats were recalled because small, sharp metal objects found in the padded area of the bouncer chair could protrude through the fabric, posing a laceration hazard to children. No injuries were associated with either product at the time of the recall. See Tab E, Staff NPR Briefing Package.

IV. International Standards for Bouncer Seats

CPSC staff found no other standard for infant bouncer seats. See Tab C, Staff NPR Briefing Package. However, CPSC staff identified two closely related international standards, BS EN 14036:2003, *Child Use and Care Articles—Baby Bouncers—Safety requirements* (''BS EN 14036'') and BS EN 12790:2002, *Test Methods and Child Care Articles—Reclined cradles* (''BS EN 12790''), which pertain to products with some characteristics similar to infant bouncer seats. The scope of BS EN 14036 does not include bouncers intended for inclined seating; rather, the standard involves products designed to suspend a child, from above, in an essentially vertical, semi-seated position. These products, sold as baby jumpers in the United States, enable the child's toes/balls of the feet to have contact with the floor to activate and maintain the bouncing action. General requirements in BS EN 14036 are similar to ASTM F2167, but are less stringent. Remaining requirements in BS EN 14036 are not applicable to infant bouncer seats.

BS EN 12790 specifies safety requirements and the corresponding test methods for fixed or folding reclined cradles intended for children up to 6 months and/or up to a weight of 9 kg. Unlike infant bouncer seats, BS EN 12790 is intended to cover non-bouncing products designed to be a safe sleeping environment. BS EN 12790 contains the same general requirements as BS EN 14036. Additional testing in BS EN 12790 includes stability, static strength, dynamic strength, slip resistance, unintentional folding, and restraints. ASTM F2167 contains more stringent stability, static strength, and dynamic testing than BS EN 12790. Slip-resistance tests are substantially similar in both standards. BS EN 12790 contains an unintentional folding test that is not applicable to infant bouncer seats. Finally, although ASTM F2167 does not have a restraint slip test, the restraint strength test requires an additional pull test at 45lb (200 N) to the normal use direction. Accordingly, overall, ASTM F2167–15 is more stringent in most areas than BS EN 12790 and addresses the hazard patterns identified in CPSC's incident data.

V. Voluntary Standard—ASTM F2167

A. History of ASTM F2167

A voluntary standard for infant bouncer seats was first approved in December 2001 and published in January 2002, as ASTM F2167–01, *Standard Consumer Safety Specification for Infant Bouncer Seats.* Since then, ASTM has revised the standard nine times. Tab C of the Staff NPR Briefing Package includes a description of each revision. The current version, ASTM F2167–15, was approved on May 1, 2015, and published in June 2015. ASTM F2167–15 includes modified and new performance and labeling requirements developed by CPSC staff, in conjunction with stakeholders on the ASTM subcommittee task group, to address the hazards associated with bouncer seats. A description of the current voluntary standard for bouncer seats follows.

B. Description of the Current Voluntary Standard—ASTM F2167–15

ASTM F2167–15 includes the following key provisions: Scope, terminology, general requirements, performance requirements, test methods, marking and labeling, and instructional literature.

Scope. Section 1 of ASTM F2167–15 states the scope of the standard, detailing what constitutes an ''infant bouncer seat.'' As stated in section II.A of this preamble, the Scope section defines an ''infant bouncer seat'' as ''a freestanding product intended to support an occupant in a reclined position to facilitate bouncing by the occupant, with the aid of a caregiver or by other means.'' ASTM F2167–15 states that infant bouncer seats are intended for ''infants who have not developed the ability to sit up unassisted (approximately 0 to 6 months of age).''

Terminology. Section 3 of ASTM F2167–15 provides definitions of terms specific to this standard. For example, section 3.1.1 of the ASTM standard defines ''conspicuous'' to mean a ''label that is visible, when the infant bouncer seat is in a manufacturer's recommended use position, to a person sitting near the infant bouncer seat at any one position around the infant bouncer seat but is not necessarily visible from all positions.''

General Requirements. Section 5 of ASTM F2167–15 addresses numerous hazards with several general requirements, most of which are also found in the other ASTM juvenile product standards. Several requirements reference an existing CPSC standard. The following general requirements apply to bouncer seats. Where the ASTM standard relies on a CPSC mandatory standard, the mandatory standard is cited in parentheses next to the requirement:

- Hazardous sharp points and edges (16 CFR 1500.48 and 1500.49);
- Small parts (16 CFR 1501);
- Lead in paint (16 CFR 1303);
- Banned articles (16 CFR 1500.18(a)(6) and 1500.86(a)(4));
- Wood parts;
- Latching and locking mechanisms;
- Scissoring, shearing, and pinching;
- Openings;
- Exposed coil springs;
- Protective components;
- Permanency of labels and warnings; and
- Toys (ASTM F963).

Performance Requirements and Test Methods. Sections 6 and 7 of ASTM F2167–15 contain performance requirements specific to bouncer seats, as well as test methods that must be used to assess conformity with such requirements. Below is a discussion of each performance requirement and the related test method.

- Restraints. ASTM F2167–15 requires that restraints be provided with a bouncer seat that are capable of securing a child when the bouncer is placed in any use position recommended by the manufacturer. ASTM F 2167–15 requires both a waist and a crotch restraint, and the restraint must be designed in such a way that the crotch restraint must be used when the waist restraint is in use. The standard specifies that the restraint's anchorages shall not separate from the attachment points to the bouncer when tested. Testing to this requirement is performed by securing the bouncer seat and applying a 45lb (200N) force for a period of 10 seconds to a single attachment point of the restraint in the normal use direction. Although no provisions in the performance requirements address the actual use of the restraint, ASTM F2167–15 contains a warning label requirement regarding proper use of the restraint.

[5] CPSC link to recalled product: *http://www.cpsc.gov/en/Recalls/2007/Infant-Bouncer-Seats-Recalled-Due-to-Frame-Failure/.*

[6] CPSC link to recalled product: *http://www.cpsc.gov/en/Recalls/2009/BabySwede-LLC-Recalls-Bouncer-Chairs-Due-to-Laceration-Hazard/.*

• Stability. ASTM F2167–15 includes a test for bouncer stability in each direction, forward, sideward, and rearward. In the forward stability test, an infant CAMI dummy is placed in the infant bouncer and the restraints are adjusted to fit in accordance with the manufacturer's instructions. The dummy is then removed and the stability test fixture is placed in the seat. A vertical static force of 21lb (93N) or three times the manufacturer's recommended weight, whichever is greater, is applied for 60 seconds to the fixture at a distance of 6in (152.4mm) in front of the crotch post. To pass the test, the bouncer must not tip over or the front edge must not touch the test surface.

Repeatable stability testing in the sideward and rearward directions is more difficult to accomplish based on a bouncer's potential shifts in the center of gravity. Because of these potential shifts, sideward and rearward testing for bouncers is done differently than in the forward direction. The current sideward and rearward stability tests are performed with the infant CAMI dummy placed in the seat and the bouncer placed on a 20-degree incline in the most unstable orientation other than forward. To pass the test, the bouncer must not tip over in this position.

• Slip Resistance. The slip resistance test is designed to keep bouncers from traveling across a surface while being used by a child. Bouncers placed on smooth, hard surfaces, such as a kitchen counter, are less likely to creep along the surface while a child is in the seat, if the product is designed to meet the slip resistance requirement. The slip resistance requirement in ASTM F2167–15 includes both static and dynamic components. The static slip resistance test is performed on a smooth laminate surface with a matte finish and a 10-degree incline. A 7.5lb (3.4kg) CAMI dummy is placed in the bouncer with the front of the bouncer facing down the incline. The bouncer must not move down the incline more than 1/8 in. (3mm) in 1 minute. The test is repeated with the bouncer seat oriented with the left, right, and rear sides pointed down the incline.

In the dynamic slip resistance test, a test fixture is placed in the bouncer seat with a 7.5lb (93.4kg) weight, and the bouncer is placed on the 10-degree inclined surface. Additionally, if the bouncer has a feature, such as a vibration unit, the unit is to be turned on during the test. An additional 2.5lb (1.13kg) weight is dropped onto the test fixture from a height of 6 in. (152.4mm) a total of 10 times. To pass, the bouncer seat is not allowed to move more than 1/2in (13mm) during the test. This test is repeated with the bouncer in the remaining sideways and rear orientations.

• Structural Integrity and Disassembly/Collapse. ASTM F2167–15 requires that bouncer seats pass a series of three tests to evaluate structural integrity: (1) A static load test; (2) a dynamic load test; and (3) a disassembly/collapse test.

To pass the first two tests, at the conclusion of the tests, the bouncer seat shall have no failure of seams, breakage of materials, or changes of adjustments that could cause the product not to fully support the child or that creates a hazardous condition outlined in the general requirements of the standard. The static load test requires that a 6″ × 6″ × 3/4″ (152.4 × 152.4 × 1.91mm) wood block be placed in the bouncer seat and loaded with the greater of 60lb (27.3kg), or 3 times the manufacturer's recommended maximum weight, whichever is greater. The test is intended to ensure that the bouncer design is sufficient to hold the weight of any child that is likely to use the product.

The dynamic load test requires that a 6″ (152.4mm) weld cap be dropped from a distance of 1″ (25mm) with the convex surface face down onto the bouncer seat. Extra weight is added to the weld cap to provide a total weight of 33lb (15kg). The drop for the dynamic load test is repeated a total of 100 times. This test simulates the child being placed in the seat and removed, as well as the forces applied to the bouncer while the child is in the seat. This test provides a reasonable factor of safety to ensure that the bouncer seat does not fail when used in accordance with the manufacturer's recommendations.

The disassembly/collapse test simulates lifting the bouncer by the ends with a child seated in the product to see whether the bouncer collapses or folds up into a position that might result in injury. To conduct the test, a newborn CAMI dummy is placed in the bouncer seat and a 15lb (67N) force is applied to the bouncer at the location most likely to cause disassembly. In situations where multiple locations are present that could result in disassembly, the test is repeated for each location. If a hazardous condition results from the test, the bouncer fails the requirement. A hazardous condition is anything that would result in the bouncer not meeting the general requirements, or any visual indications of disassembly or collapse of the bouncer.

• Drop Test. The drop test is intended to evaluate the durability of bouncer seats in instances of misuse, and to assess compliance with the general safety requirements, such as small parts, sharp points, and sharp edges. The drop test applies dynamic forces to the bouncer in directions not associated with normal use by a child. The bouncer must be dropped from a height of 36″ (914.4mm), once in each of six different planes (top, bottom, front, rear, left side, and right side). If the bouncer is of a folding design, the six drops must be done in both the folded and unfolded configurations (for a total of 12 drops). At the end of the test, the bouncer must meet the general requirements outlined in Section 5.0 of the standard.

• Toy Bar Attachment Integrity. ASTM F2167–15 includes general performance requirements to test toy bars on bouncer seats. A static test is performed with a 6″x6″x3/4″ (152.4x152.4x1.91mm) wood block placed in the bouncer seat and loaded with the greater of 40lb (18.2kg) or two times the manufacturer's recommended maximum weight. The bouncer is then gradually lifted. In the dynamic test, an infant CAMI is placed in the seat and a cable is attached to the center grasping point of the handle. The bouncer is raised and allowed to drop 2″ (5.1cm). The toy bar must completely release from the bouncer or move less than 2″ (5.1cm) from the resting position if the bar has a single attachment point. Additionally, individual toys included with the bouncer are required to meet the general requirements in the standard.

• Battery Compartments. ASTM recently added battery and containment requirements to F2167. The new requirements include permanently marking the correct battery polarity adjacent to the battery compartment, providing a means to contain the electrolytic material in the event of battery leakage, protection against the possibility of charging non-rechargeable batteries, and defining a maximum surface temperature for any accessible component. The battery polarity requirement requires a visual inspection of the battery compartment. Surface temperature and charging protection are accomplished through the performance of an operational test. The bouncer is operated using new batteries of the type recommended by the manufacturer. Testing is performed by operating the bouncer at the highest setting for 60 minutes. Upon conclusion, no battery leakage, explosion, or fire can occur, and no accessible component shall exceed 160 °F degrees (71°C). The performance requirement includes a provision for testing using a/c power; but staff is unaware of bouncers

currently on the market that are a/c powered.

Marking and Labeling. Section 8 of ASTM F2167–15 requires products to be marked or labeled with manufacturing information and relevant product warnings.

- Manufacturing Information. Section 8.1 requires that each product and its retail packaging be marked or labeled, clearly, legibly, and permanently, to include the name and address of the manufacturer, distributor, or seller, and a code or other means to identify the date of manufacture. Section 8.2 states that a manufacturer should change the model number when the product undergoes a significant structural or design change that affects conformance to the standard.
- Product Warnings. CPSC staff and the ASTM task group and subcommittee worked to improve the warning label requirements for bouncer seats in section 8.3 of ASTM F2167 to address the hazard of falls from elevated surfaces. ASTM F2167–15 includes several changes to the warnings requirements intended to address this hazard, as well as suffocation. Bouncer seats must be labeled with two groups of warning statements, a fall hazard warning and a suffocation warning. ASTM F2167–15 includes new content on color in the warning labels, placement of the fall hazard warning on the front of the product, and changes to the suggested warning language for both falls and suffocation. As set forth in more detail in section VI of the preamble, CPSC is proposing to include additional changes to the warning label requirements to address the deaths and injuries associated with infants falling from bouncer seats, and associated with infants falling while remaining in the seat, that occur when caregivers place bouncer seats on an elevated surface.

Instructional Literature. Section 9 of ASTM F2167–15 requires that instructions be provided with bouncer seats and be easy to read and understand. Additionally, the section contains requirements relating to instructional literature contents, including warnings.

VI. Assessment of the Voluntary Standard ASTM F2167–15

CPSC staff examined the relationship between the performance requirements in ASTM F2167–15 and each of the hazard patterns identified in section III.C of this preamble. Tab C, Staff NPR Briefing Package. Based on staff's assessment, CPSC finds that the current voluntary standard, ASTM F2167–15, adequately addresses the mechanical hazard patterns identified in the incident data associated with bouncer seats. However, CPSC finds that the warning label requirements in ASTM F2167–15 can be improved to address infant falls from bouncers placed on an elevated surface. At this time, such falls cannot be addressed by a performance requirement for bouncer seats. Addressing incidents when infants fall from bouncer seats, as well as incidents when infants fall while remaining in the seat, will require a change in caregiver behavior. Accordingly, CPSC is proposing to strengthen the requirements for the warning label to increase compliance by caregivers and reduce the risk of injury to infants. Tab D, Staff NPR Briefing Package.

The following section discusses how each of the product-related hazard patterns identified in section III.C of this preamble is addressed by the current voluntary standard, ASTM F2167–15. Where CPSC is proposing additional requirements, the rationale for these changes is also explained.

A. Product Design—CPSC staff evaluated the current requirements in ASTM F2167 and tested bouncer samples to the tests for product design. The performance requirements to test for hazards related to product design are the same as those used to test for structural integrity. Additionally, the drop test and the general requirements in Section 5.0 are used to address this hazard pattern. CPSC staff found that each type of failure identified in the incidents is addressed in the standard with performance requirements and associated tests. CPSC staff opined that many of the incidents may be the result of manufacturing, shipping, or consumer assembly-related issues. Accordingly, at this time, the Commission does not believe that adding or strengthening requirements is likely to reduce the occurrence of these incidents, and the current performance requirements are adequate to address this hazard pattern.

B. Structural Integrity—As reviewed in section V.B of this preamble, ASTM F2167–15 subjects infant bouncers to a series of three tests to evaluate structural integrity including: (1) A static load test; (2) a dynamic load test; and (3) a disassembly/collapse test. After reviewing the available incident information, CPSC staff concluded that it is likely that many of the incidents included in the structural integrity category are the result of product misassembly, and may not be the result of product design. CPSC staff opined that the three structural tests subject infant bouncers to the reasonable forces that could be applied during the normal life of the product and adequately test the structural strength of a bouncer. Based on staff's assessment, the Commission is not proposing to add more stringent performance requirements at this time.

C. Toy Bar-Related—Based on staff's assessment of the standard, the toy bar requirements in ASTM F 2167–15 are adequate to address the identified hazards. Staff evaluated many bouncers that included a bar designed with small toys attached that hang over the body of a child seated in the bouncer. Individual toys included with the bouncer are required to meet the general requirements in the standard, including ASTM F 963. Additionally, the toy bar is required to meet the toy bar integrity test requirement. The toy bar integrity requirement uses two different tests, a static integrity test and a dynamic integrity test, to address incidents in which the toy bars are used as handles. CPSC is unaware of any injuries involving toy bars releasing when being used as a handle that have occurred since 2012, when the toy bar integrity tests were added to ASTM F2167. Although many of the recent toy bar incident reports describe consumer complaints about the toy bar releasing or bending, CPSC does not consider these reports to be safety related, because the toy bars are specifically designed to perform in a manner that does not allow a consumer to use the toy bar as a handle, and no reported injuries resulted from these incidents.

D. Stability—ASTM F2167–15 adequately addresses stability-related incidents. CPSC staff worked with the ASTM subcommittee on bouncers to modify and enhance all the stability performance requirements. Beginning with ASTM F2167–14, the rear and side stability tests were strengthened by ASTM when the angle of incline was from 12 to 20 degrees. Additional changes in ASTM F2167–15 include a longer distance between the crotch post of the test fixture and the application of force for the forward stability test. Changes to the stability requirements will require the design of increasingly stable bouncer designs similar to ones currently available. CPSC believes that these additional requirements will reduce the likelihood of bouncer tip overs and associated injuries.

E. Chemical/Electrical Hazards—To address reported chemical and electrical incidents, ASTM recently added battery and containment requirements to the 2015 version of ASTM F2167. These additional requirements were developed with support from CPSC staff and based on the incidents reported to CPSC. New requirements include permanently marking the correct battery polarity

adjacent to the battery compartment, providing a means to contain the electrolytic material in the event of battery leakage, protection against the possibility of charging non-rechargeable batteries, and defining a maximum surface temperature for any accessible component. Based on CPSC staff's assessment, CPSC believes that the new battery requirements adequately address reported electrical incidents by reducing the likelihood of overheating and battery leakage incidents.

F. Restraints—ASTM F2167–15 adequately addresses mechanical incidents involving restraints. ASTM F2167–15 requires that restraints be provided with a bouncer seat. Restraints must be capable of securing a child when the bouncer is placed in any use position recommended by the manufacturer. ASTM F 2167 requires both a waist and a crotch restraint, and the restraint must be designed in such a way that the crotch restraint must be used when the waist restraint is in use. Additionally, on-product warning information regarding use of restraints is required. See Tab D, Staff NPR Briefing Package. As described below in section VI.G.1, CPSC is proposing additional language for the product warning label to address incidents involving children who fell from bouncers when placed, unrestrained, to sleep.

G. Hazardous Placement—Hazardous placement of bouncer seats occurs when caregivers place bouncers in a hazardous environment, resulting in suffocation or head injuries. Factors that contribute most to these hazards include the presence of excess bedding in or under the bouncer; placement of the bouncer on a soft surface, such as an adult bed; placement of the bouncer in a crib; the infant being placed in the bouncer to sleep unrestrained, which allows the infant unsupervised time and movement within the hazardous environment; and carrying or placing the bouncer at an elevated height. ASTM F2167 addresses hazardous placement of bouncer seats with tests for stability and slip resistance, designed to keep bouncers from traveling across a surface while being used by a child. These performance requirements may help reduce the risk of injury in hazardous placement.

Although the standard includes performance testing for better stability and slip resistance, addressing hazardous placement incidents with performance requirements is difficult because the hazard scenario involves consumer behavior, a foreseeable misuse of the bouncer seat, which should be used only on the floor. Accordingly, CPSC is proposing modifications to the text, placement, and formatting of warnings requirements and instructional literature requirements of ASTM F2167–15 to help further reduce injuries related to this hazard pattern. A detailed description of staff's assessment, rationale, and citations to the relevant literature for the recommended changes appear in Tab D of the Staff's NPR Briefing Package.

1. Modifications to the Warning Label Content

The Commission proposes to add two components to the warning statements for bouncer seats that are absent in ASTM F2167–15: (1) The phrase ''even if baby is sleeping'' to the warning to use restraints; and (2) developmental guidance on when to stop using the product to help avoid suffocation and fall risks. In general, guidelines for warning statements agree that warnings should identify the hazards, the consequences, and the means to avoid them (*e.g.,* Madden, 2006; Singer, Balliro, & Lerner, 2003, October). The content of the proposed modified warnings meets these requirements by calling attention to each of the behaviors that are related to the specific hazards identified, and advising caregivers how to avoid those hazards.

(a) Use of Restraints

''Always use restraints'' is a part of the warnings and instructions in the current version of ASTM F2167, and has been so over many editions of the standard. Based on the incident data relating deaths to suffocation among unrestrained infants while they slept, and serious head injuries to unrestrained infants in falls from bouncer seats that are placed on elevated surfaces and falls from bouncer seats that are being carried, CPSC believes that the current requirement is inadequate to address the risk of injury to infants from falls out of bouncer seats, or the risk of suffocation among unrestrained infants who are sleeping.

The Commission's proposed warning language includes the statement, ''Adjust to fit snugly, *even if baby is sleeping.''* ASTM F2167–15 lacks the phrase that addresses sleeping. CPSC staff reports that while working with ASTM, some ASTM members expressed the opinion that ''Always use restraints'' is adequate because it allows for no exceptions to the use of restraints, and contended that the staff's recommended language communicates that the product is intended for use as a place for the child to sleep, and may encourage such use. One member was concerned that including language regarding sleep may suggest that manufacturers should bring bouncers into compliance with requirements for products that are designed for sleep.

Although the Commission understands the marketing concerns of some manufacturers, the proposed rule addresses how caregivers use bouncer seats, the sleeping activity of infants that are intended to use the product, and the deaths and injuries reflected in the data when caregivers fail to use restraints. Accordingly, to address caregiver behavior, it is essential to include language that conveys the hazard associated with allowing a child to sleep in a bouncer seat while unrestrained. The Commission's concern is that young infants, such as those intended to use bouncer seats, spend more time asleep than awake.[7] Infants that spend more than brief periods in a bouncer seat will fall asleep on occasion (and caregivers will place infants to sleep for the night in bouncer seats under some circumstances), just as infants fall asleep in strollers, swings, and car-seat carriers. It may be counterintuitive, and therefore unlikely to occur to consumers, that products made for infants' use, especially those that have features intended to soothe and comfort them, would be unsafe places for infants to sleep. In fact, despite claims that bouncer seats are not intended for children to sleep in, CPSC staff found that some manufacturers' marketing suggests that bouncers are intended for sleep as well as play.

Caregivers may remove or loosen restraints while a child is sleeping in a bouncer seat. Removing or loosening product restraints while a child naps or sleeps is a known hazard pattern across infant products that use restraints. It is foreseeable that some caregivers will perceive the restraints as uncomfortable and unnecessary (Lerner, Huey, & Kotwal; 2001), particularly for younger users, who may be seen as not yet mobile enough to be at risk of falling out of the bouncer, and even less at risk of falling if the infant is asleep. CPSC's proposed warning statement addresses the fact that a child *will* sleep in the bouncer, and addresses caregivers' known inclination to loosen or remove the restraints by specifying that they should do the opposite to avoid the risk of injury or death from the child falling from the bouncer seat or turning in the seat.

[7] For example, see the American Academy of Pediatrics Web site, *http://www.healthychildren.org/English/ages-stages/baby/sleep/Pages/default.aspx.*

(b) Developmental Guidance

The second modification to ASTM F2167–15 in CPSC's proposed warning content is in the developmental guidance given in the suffocation warning and in the product instructions. The warning in the current ASTM standard includes the developmental statement: ''never use for a child able to sit up unassisted,'' a milestone which, on average, a child will accomplish at about 6 months of age. Some packaging and instructions that CPSC staff reviewed also stated that the product is for use from birth *until* the child is able to sit up unassisted, and use a weight limit (25 lb) that reflects a 50th percentile 18-month-old. The Commission is concerned that this combination of guidance leads caregivers to use the product beyond the point that it is safe. Before infants can sit steadily by themselves, they lack upper body and torso control, but actively try to sit, turn, and reach for objects. Infants in bouncer seats are supported in an inclined position with their upper body unconstrained. The infant's actions may cause them to hang over the side or front, fall out or tip over the bouncer, or turn into the surface of the seat where the flexible, conforming design of the seat can compromise the external airways.

CPSC proposes that the bouncer seat warning label and product instructions advise caregivers to stop using the product when children start trying to sit up. On average, children reach this milestone at 4.8 months.[8] CPSC staff recommended this milestone based on the data indicating that most witnessed instances in which the child's activities reportedly preceded tip-overs or resulted in the child hanging out of the bouncer involved children 5 months of age or younger.

2. Modifications to Warning Label Placement

Language in ASTM F2167–15 requires the fall hazard warning to appear anywhere on the front surface of the product's seat back. To address hazards, warning labels must be conspicuous, formatted to help attract and maintain attention, and include appropriate instructional content. Accordingly, CPSC proposes that the fall hazard warning label be required to be on the front of the product near the infant's head to increase the likelihood that caregivers will notice it, and comply with its recommendations, at decision points affecting the child's safety. This location near the infant's head was adopted for warnings on hand-held infant carriers in 16 CFR part 1225, *Safety Standard for Hand-Held Infant Carriers* (''HHIC''; FR 78, No. 235; 73415, December 6, 2013) and the National Highway Transportation Administration's (''NHTSA'') car seat standard, 49 CFR 571.213 Federal Motor Vehicle Safety Standard (''FMVSS'') No, 213.

CPSC's research indicates that placement of the warning label near the child's face on the bouncer seat is essential in the effort to influence caregivers' behavior. Research indicates that the location of a warning label plays a vital role in its salience, a crucial factor in effectiveness (*cf.* topic reviews by Lesch, 2006; Silver & Braun, 1999). ASTM F2167–15 requires only that the label be *visible* on the front surface of the seat back with the Newborn CAMI manikin placed in the seat. The Commission is concerned that, because of its artificial and static nature, the test procedure in ASTM F2167–15 for visibility of the fall hazard warning label is unlikely to replicate visibility of the label under normal conditions of product use. In addition to allowing considerable variability in the conspicuity of the label location, a basic flaw in this method is the assumption that what is visible under static test conditions will be visible during routine use. A label below the shoulder level or along the torso down to the seat bight may be covered by parts of the child's body or clothing, and the area may be covered by a blanket, including an accessory cover that comes with at least one product.

Because a label must be seen to have an effect, visibility is a prerequisite to effectiveness. Visibility, in itself, however, is an insufficient requirement. Given the number, type, and severity of the incidents that prompted the revisions to the warnings, the appropriate criterion is that the label be likely to draw the caregiver's attention at any decision point that may affect safe use. As with the required labeling for hand-held infant carriers, the warning label should be near the child's face because that is where the caregiver's attention is most likely to be focused. This is the most conspicuous location on the product and offers the best opportunity to influence the caregiver's behavior.

During the ASTM process, when CPSC staff suggested locating the fall hazard warning next to the infants' head, ASTM subcommittee members expressed concerns that (1) common label materials present potential abrasion and cut hazards if adjacent to an infant's face; (2) the location is design-restrictive for smaller models because of the size of the label; and (3) due to space restrictions, the location is challenging for those firms that use labels in multiple languages.

Based on staff's review of bouncer seats and the identified issues, the Commission believes these issues can be resolved. As noted above, CPSC's proposed location for the fall hazard warning is the same as that recently adopted for warnings on infant car seats that are also hand-held carriers. NHTSA adopted this location for its air bag warning in these products in the late 1990's, based on its own research. CPSC staff examined car seats and found that both heat transfer and sewn-on labels, the latter of which was identified by industry as a concern, are used on car seats. CPSC's project manager for the hand-held carrier standard reported that neither injuries nor space requirements due to the need to produce labels in multiple languages were raised as concerns for hand-held carriers. Firms that produce infant car seat carriers have managed these issues successfully. CPSC staff contacted NHTSA staff responsible for routine data review, who confirmed that there have been no complaints of injury of any type resulting from car seat labels near a child's face. Finally, CPSC's proposed label is approximately 2.25 inches long and 2.0 inches wide. Review of hand-held infant carriers that are also infant car seats, which require a larger[9] label for both the CPSC mandated strangulation warning and the NHTSA-mandated air bag warning, suggests that there is at least as much space, and perhaps more, on many infant bouncer models, as on car seat carriers.

Although no voluntary or mandatory requirement exists for multiple languages on products sold in the U.S., given the relatively small size of the proposed warning label, multiple options appear available to firms for placement of the fall hazard warning in multiples languages. For example, the warning label could appear in a different language on either side of the child's head, as suggested by the Canadian representative to the task group; different labels could be made for different markets; or the label length could be extended to accommodate additional languages, as some firms have done with infant car seat labels.

[8] Range, 3–8 months. Bayley, N. (1969). *Manual for the Bayley Scales of Infant Development.* New York, NY: The Psychological Corporation.

[9] The message panel of the air bag warning alone must be no smaller than 30 cm^2 (11 $in.^2$); the pictogram must be at least 30 mm in diameter (1.18 in.).

3. Modifications to Warning Label Format

ASTM F2167–15 (1) allows the text and the background of the warning label, except for the area behind the word ''WARNING,'' to be any color as long as it is contrasting, and (2) provides no format guidance. Although example labels with CPSC's recommended format are presented in the voluntary standard, the standard includes the permissive statements that the figures '' . . . are presented as EXAMPLES ONLY . . . [emphasis in original]'' and that the format and ''wording content,'' as well as the use of highlighting, ''are at the discretion of the manufacturer.''

The Commission proposes that the formatting requirements for bouncer seats reflect the format shown in the label in Figure 1. Good formatting helps attract and maintain attention, and aids reading and comprehension. Information is processed more quickly and easily when it is organized by content into brief chunks. CPSC is concerned that the quoted statements make it likely that some firms will continue to use poor quality labels that present warning information in a cluttered paragraph style that is difficult to read, rather than a label that is conspicuous, easy to read, and easy to comprehend, as is the recommended warning label.

Figure 1

VII. Proposed CPSC Standard for Bouncer Seats

The Commission concludes that ASTM F2167–15 adequately addresses most of the hazards associated with bouncer seats, but proposes to modify the warning label requirements to increase effectiveness aimed at changing caregiver behavior to further reduce the risk of injury to infants from falls. Thus, the Commission proposes to incorporate by reference ASTM F2167–15 with the following modifications to the warning label requirements:

- Revise the content of the warnings, markings, and instructions to:
- Add text to the warnings that states to use the restraints ''. . . even if baby is sleeping . . .'';
- change the text in the warnings to read, ''stop using when baby starts trying to sit up''; and
- change the developmental guidance in the instructions, if stated, to read, ''from birth (or ''0'') until baby starts trying to sit up.''
- Require that the fall hazard label be located on the front surface of the bouncer adjacent to the area where the child's head would rest, and modify the current visibility test to reflect this requirement.
- Specify a standard format (including black text on a white background, table design, bullet points, and black border) for the warnings on the product and in the instructions.

VIII. Amendment to 16 CFR Part 1112 To Include NOR for Bouncer Seat Standard

The CPSA establishes certain requirements for product certification and testing. Products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* 2063(a)(2). The Commission must publish an NOR for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. *Id.* 2063(a)(3). Thus, the proposed rule for 16 CFR part 1229, *Safety Standard for Infant Bouncer Seats,* if issued as a final rule, would be a children's product safety rule that requires the issuance of an NOR.

The Commission published a final rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies,* 78 FR 15836 (March 12, 2013), codified at 16 CFR part 1112 (''part 1112'') and effective on June 10, 2013, which establishes requirements for accreditation of third party conformity assessment bodies to test for conformity with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also codifies all of the NORs issued previously by the Commission.

All new NORs for new children's product safety rules, such as the infant bouncer seat standard, require an amendment to part 1112. To meet the requirement that the Commission issue an NOR for the proposed bouncer seat standard, as part of this NPR, the Commission proposes to amend the existing rule that codifies the list of all NORs issued by the Commission to add bouncer seats to the list of children's product safety rules for which the CPSC has issued an NOR.

Test laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard for bouncer seats would be required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to the CPSC to have 16 CFR part 1229, *Safety Standard for Infant Bouncer Seats,* included in the laboratory's scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC Web site at: *www.cpsc.gov/labsearch.*

IX. Incorporation by Reference

Section 1229.2(a) of the proposed rule would incorporate by reference ASTM F2167–15. The Office of the Federal Register (''OFR'') has regulations concerning incorporation by reference. 1 CFR part 51. The regulations require that, for a proposed rule, agencies discuss in the preamble of the NPR ways that the materials the agency proposes to incorporate by reference are reasonably available to interested persons or how the agency worked to make the materials reasonably available. In addition, the preamble of the proposed rule must summarize the material. 1 CFR 51.5(a).

In accordance with the OFR's requirements, section V.B. of this preamble summarizes the provisions of ASTM F2167–15 that the Commission proposes to incorporate by reference. ASTM F2167–15 is copyrighted. By permission of ASTM, the standard can be viewed as a read-only document during the comment period on this NPR, at: *http://www.astm.org/cpsc.htm.* Interested persons may also purchase a copy of ASTM F2167–15 from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org/cpsc.htm.* One may also inspect a copy at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923.

X. Effective Date

The Administrative Procedure Act (''APA'') generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission is proposing an effective date of 6 months after publication of the final rule in the **Federal Register**. Without evidence to the contrary, CPSC generally considers 6 months to be sufficient time for suppliers to come into compliance with a new standard, and a 6-month effective date is typical for other CPSIA section 104 rules. Six months is also the period that the Juvenile Products Manufacturers Association (''JPMA'') typically allows for products in the JPMA certification program to transition to a new standard once that standard is published. We also propose a 6-month effective date for the amendment to part 1112. We ask for comments on the proposed 6-month effective date.

XI. Regulatory Flexibility Act

A. Introduction

The Commission is issuing a proposed rule under the requirements of section 104 of the Consumer Product Safety Improvement Act (''CPSIA'') that would incorporate by reference the most recent ASTM standard for infant bouncer seats, ASTM F2167–15, with several modifications to the requirements for product warnings and instructional literature. In this section, we summarize staff's evaluation of the potential economic impact of the proposed rule on infant bouncer seats on small entities, including small businesses, as required by the Regulatory Flexibility Act (''RFA''). Section 603 of the RFA requires that agencies prepare an initial regulatory flexibility analysis (''IRFA'') and make it available to the public for comment when the general notice of proposed rulemaking (''NPR'') is published, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The IRFA must describe the impact of the proposed rule on small entities and identify any alternatives that may reduce the impact. See Tab F, Staff NPR Briefing Package.

B. The Product

An infant bouncer seat is defined in ASTM F2167–15, *Standard Consumer Safety Specification for Infant Bouncer Seats,* as ''a freestanding product intended to support an occupant in a reclined position to facilitate bouncing by the occupant, with the aid of a caregiver or by other means.'' It is intended for ''infants who have not developed the ability to sit up unassisted (approximately 0 to 6 months of age).'' These products vary widely in price; they can be purchased for as little as $20, but can also easily cost more than $200.

C. The Market for Infant Bouncer Seats

Staff identified 22 firms (including large and small) supplying infant bouncer seats to the U.S. market, although there may be additional firms as well. These firms specialize primarily in the manufacture and/or distribution of children's products, including durable nursery products. The majority of the 22 known firms are domestic (including 8 manufacturers and 10 importers). The remaining four firms are foreign manufacturers.[10] Staff expects that the infant bouncer seats of 17 of these firms are already compliant with ASTM F2167 because the firms either: (1) Have their bouncers certified by the Juvenile Products Manufacturers Association (''JPMA'') (six firms); (2) claim compliance with the voluntary standard (ten firms); or (3) have been tested to the ASTM standard by CPSC staff (one firm).[11]

D. Reason for Agency Action and Legal Basis for the Proposed Rule

Section 104 of the CPSIA requires the CPSC to promulgate a mandatory standard for infant bouncer seats that is substantially the same as, or more stringent than, the voluntary standard if the Commission determines that a more stringent standard would further reduce the risk of injury associated with such products.

CPSC staff worked closely with ASTM to develop the revised requirements, test procedures, and warning labels that have been incorporated into ASTM F2167 since the rulemaking process started in January 2013 in an effort to reduce this risk. However, not all of staff's warning label recommendations were adopted into the most recent version of the voluntary standard, ASTM F2167–15. Therefore, the Commission proposes to incorporate by reference ASTM F2167–15, with the remaining modifications staff recommended to ASTM.

E. Requirements of the Proposed Rule

The Commission proposes adopting the voluntary ASTM standard for infant bouncer seats (ASTM F2167–15) with additional changes to the warning labels (in particular, the location of the fall hazard warning label) and a test to ensure the visibility of those labels on the product. A description of the current voluntary standard appears in section V of this preamble, and a description of the proposed modifications to the warning requirements appears in section VII of this preamble.

All firms would need to modify the text of their warnings for both the product and the instruction manual. The fall hazard warning would need to be re-located next to the child's head[12] and be visible when accessories are in use (such as a toy bar or an infant insert used for supporting a smaller child's upper body).

Staff discussed these changes with several ASTM members and supplier representatives. The possible economic impact of these changes on small business is discussed in Tab F of Staff's NPR Briefing Package and in section XI.G of this preamble.

F. Other Federal or State Rules

No federal rules duplicate, overlap, or conflict with the proposed rule.

G. Impact on Small Businesses

CPSC is aware of approximately 22 firms (large and small) currently marketing infant bouncer seats in the United States, 18 of which are domestic. Under U.S. Small Business Administration (''SBA'') guidelines, a manufacturer of infant bouncer seats is categorized as small if it has 500 or fewer employees, and importers and wholesalers are considered small if they have 100 or fewer employees. Our analysis is limited to domestic firms because SBA guidelines and definitions pertain to U.S.-based entities. Based on these guidelines, about 12 of the 22 firms are small—five domestic manufacturers and seven domestic importers. Additional unknown small domestic infant bouncer seats suppliers may be operating in the U.S. market.

1. Small Manufacturers

The economic impact of the proposed bouncer standard should be small for the five small domestic manufacturers, apart from third party testing costs. The

[10] Determinations were made using information from Dun & Bradstreet and ReferenceUSAGov, as well as firm Web sites.

[11] JPMA typically allows 6 months for products in their certification program to shift to a new standard once it is published. The version of the standard that firms are likely testing to currently is ASTM F2167–14. Two newer versions of the standard have been published since then, but neither will become effective for JPMA certification purposes before September 2015. Additionally, many infant bouncer seats are expected to be compliant with ASTM F2167–14a without modification, and firms compliant with earlier versions of the standard are likely to remain compliant as the standard evolves.

[12] The warning was only recently moved to the front of the bouncer (ASTM F2167–15).

bouncers of all of these firms already comply with the ASTM voluntary standard currently in effect for testing purposes (F2167–14). These firms are expected to remain compliant with the voluntary standard as it evolves, because they follow and, in at least three cases, actively participate in the standard development process. Therefore, compliance with the voluntary standard is part of an established business practice. ASTM F2167–15, the version the Commission proposes to incorporate, will be in effect by the time the mandatory standard becomes final and these firms are likely to be in compliance based on their history.

None of the small manufacturers typically includes more than four languages in their warnings (two firms use two languages; two firms use three languages; and one firm uses four languages). Based upon inspection of their products and the space available for the warnings, redesign should not be required for any of the bouncers supplied by the known small manufacturers. The firm using four languages might opt to redesign to give their product(s) a less cluttered appearance. However, discussions with a firm representative contacted by staff indicated that the firm was not concerned about the location of the warning labels.

Under section 14 of the CPSA, once the new infant bouncer seat requirements become effective, all manufacturers will be subject to the third party testing and certification requirements of the CPSA and the Commission's rule *Testing and Labeling Pertaining to Product Certification* at 16 CFR part 1107 (''the 1107 rule''). Third party testing will include any physical and mechanical test requirements specified in the final infant bouncer seats rule. Manufacturers and importers should already be conducting required lead testing for bouncers. Third party testing costs are in addition to the direct costs of meeting the infant bouncer seats standard.

All infant bouncer seats sold by U.S. manufacturers are currently tested to verify compliance with the ASTM standard, though not necessarily via third party. Thus, the impact to testing costs will be limited to the difference between the cost of third party tests and the cost of current testing regimes. As a frame of reference, suppliers have estimated that testing to the ASTM voluntary standard typically costs about $560–$800 per model sample. Based on an examination of firm revenues from recent Dun & Bradstreet or ReferenceUSAGov reports, the impact of third party testing to ASTM F2167–15 is unlikely to be economically significant for most small manufacturers (*i.e.,* testing costs will be less than 1 percent of gross revenue). Although the Commission does not know how many samples will be needed to meet the ''high degree of assurance'' criterion required in the 1107 rule, over 24 units per model would be required to make testing costs to exceed one percent of gross revenue for the small manufacturer with the lowest gross revenue. One firm has a much larger number of infant bouncer models than the other small manufacturers, however, and its testing costs could exceed 1 percent of gross revenue if as few as seven units per model were required for testing. Note that this calculation assumes the rule would generate *additional* testing costs in the $560–$800 per model sample range. Given that all firms are conducting some testing already, this likely overestimates the impact of the rule with respect to testing costs. However, we do not know specifically how much the third party requirement adds to testing costs or precisely how many models are needed to meet the ''high degree of assurance'' criterion and cannot rule out a significant economic impact. We welcome comments regarding incremental costs due to third party testing (*i.e.,* how much does moving from a voluntary to a mandatory third party testing regime add to testing costs, in total and on a per test basis). In addition, we seek comments regarding the accuracy of assuming that a ''high degree of assurance'' can be achieved with fewer than seven samples.

2. Small Importers

a. Small Importers With Compliant Infant Bouncer Seats

Five small importers of infant bouncer seats are currently in compliance with the voluntary standard and, based on prior compliance with the voluntary standard, would likely continue compliance as new versions of the voluntary standard are published. The bouncers supplied by these firms would, for the most part, only require modifications to meet the warning label changes.

The placement of the new warnings could potentially require significant changes to existing models of imported bouncers. Imported bouncers tend to be produced to broadly meet the current requirements for several trading partners simultaneously, including the labeling requirements for multiple countries. Producers for international markets typically address labeling requirements for their various trading partners by simply providing a warning that covers all required safety issues in multiple languages. However, the proposed rule's specificity regarding warning label location could make simple replication of the warning label in multiple languages impractical due to space constraints on the front surface of the back of the bouncer. While only the English-language warning would be required for products sold in the United States, this could mean that foreign producers will need to design a product for the U.S. market. One solution could be as straightforward as reducing the number of languages used for warnings on U.S.-bound bouncer seats. Regardless, having a differing product for the U.S market could create logistical problems or costs, which could be passed on to importers.

We have no information regarding the degree to which foreign producers tend to pass on increases in regulatory costs to importers and are seeking comment on this topic. Because we lack information on the costs to importers associated with complying with the proposed rule, we are unable to rule out a significant impact for three of the five importers of compliant bouncers. We begin our discussion of potential impacts by assuming, when possible, firms would prefer to develop a U.S.-specific product with fewer warning labels rather than exit the bouncer market or develop a bouncer with sufficient room to accommodate warnings in languages for both their U.S. and foreign markets. Developing such a bouncer would address the requirements in the proposed rule, while ensuring that the appearance of their bouncers remains comparable to their competition's products (for which one to three languages is typical). The Commission requests feedback from the public, particularly from small importers, on the portion of regulatory compliance costs typically borne by importers, as well as information on the costs of developing a compliant bouncer for the U.S. market.

CPSC staff believes that one importer would not likely experience a significant economic impact based on comparing redesign cost estimates provided by suppliers (around $200,000 to $300,000) to its annual revenue, even if its supplier passed on 100 percent of the costs of redesign.

The Commission requests feedback on the cost estimate for product redesign, as well as how that cost level might differ if the redesign focused exclusively on warning label changes and the logistical problems it might create. Based upon examination of this firm's

revenues and the revenues associated with the sale of bouncers, this firm also could likely exit the market without experiencing a significant economic impact.

If product redesign costs $200,000 and the supplying firm only passed on roughly 50 percent of the expected redesign costs, then two of the remaining four importers would not likely experience significant economic impact. The Commission requests input on whether it is reasonable to assume, in the absence of alternative information, foreign suppliers will share up to 50 percent of the costs of redesign, as well as information supporting any alternative estimates of the relative portions of cost sharing that is typical for an importer and its supplying firm. If the supplying firm were unwilling or unable to limit cost passed through, then one of these firms could probably exit the market without significant economic impact as sales of bouncers are likely to contribute less than one percent to its overall revenue.

The fourth importer would likely only avoid significant economic impact if their supplier absorbed 100 percent of the cost of a redesign. Dropping bouncers from their product line could be an option. However, it is likely that the sales revenue generated by bouncer sales exceeds one percent of their overall revenue. This importer is an exclusive distributor for their supplier's products in the U.S., so an alternative supplier is not an option.

We request information on the relationship between exclusive distributors and their suppliers, particularly as it pertains to willingness to shoulder redevelopment costs to maintain a U.S. market presence.

Neither annual revenue nor bouncer sales revenue was available for the final small importer of compliant bouncers; therefore, no assessment of impact could be made.

b. Small Importers With Noncompliant Infant Bouncer Seats

Two firms import bouncers that do not comply with the voluntary standard. The bouncers for these firms will require changes to come into compliance with the voluntary standard as well as modifications to meet the proposed warning label requirements. Similar to the case of importers of compliant bouncers, the proposed location of the warning labels on the front of the bouncer adjacent to the head could present a problem, because one firm typically uses nine languages while the other uses six. These importers may need to tailor a product for the U.S, which could be logistically difficult or costly, especially for a small firm with low sales volume.

The size of the economic impact on the two firms with noncompliant infant bouncer seats will depend upon the cost of the changes required and the degree to which their supplying firms pass on any increases in production costs associated with changes in the product needed to meet the mandatory standard. Again, we do not have any information on the proportion of compliance costs passed on and are seeking public comment on this topic. It is possible that these two importers could discontinue the sale of infant bouncer seats altogether, as the product does not appear to represent a substantial portion of either firms' product lines. However, one of the two firms would likely only avoid a significant economic impact if its supplier absorbed 100 percent of the cost of a redesign and it seems likely that its bouncer sales might exceed 1 percent of its annual sales revenue as well. Again, we do not have specific information on bouncer sales revenues, and cannot rule out a significant economic impact for either firm.

Both of the small importers with noncompliant bouncers are directly tied to their foreign suppliers and finding an alternate supply source would not be a viable alternative for these firms. However, given this close relationship, the foreign suppliers likely would have an incentive to work with their U.S. subsidiaries to maintain an American market presence.

The Commission is interested in information regarding the relationship between foreign producers and their U.S. subsidiaries and whether such relationships decrease the likelihood that the subsidiary experiences a significant economic impact due to a rule.

3. Third Party Testing Costs for Small Importers

As with manufacturers, all importers will be subject to third-party testing and certification requirements, and consequently, will be subject to costs similar to those for manufacturers if their supplying foreign firm(s) does not perform third party testing. The majority of bouncer importers are already testing their products to verify compliance with the ASTM standard, and any costs would be limited to the incremental costs associated with third party testing over the current testing regime.

We were able to obtain revenue data for one of the small importers with noncompliant bouncers. For that importer, third party testing costs, considered alone and apart from any additional performance requirements due to the proposed rule, would not exceed one percent of gross revenue unless around 12 units per model required testing to provide a ''high degree of assurance.'' Although staff believes that it is unlikely that any importer would need to test more than 12 samples, we are seeking information regarding the validity of that assumption. We had no basis for examining the size of the impact for the remaining importer of noncompliant bouncers.

It is important to note that our analysis of the impact of the draft proposed rule have evaluated the impacts of complying with performance requirements and third party testing requirements independently. Firms will, in fact, experience the costs jointly. It is possible for testing costs, when evaluated independently, to not create significant economic impact (and vice versa).

The Commission seeks information on the extent to which performance requirements and testing costs evaluated jointly generate significant economic impact even when each component evaluated independently is not expected to lead to significant impact.

H. Alternatives

Three alternatives are available to the Commission that may minimize the economic impact on small entities: (1) Adopt ASTM F2167–15 with no modifications; [13] (2) adopt ASTM F2167–15 with the proposed modifications, except for the warning label location specificity; and (3) allow a later effective date.

Section 104 of the CPSIA requires that the Commission promulgate a standard that is either substantially the same as the voluntary standard or more stringent. Therefore, adopting ASTM F2167–15 with no modifications is the least stringent rule allowed by law. This alternative would reduce the impact on all of the known small businesses supplying infant bouncers to the U.S. market because this alternative would eliminate any economic impact related directly to complying with the proposed rule for all five of the known small domestic manufacturers and the five small importers with compliant infant bouncers, all of whom are expected to comply with ASTM F2167–15 by the time the final rule becomes effective. Firms with compliant products, however, would continue to be affected by third party testing requirements.

[13] As discussed in the briefing memo, adopting the voluntary standard with no modifications is an option if the Commission determines that a more stringent standard would not further reduce the risk of injury associated with infant bouncers.

Alternatively, the Commission could adopt a more stringent alternative that is still less stringent than the proposed rule by adopting ASTM F2167–15 with the proposed modifications, except for the requirement that the warning labels on the product be located next to the occupant's head. With the exception of impacts due to third party testing, this would eliminate most of the impact on small manufacturers (all of which sell compliant bouncer seats), leaving them with only minor costs associated with changing the wording and format of their warning labels. The impact on the five small importers of compliant bouncers would be similarly reduced.

Finally, the Commission could reduce the proposed rule's impact on small businesses by setting a later effective date. A later effective date would reduce the economic impact on firms in two ways. One, firms would be less likely to experience a lapse in production/importation, which could result if they are unable to comply and third party test within the required timeframe. Two, firms could spread costs over a longer time period, thereby reducing their annual costs, as well as the present value of their total costs. We request comment on the 6-month effective date, as well as feedback on how firms (particularly small importers) would likely address the proposed rule.

I. Small Business Impacts of the Accreditation Requirements for Testing Laboratories

In accordance with section 14 of the CPSA, all children's products that are subject to a children's product safety rule must be tested by a CPSC-accepted third party conformity assessment body (*i.e.,* testing laboratory) for compliance with applicable children's product safety rules. Testing laboratories that want to conduct this testing must meet the NOR pertaining to third party conformity testing. NORs have been codified for existing rules at 16 CFR part 1112. Consequently, the Commission proposes an amendment to 16 CFR part 1112 that would establish the NOR for those testing laboratories that want to test for compliance with the bouncers final rule. This section assesses the impact of the amendment on small laboratories.

A Final Regulatory Flexibility Analysis (''FRFA'') was conducted as part of the promulgation of the original 1112 rule (78 FR 15836, 15855–58) as required by the RFA. Briefly, the FRFA concluded that the accreditation requirements would not have a significant adverse impact on a substantial number of small laboratories because no requirements were imposed on laboratories that did not intend to provide third party testing services. The only laboratories that were expected to provide such services were those that anticipated receiving sufficient revenue from the mandated testing to justify accepting the requirements as a business decision.

Based on similar reasoning, amending the rule to include the NOR for the bouncer seat standard will not have a significant adverse impact on small laboratories. Moreover, based upon the number of laboratories in the U.S. that have applied for CPSC acceptance of the accreditation to test for conformance to other juvenile product standards, we expect that only a few laboratories will seek CPSC acceptance of their accreditation to test for conformance with the infant bouncer seat standard. Most of these laboratories will have already been accredited to test for conformance to other juvenile product standards, and the only costs to them would be the cost of adding the bouncer seat standard to their scope of accreditation, a cost that test laboratories have indicated is extremely low when they are already accredited for other section 104 rules. As a consequence, the Commission certifies that the NOR for the infant bouncer seat standard will not have a significant impact on a substantial number of small entities.

XII. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, a rule that has ''little or no potential for affecting the human environment,'' is categorically exempt from this requirement. 16 CFR 1021.5(c)(1). The proposed rule falls within the categorical exemption.

XIII. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- A title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the OMB.

Title: Safety Standard for Infant Bouncer Seats.

Description: The proposed rule would require each infant bouncer seat to comply with ASTM F2167–15, *Standard Consumer Safety Specification for Infant Bouncer Seats.* Sections 8 and 9 of ASTM F2167–15 contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import bouncer seats.

Estimated Burden: We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1229.2(a)	22	4	88	1	88

Our estimate is based on the following:

Section 8.1.1 of ASTM F2167–15 requires that the name and the place of business (city, state, and mailing address, including zip code) or telephone number of the manufacturer, distributor, or seller be marked clearly and legibly on each product and its retail package. Section 8.1.2 of ASTM F2167–15 requires a code mark or other means that identifies the date (month

and year, as a minimum) of manufacture.

Twenty-two known entities supply bouncer seats to the U.S. market may need to make some modifications to their existing labels. We estimate that the time required to make these modifications is about 1 hour per model. Based on an evaluation of supplier product lines, each entity supplies an average of four models of bouncer seats; [14] therefore, the estimated burden associated with labels is 1 hour per model × 22 entities × 4 models per entity = 88 hours. We estimate the hourly compensation for the time required to create and update labels is $30.19 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2015, Table 9, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*). Therefore, the estimated annual cost to industry associated with the labeling requirements is $2,656.72 ($30.19 per hour × 88 hours = $2,656.72). No operating, maintenance, or capital costs are associated with the collection.

Section 9.1 of ASTM F2167–15 requires instructions to be supplied with the infant bouncer. Bouncer seats are complicated products that generally require use and assembly instructions. Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' We are unaware of bouncer seats that generally require use instructions but lack such instructions. Therefore, we tentatively estimate that no burden hours are associated with section 9.1 of ASTM F2167–15, because any burden associated with supplying instructions with bouncer seats would be ''usual and customary'' and not within the definition of ''burden'' under the OMB's regulations.

Based on this analysis, the proposed standard for bouncer seats would impose a burden to industry of 88 hours at a cost of $2,656.72 annually.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by November 18, 2015, to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this notice).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
- the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- the estimated burden hours associated with label modification, including any alternative estimates.

XIV. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules.'' Therefore, the preemption provision of section 26(a) of the CPSA would apply to a rule issued under section 104.

XV. Request for Comments

This NPR begins a rulemaking proceeding under section 104(b) of the CPSIA to issue a consumer product safety standard for bouncer seats, and to amend part 1112 to add bouncer seats to the list of children's product safety rules for which the CPSC has issued an NOR. We invite all interested persons to submit comments on any aspect of the proposed mandatory safety standard for bouncer seats and on the proposed amendment to part 1112. Specifically, the Commission requests comments on the costs of compliance with, and testing to, the proposed bouncer seats safety standard; the impact of the proposed rule on small businesses; the proposed 6-month effective date for the new mandatory bouncer seats safety standard; and the proposed amendment to part 1112. During the comment period, the ASTM F2167–15, Standard Consumer Safety Specification for Infant Bouncer Seats, is available as a read-only document at: *http://www.astm.org/cpsc.htm.*

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Incorporation by Reference, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1229

Bouncer seats, Chairs, Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Seats, and Toys.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(42) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

* * * * *

(b) * * *

(42) 16 CFR part 1229, Safety Standard for Infant Bouncer Seats.

* * * * *

■ 3. Add part 1229 to read as follows:

PART 1229—SAFETY STANDARD FOR INFANT BOUNCER SEATS

Sec.

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016.

[14] This number was derived during the market research phase of the initial regulatory flexibility analysis by dividing the total number of bouncer seats supplied by all bouncer seat suppliers by the total number of bouncer seat suppliers.

§ 1229.1 Scope.

This part establishes a consumer product safety standard for infant bouncer seats.

§ 1229.2 Requirements for infant bouncer seats.

(a) Except as provided in paragraph (b) of this section, each infant bouncer seat must comply with all applicable provisions of ASTM F2167–15, Standard Consumer Safety Specification for Infant Bouncer Seats, approved on May 1, 2015. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org/cpsc.htm.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

(b) Comply with ASTM F2167–15 with the following additions or exclusions:

(1) Instead of complying with sections 7.11.1 through 7.11.3.3 of ASTM F2167–15, comply with the following:

(i) 7 .11.1 *Visibility with Accessories Excluding Toy Bar.* Identify and install each accessory unrelated to the toy bar that could obscure the warning label during a caregiver's interaction with the occupant. Place the bouncer on the floor.

(ii) 7.11.1.1 Face the front of the bouncer from a distance of 1.0 ft (0.3 m and verify that all warning text is visible and not obscured by the accessory(ies).

(iii) 7.11.1.2 A label on the bouncer seat back surface that is obscured by an accessory such as an infant insert would meet the visibility requirement if the label is plainly visible and easily readable on the accessory.

(A) 7.11.2 *Visibility with Toy Bar and Related Accessories.* Identify and install the toy bar and related accessory(ies) that could obscure the warning label during a caregiver's interaction with the occupant. Place the bouncer on the floor.

(B) 7.11.2.1 Face the front of the bouncer from a distance of 1.0 ft (0.3 m and verify that all warning text is visible and not obscured by the toy bar and related accessory(ies).

(C) 7.11.2.2 A fall hazard label that is partly obscured by a toy bar or its related accessories, but is visible with a shift of the observer's head position would meet the visibility requirement.

(2) Instead of complying with sections 8.3.1 through 8.3.3.1 of ASTM F2167–15, comply with the following:

(i) 8.3.1 Warning Groups and Header—Each infant bouncer seat shall be labeled with two groups of warning statements: a fall hazard warning and a suffocation warning. Each warning statement group shall be preceded by a header consisting of the safety alert symbol

"⚠"

and the signal word ''WARNING.''

(ii) 8.3.2 Warning Format—The background color for the safety alert symbol and the signal word shall be orange, red or yellow, whichever provides best contrast against the product material. The safety alert symbol and the signal word shall be in bold capital letters not less than 0.2 in. (5 mm) high. The remainder of the text shall be characters whose upper case shall be at least 0.1 in. (2.5 mm) high. All elements of these warnings shall be permanent, and in sans serif, non-condensed style font. Precautionary statements shall be indented from hazard statements and preceded with bullet points. The warning label and the panel containing the signal word ''WARNING'' shall be surrounded by a heavy black line. Message panels within the labels shall be delineated with solid lines between sections of differing content. The background color in the message panel shall be white and the text shall be black. If an outside border is used to surround the heavy black lines of the label, the border shall be white and the corners may be radiused.

(iii) 8.3.3 *Warning Locations:*

(A) 8.3.3.1 The fall hazard warnings label in 8.3.4.1 shall be on the front surface of the infant bouncer seat back adjacent to the area where a child's head would rest, so that the label is plainly visible and easily readable. If one or more accessories are provided with the bouncer that could obscure the warning label during use, the visibility of the label shall be verified in accordance with 7.11.

(B) [Reserved].

(3) Instead of complying with sections 8.3.4.1 through 8.3.5 of ASTM F2167–15, comply with the following:

(i) 8.3.4.1 *Fall Hazard:*

Fall Hazard: Babies have suffered skull fractures falling while in and from bouncers.

- Use bouncer ONLY on floor.
- Always use restraints. Adjust to fit snugly, even if baby is sleeping.
- Never lift or carry baby in bouncer. [NOTE: Bouncer seats with a handle(s) intended for use to lift and carry a child are exempt from including this warning statement.]

(ii) 8.3.4.2 *Suffocation Hazard:*

Suffocation Hazard: Babies have suffocated when bouncers tipped over on soft surfaces.

- Never use on a bed, sofa, cushion, or other soft surface.
- Never leave baby unattended. To prevent falls and suffocation:
- Always use restraints. Adjust to fit snugly, even if baby is sleeping.
- Stop using bouncer when baby starts trying to sit up.

(iii) 8.3.5 Figs. 10–12 The safety alert symbol

"⚠"

and the signal word ''WARNING'' shall be as specified above, but with the option of background colors as described above. The warning statements' wording content, as well as the use of any underlining, capital lettering, or bold typeface, or a combination thereof, are at the discretion of the manufacturer.

(4) In section 9 of ASTM F2167–15, replace Figure 10 with the following:

Figure 10

(5) Instead of complying with section 9.1.1.5 of ASTM F2167–15, comply with the following:

(i) 9.1.1.5 Instructions must indicate the manufacturer's recommended maximum weight, height, age, developmental level, consistent with the warning statement in 8.3.4.2, or combination thereof of the occupant for which the infant bouncer seat is intended. If the infant bouncer seat is not intended for use by a child for a specific reason (insert reason), the instructions shall so state this limitation.

(ii) [Reserved]

(6) In section 10 of ASTM F2167–15, replace Figures 11 and 12 with the following:

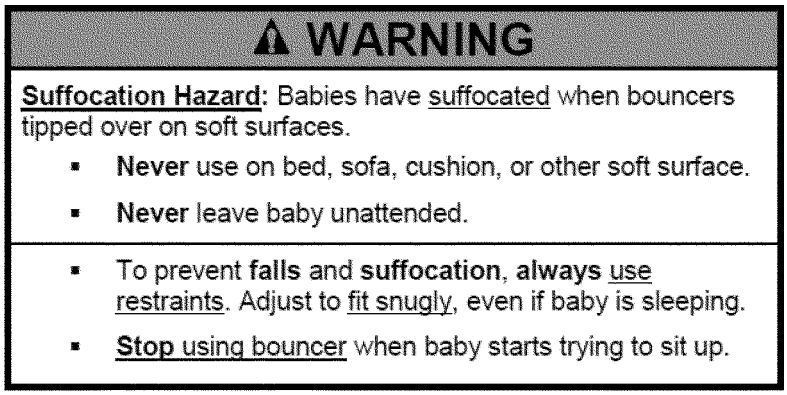


Figure 11

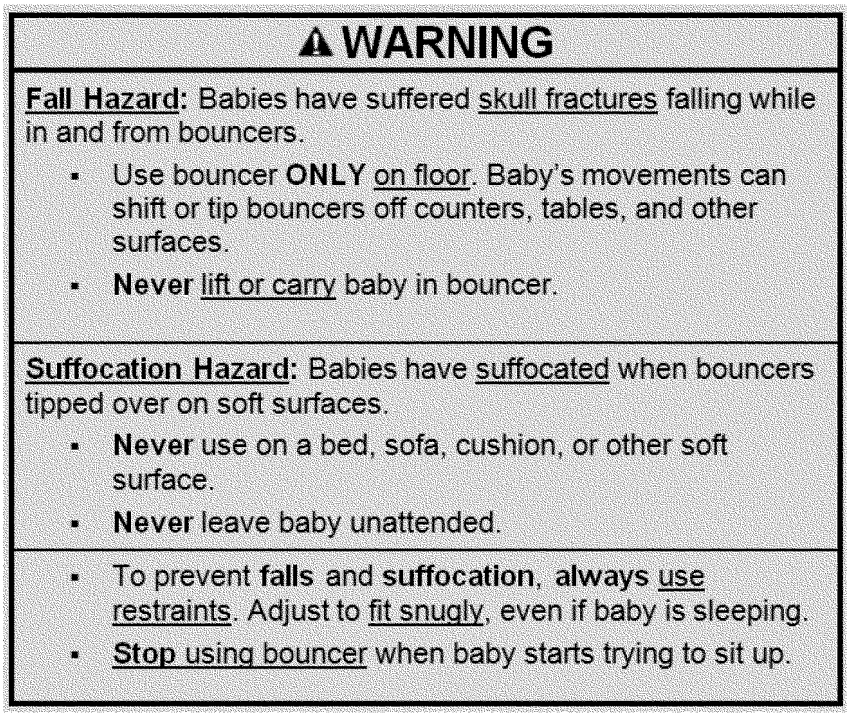


Figure 12

Dated: October 13, 2015.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2015–26386 Filed 10–16–15; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0645; FRL–9935–80–Region 9]

Air Plan Approval; Phoenix, Arizona; Second 10-Year Carbon Monoxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Arizona. On March 9, 2005, the EPA redesignated Phoenix, Arizona from nonattainment to attainment for the carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS) and approved the State's plan addressing the area's maintenance of the NAAQS for ten years. On April 2, 2013, the State of Arizona submitted to the EPA a second maintenance plan for the Phoenix area that addressed maintenance of the NAAQS for an additional ten years. The EPA is also proposing to find adequate and approve a transportation conformity motor vehicle emissions budgets (MVEB) for the year 2025 and beyond.

DATES: Comments must be received on or before November 18, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2015–0645, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. If you need to include CBI as part of your comment, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets* for instructions. 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.

For additional submission methods, the full EPA public comment policy, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: John Kelly, Planning Office (Air–2), Air Division, Region 9, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, (415) 947–4151, *kelly.johnj@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *AADT* mean or refer to Annual Average Daily Traffic.

(iii) The initials *ADEQ* mean or refer to Arizona Department of Environmental Quality.

(iv) The initials *ANP* mean or refer to Annual Monitoring Network Plans, commonly known as Annual Network Plans or ANP.

(v) The initials *CO* mean or refer to carbon monoxide.

(vi) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(vii) The initials *MAG* mean or refer to the Maricopa Association of Governments.

(viii) The initials *MCAQD* mean or refer to the Maricopa County Air Quality Department.

(ix) The initials *MVEB* mean or refer to Motor Vehicle Emissions Budget.

(x) The initials *mtpd* mean or refer to metric tons per day.

(xi) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

(xii) The initials *ppm* mean or refer to parts per million.

(xiii) The initials *RTP* mean or refer to Regional Transportation Plan.

(xiv) The initials *SIP* mean or refer to State Implementation Plan.

(xv) The initials *TIP* mean or refer to Transportation Improvement Plan.

(xvi) The initials *TSA* mean or refer to an air monitoring program Technical Systems Audit.

(xvii) The words *Arizona* and *State* mean or refer to the State of Arizona.

I. Background

A. Phoenix (Maricopa County), Arizona Attainment Status

Under the Clean Air Act (CAA) Amendments of 1990, the Phoenix metropolitan area in Maricopa County, Arizona (hereinafter referred to as Phoenix, the Phoenix area or the area) was designated and classified as a moderate CO nonattainment area. On July 29, 1996, the EPA found that the area had not attained the CO NAAQS by the moderate attainment date and the area was reclassified to serious nonattainment by operation of law, effective August 28, 1996. 61 FR 39343.

The primary CO NAAQS are attained when ambient concentration design values do not exceed either the 1-hour 35 parts per million (ppm) standard or the 8-hour 9 ppm standard more than once per year. 40 CFR 50.8(a). There have been no violations in Phoenix of the 1-hour CO standard since 1984 and no violations of the 8-hour standard since 1996. 2013 Maintenance Plan, page 1–1. The EPA determined in 2003 that the area had attained the CO NAAQS by the area's December 31, 2000 attainment deadline. 68 FR 55008, September 22, 2003. This determination did not affect the designation of the area as nonattainment or its classification as a serious area.

On May 30, 2003, the State of Arizona submitted a request to the EPA to redesignate Phoenix from nonattainment to attainment for the CO NAAQS. Along with this request, the State submitted a CAA section 175A(a) maintenance plan which demonstrated that the area would maintain the CO NAAQS for the first 10 years following our approval of the redesignation request (''2003 CO Maintenance Plan''). We approved the State's redesignation request and 10-year maintenance plan on March 9, 2005, effective April 8, 2005. 70 FR 11553. For a detailed history of the CO planning efforts in the area up to 2004, please see the Technical Support Document that accompanied the EPA's proposal to approve the first 10-year maintenance plan for the area. 69 FR 60328, October 8, 2004.

B. 2013 CO Maintenance Plan

Eight years after an area is redesignated to attainment, CAA section 175A(b) requires the State to submit a subsequent maintenance plan to the EPA, covering a second 10-year period.[1] The second maintenance plan must demonstrate continued compliance with the NAAQS during this second 10-year period. To fulfill this requirement of the CAA, Arizona submitted the second 10-year update of the Phoenix area CO maintenance plan to the EPA on April 2, 2013. The plan was developed by the Maricopa Association of Governments (MAG) and is titled ''MAG 2013 Carbon Monoxide Maintenance Plan for the Maricopa County Area'' (hereinafter, ''2013 Maintenance Plan''). MAG is the State's delegated Agency with authority to develop SIPs for Maricopa County. With this action, we are proposing to approve the 2013 Maintenance Plan as a revision to the Arizona SIP.

C. Transportation Conformity

Section 176(c) of the Act defines conformity as meeting the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The Act further defines transportation conformity to mean that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The Federal transportation conformity rule, 40 CFR part 93 subpart A, sets forth the criteria and procedures for demonstrating and assuring conformity of transportation plans, programs and projects which are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of Federal funds under Title 23 U.S.C. or the Federal Transit Laws. 49 U.S.C. chapter 53.

The transportation conformity rule applies within all nonattainment and maintenance areas. As prescribed by the transportation conformity rule, once an area has an applicable SIP with MVEBs, the expected emissions from planned transportation activities must be consistent with such established budgets for that area.

With this action, the EPA proposes to find adequate and approve a CO transportation conformity MVEB for the year 2025 and beyond.

II. The EPA's Evaluation of Arizona's Submittal

The 2013 Maintenance Plan contains the following major sections:

1. Introduction. This section contains a general discussion of CO plan approvals and the area's redesignation to attainment. 2013 Maintenance Plan, Chapter 1.

2. Continued Attainment of the Carbon Monoxide NAAQS. This section includes some historical background, a description of the CO monitoring network in Phoenix, monitoring results and the State's demonstration that the area has continued to attain the CO standards, and information regarding the State's monitoring data quality assurance program. 2013 Maintenance Plan, Chapter 2.

3. Maintenance Plan. This section includes control measures, maintenance demonstration, monitoring network information and verification that the area has continued to attain the CO standards, contingency provisions, a transportation conformity budget and subsequent maintenance plan revisions. 2013 Maintenance Plan, Chapter 3.

The following is the EPA's evaluation of the ambient air monitoring information and maintenance plan provided in the State's submittal.

A. Ambient Air Quality Monitoring Data

The primary NAAQS for CO are: ''(1) 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year and (2) 35 parts per million (40 milligrams per cubic meter) for a 1-hour average concentration not to be exceeded more than once per year.'' 40 CFR 50.8. At the time of submittal of the 2013 Maintenance Plan in March 2013, there had been no violations in Phoenix of the 1-hour carbon monoxide

[1] In this case, the initial maintenance period extended through 2015. Thus, the second 10-year period extends through 2025.

standard since 1984 and no violations of the 8-hour standard since 1996. 2013 Maintenance Plan, page 1–1.

TABLE 1—CO DESIGN VALUES FOR PHOENIX, AZ, YEARS 2005–2014

Design values (ppm) [2]		Years
1-Hour	8-Hour	
7.0	4.6	2005
6.5	4.6	2006
6.0	4.1	2007
4.5	3.0	2008
4.8	3.3	2009
8.9	3.2	2010
3.9	2.9	2011
4.5	2.5	2012
4.2	2.7	2013
4.9	2.8	2014

The EPA also examined monitoring data for Phoenix from the entire period covered by the first maintenance plan. Table 1 shows the complete, quality assured and certified ambient air monitoring design values for CO in the area for the years 2005 to 2014. The monitoring data show the area has not violated the CO standards during the first maintenance period. The EPA notes the trend of 8-hour CO design values decreasing during this period, as also described in the 2013 Maintenance Plan for the years 2004 to 2011. 2013 Maintenance Plan, figure 2–2, page 2–8.

B. Maintenance Plan Control Measures

The State and MAG commit to continue to implement the nine control measures listed in the 2003 Maintenance Plan, and have implemented a tenth control measure that had been identified in that plan as a contingency measure. 2013 Maintenance Plan, page 3–1. Table 2 lists these control measures. 2013 Maintenance Plan, table 3–1, page 3–2.

TABLE 2—MAINTENANCE MEASURES IN THE 2013 MAINTENANCE PLAN

1. California Phase 2 Reformulated Gasoline with 3.5% Oxygen Content from November 1 through March 31
2. Off-Road Vehicle and Engine Standards
3. Phased-in Emission Test Cutpoints
4. One-Time Waiver from Vehicle Emissions Test
5. Defer Emissions Associated with Government Activities
6. Coordinate Traffic Signal Systems
7. Develop Intelligent Transportation Systems
8. Tougher Enforcement of Vehicle Registration and Emissions Test Compliance
9. Clean Burning Fireplace Ordinances
10. Expansion of Area A Boundaries

The tenth control measure listed in Table 2 is described in the 2003 Maintenance Plan as a contingency measure. 2003 Maintenance Plan, Exhibit 2, Appendix A, Technical Support Document, Section VII–2–2. The State has implemented the expansion of Area A boundaries and the EPA approved the expansion of Area A boundaries as a revision to the Arizona SIP on May 22, 2013. 78 FR 30209.

C. Emissions Inventories

The 2013 Maintenance Plan provides a comparison of actual CO emissions in the Phoenix maintenance area in 2008 with projected emissions in 2025. 2003 Maintenance Plan, page 3–4, table 3–3. These emissions are for an average weekday during the winter season, the months November to January. The 2008 emissions are taken from the latest periodic emissions inventory for the area, the 2008 periodic emissions inventory, which is included in Appendix A, Exhibit 1 of the 2013 Maintenance Plan. Emissions for the year 2025 used growth factors for the area derived from the 2005 special U.S. census conducted in the area and EPA models for estimating onroad emissions and nonroad equipment emissions, as well as the Emissions and Dispersion Modeling System and the Federal Aviation Administration Terminal Area Forecast system database for all airports except Luke Air Force Base (AFB). Emissions of CO from the Luke AFB were derived from two documents: the first, titled ''2008 Mobile Source Emissions Inventory for Luke Air Force Base,'' prepared by Weston Solutions, Inc. for the Air Education and Training Command, U.S. Air Force, Randolph AFB, Texas, in June 2010; the second document is titled ''F–35A Training Basing Environmental Impact Statement, Final Volume 1,'' prepared by the U.S. Air Force in 2012.

Several emissions reductions are credited in the projected emissions for the year 2025. The first two control measures listed in Table 2, California Phase 2 Reformulated Gasoline with 3.5 percent Oxygen Content from November 1 through March 31, and Off-Road Vehicle and Engine Standards, are estimated to produce reductions of CO emissions of 128.9 mtpd and 15 mtpd, respectively. These reductions represent about a 19 percent reduction of emissions by 2025. The State and MAG commit to continued implementation of all other control measures listed in Table 2. However, their collective reduction is expected to be less than one percent of 2025 emissions, and therefore no numeric credit was taken for those measures in the State's projections of CO emissions in 2025.

Details regarding the technical inputs and assumptions used in preparing the emissions inventories are provided in Chapter II of the technical support document for the 2013 Maintenance plan, in Appendix A, Exhibit 2. The results of MAG's inventory of actual emissions in 2008 and projected emissions in 2025 are provided in Table 3.

[2] Design values were derived from the EPA Air Trends (*http://www3.epa.gov/airtrends/values.html*) Web site.

TABLE 3—AVERAGE WEEKDAY EMISSIONS DURING THE WINTER SEASON IN THE PHOENIX CO MAINTENANCE AREA, IN METRIC TONS PER DAY (MTPD)

Source category	CO Emissions	
	2008	2025
Point	0.7	19.8
Area	37.8	47.3
Nonroad	281.5	213.1
Onroad	581.6	359.4
Total	901.6	639.6

Compared to emissions in 2008, projected emissions in 2025 show a downward trend. Total CO emissions projected in the year 2025, 639.6 mtpd, represent approximately 70 percent of the actual emissions in the year 2008.

D. Maintenance Demonstration

The 2013 Maintenance Plan relies on a series of technical analyses to demonstrate maintenance of the CO NAAQS through the year 2025. MAG performed three different modeling analyses to project CO emissions out to the year 2025 and estimate their impact on maximum ambient CO concentration. In addition, MAG conducted two weight-of-evidence evaluations using actual trends in air quality and meteorological data to reinforce the modeling analyses. MAG also developed a modeling protocol to detail the technical approaches and assumptions to be used in demonstrating maintenance of the CO NAAQS. 2013 Maintenance Plan, Appendix A, Exhibit 2, Technical Support Document.

MAG's first modeling analysis was based on an emissions inventory comparison. MAG developed two sets of CO emissions inventories: one representing the CO modeling domain in 2006, 2008, 2015 and 2025; another representing the maintenance area in 2008 and 2025. The modeling domain covers 792 square miles, including the busiest intersections in the area and the ambient air monitors with the highest readings, while the maintenance area is 1,814 square miles. MAG calculated the ratio of the total emissions expected in 2025 to the total emissions in a prior year (2006 for the modeling domain and 2008 for the maintenance area). MAG then multiplied these ratios by the maximum concentration in the earlier year to yield a predicted 2025 concentration. The maximum 8-hour CO concentration at West Indian School monitor in 2006 was 5.3 ppm. When multiplied by the ratio of 2025 emissions for the maintenance area (403.9 mtpd) divided by 2006 emissions (803.0 mtpd) for the maintenance area, or 0.503, the predicted concentration in 2025 at the West Indian School monitoring site is 2.7 ppm, well below the 9 ppm level of the 8-hour CO NAAQS.

MAG's second modeling analysis involved updating the modeling of CO concentrations performed in the 2003 Maintenance Plan using the EPA-approved Urban Airshed Model (UAM) and the intersection hotspot model (CAL3QHC). In particular, MAG updated the projections of concentrations for the years 2006 and 2015 in the 2003 Maintenance Plan by adjusting by the ratio of new to old emissions inventory totals and then scaling them for the year 2025. The highest concentrations in 2025 predicted at the two busiest intersections in Phoenix (at the Phoenix Grand Avenue and West Indian School monitors) using these models was 4.0 ppm, less than half of the level of the 8-hour standard.

MAG's third modeling approach in the 2013 Maintenance Plan was an intersection hotspot analysis. The three intersections projected to have the highest traffic volumes and the three intersections projected to have the worst traffic congestion were identified using the MAG TransCAD traffic assignment for the year 2025. MAG used CAL3QHC to determine the maximum 8-hour concentration at these intersections in 2025, then added the expected background concentration, 1.3 ppm CO. The highest CO concentration expected in 2025 was 1.7 ppm at two intersections, 16th Street and Camelback Road, and Priest Drive and Southern Avenue. This level is also well below the 8-hour CO NAAQS.

In addition to the above three modeling exercises, MAG conducted two weight-of-evidence evaluations to support the maintenance demonstration. In one, historical trends of 1-hour and 8-hour monitored CO concentrations were applied to a regression analysis to project concentrations in 2015 and 2025. The monitoring data used was from the period 1980 to 2011. Projecting forward the trend lines using regression analysis for each monitoring site, the West Phoenix site has the highest projected 8-hour CO concentration, 2.7 ppm in 2015 and 1.6 ppm in 2025.

In a second weight-of-evidence evaluation, MAG conducted a meteorological analysis to assess whether unusually favorable meteorology played a role in continued maintenance of the CO standard. In particular, MAG assessed long-term values of key meteorological parameters, including temperature, wind speed, wind direction, atmospheric stability and mixing height and compared these values to CO monitored concentration trends during the same period. Four meteorological analyses were performed, comparing later meteorological data to the data from the 1994 episode used in the evaluation, when there was an exceedance of the 8-hour CO standard, with the following results: (1) The maximum 8-hour CO concentrations have continued to decline, while meteorological conditions have not differed significantly from the 1994 episode; (2) 8-hour CO concentrations declined while daily variations in wind speeds, temperatures and mixing heights have not varied significantly over time; (3) 1-hour CO concentrations have continued to decrease over time regardless of meteorological conditions; and (4) daily maximum 8-hour CO concentrations below the CO NAAQS were predominant during the period 1997 through 2011 under the same range of wind speeds and mixing heights.

The EPA finds that the three modeling exercises and two weight-of-evidence evaluations provide compelling evidence that the Phoenix area will continue to maintain the CO NAAQS.

E. Ambient Air Quality Monitoring Network

The Phoenix area has maintained an ambient air quality monitoring network consisting of twelve State and Local Air Monitoring Stations (SLAMS). Of these twelve monitoring stations, 11 are operated by the Maricopa County Air Quality Department (MCAQD) and one

monitor is operated by the Arizona Department of Environmental Quality (ADEQ). These agencies provide the EPA with Annual Monitoring Network Plans (commonly known as Annual Network Plans or ANPs) for the area, and have committed to continue to operate an appropriate air quality monitoring network in accordance with appendix D of 40 CFR part 58. 2013 Maintenance Plan, page 3–17.

The EPA approved the area's ANPs, which describe the monitoring network for the area and any changes anticipated for the following year. The most recent ANP from the MCAQD was the ''MCAQD 2013 Final Air Monitoring Network Review,'' dated December 5, 2014. The most recent ANP from ADEQ was the ''State of Arizona Air Monitoring Network Plan for the Year 2014,'' dated July 1, 2014. The 2014 MCAQD ANP was approved by the EPA on March 31, 2015. Letter from Meredith Kurpius, Manager, Air Quality Analysis Office, to William Wiley, Director, MCAQD, dated March 31, 2015. The 2014 ADEQ ANP was approved by the EPA on October 30, 2014. Letter from Meredith Kurpius, Manager, Air Quality Analysis Office, to Eric Massey, Director, Air Quality Division, ADEQ, dated October 30, 2014.

The EPA performs Technical Systems Audits (TSA) of ambient air monitoring programs in accordance with 40 CFR part 58, section 2.5, which requires that the EPA conduct TSAs of primary quality assurance organizations every three years. The most recent TSA for the MCAQD was conducted by the EPA on September 25 to September 27, 2013. The EPA's findings from this TSA are presented in a final report. There were no findings that were cause for data invalidation. Letter from Deborah Jordan, Director, U.S. EPA Region 9 Air Division, to Phil McNeely, Director, Maricopa County Air Quality Department, dated December 12, 2014, transmitting ''Technical System Audit, Maricopa County Air Quality Department, Ambient Air Monitoring Program, September 25–September 27, 2013,'' dated December 2014.

The most recent TSA for ADEQ was conducted by the EPA on April 9 to April 13, 2012. The EPA's findings from this TSA are presented in a final report. There were no findings that were cause for data invalidation. Letter from Deborah Jordan, Director, U.S. EPA Region 9 Air Division, to Eric Massey, Director, ADEQ Air Division, dated January 18, 2013, transmitting ''Technical System Audit, Arizona Department of Environmental Quality, Ambient Air Monitoring Program, April 9–April 13, 2012,'' dated January 2013.

The EPA is confident that the area's air quality monitoring network is being implemented in accordance with requirements in the CAA and implementing regulations in 40 CFR part 58.

F. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of an area. A maintenance plan's contingency measures are not required to be fully adopted. However, the plan should contain clearly identified contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. In addition, specific indicators should be identified which will be used to determine when the contingency measures need to be implemented. EPA memorandum, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992.

Two contingency measures that were included in the 2003 Maintenance Plan are included in the 2013 Maintenance Plan: Gross Polluter Option for I/M Program Waivers, and Increased Waiver Repair Limit Options. These contingency measures have already been implemented in the area. A third contingency measure has been added to the 2013 Maintenance Plan: Reinstatement of the Vehicle Emissions Inspection and Maintenance (VEI) Program for Motorcycles. The VEI program for motorcycles was a control measure in the area prior to redesignation to attainment, but the State subsequently exempted motorcycles from the VEI program. Pursuant to section CAA section 175A(d) of the CAA, the contingency provisions of a maintenance plan must include all the control measures that were included in the SIP for the area before redesignation. Therefore, the State is required to include the VEI program for motorcycles as a contingency measure in the 2013 CO Maintenance Plan. ADEQ has fulfilled this requirement by submitting a SIP revision committing to request Legislative action to reinstate emissions testing for motorcycles in the Phoenix area should the area experience a violation of the CO standards. See 78 FR 30209, May 22, 2013. In addition, as noted above, the State has expanded Area A in Maricopa County, which extends additional controls beyond the previous boundary for Area A, converting this expansion from a contingency measure in the 2003 Maintenance Plan, to a control measure in the 2013 Maintenance Plan.

We propose to find that the contingency plan in the 2013 Maintenance Plan is sufficient to meet the requirements of section 175A(d) of the CAA.

G. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA section 176(c)(1)(B)). The EPA's conformity rule at 40 CFR part 93, subpart A requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. To effectuate its purpose, the conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with MVEBs contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). An MVEB is defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area.[3] The EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Notifying the public of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) making a finding of adequacy or inadequacy. See 40 CR 93.118(f). The 2003 Maintenance Plan established CO MVEBs (calculated for Friday in December) of 699.7 mtpd in 2006 and 662.9 mtpd in 2015. The EPA found the CO MVEBs adequate for transportation conformity purposes on September 29, 2003, 68 FR 55950, and approved the MVEBs on March 9, 2005, 70 FR 11553.

The 2013 Maintenance Plan establishes a 2025 MVEB of 559.4 mtpd for the CO maintenance area. We are not announcing the availability of this MVEB through the EPA's Adequacy Web site and providing a separate comment period on the adequacy of the

[3] Further information concerning the EPA's interpretations regarding MVEBs can be found in the preamble to the EPA's November 24, 1993, transportation conformity rule (see 58 FR 62193–62196).

MVEB. Instead, we are reviewing the adequacy of the MVEB simultaneously with our review of the 2013 Maintenance Plan itself. See 40 CFR 93.118(f)(2). In order to determine whether this MVEB is adequate and approvable, we have evaluated whether the MVEB meets the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). The details of the EPA's evaluation of the MVEB for compliance with the budget adequacy criteria of 40 CFR 93.118(e) are provided in a memo to file for this proposed rulemaking. Memo from John J. Kelly, Air Planning Office, EPA Region 9, to Docket EPA–R09–OAR–2015–0645, dated September 29, 2015. Based on this evaluation, we propose to find the 2025 MVEB adequate and to approve it. Any and all comments on the adequacy and approvability of the 2025 MVEB should be submitted during the comment period stated in the **DATES** section of this document.

If today's proposed action is finalized, the 2015 MVEB, which is already approved for 2015 and later years, would apply only up to the year 2024. For the year 2025 and later years, the budget will be 559.4 mtpd. See Table 4.

TABLE 4—APPROVED AND PROPOSED TRANSPORTATION CONFORMITY MOTOR VEHICLE EMISSIONS BUDGETS FOR THE PHOENIX CO MAINTENANCE AREA, IN METRIC TONS PER DAY (MTPD)

	Approved	Approved	Proposed
Year	2006	2015	2025
CO MVEB	699.7	662.9	559.4

III. Proposed Action

The EPA is proposing to approve the 2013 Maintenance Plan submitted on April 3, 2012. This maintenance plan meets the applicable CAA requirements and the EPA has determined it is sufficient to provide for maintenance of the CO NAAQS over the course of the second 10-year maintenance period out to 2025.

The EPA is also proposing to find adequate and approve the CO MVEB of 559.4 mtpd for use in the year 2025 and later years.

IV. Statutory and Executive Orders Review

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: September 30, 2015.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2015–26405 Filed 10–16–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 150826781–5781–01]

RIN 0648–BF33

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2016 Red Snapper Commercial Quota Retention

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this proposed rule would withhold 4.9 percent of the 2016 red snapper commercial quota prior to the annual distribution of red snapper allocation to red snapper Individual Fishing Quota Program (IFQ) shareholders on January 1, 2016. The purpose of this proposed rule is to allow the allocations being established through Amendment 28 to the FMP

(Amendment 28) to be effective for the 2016 fishing year.

DATES: Written comments must be received by November 3, 2015.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2015–0121'' by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0121*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Richard Malinowski, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html*.

FOR FURTHER INFORMATION CONTACT: Richard Malinowski, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *rich.malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to achieve on a continuing basis the optimum yield from federally managed fish stocks. This mandate is intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

In recent years, the Council has expressed its intent to evaluate and possibly adjust the allocation of reef fish resources between the commercial and recreational sectors. At its August 2015 meeting, the Council approved Amendment 28 for submission to the Secretary of Commerce (Secretary) for review and implementation. Amendment 28 would reallocate 352,000 lb (159,665 kg), round weight, 317,117 lb (143,842 kg), gutted weight of red snapper from the commercial sector to the recreational sector. This is equal to 4.9 percent of the current red snapper commercial quota.

This proposed rule would allow for the implementation of Amendment 28 in early 2016. While the recreational fishing season does not open until June 1 each year, NMFS distributes IFQ allocation to the shareholders on January 1 each year. After NMFS distributes the red snapper commercial quota to shareholders, it cannot be effectively recalled. If Amendment 28 is approved, it is unlikely that NMFS would be able to implement the reallocation until after the IFQ program's annual distribution of red snapper quota to the commercial sector on January 1, 2016. Therefore, without the management measures in this proposed rule, the reallocation could not occur until 2017.

Management Measures Contained in This Proposed Rule

This proposed rule would withhold distribution of 4.9 percent of the 2016 red snapper commercial quota (352,000 lb (159,665 kg), round weight; 317,117 lb (143,842 kg), gutted weight) when allocation to the red snapper IFQ shareholders is released on January 1, 2016. If NMFS does not implement Amendment 28, NMFS would distribute the withheld 4.9 percent of the 2016 IFQ allocation of red snapper to shareholders based on the shares held as of the date of distribution.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework amendment, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to withhold 4.9 percent of the Gulf commercial red snapper quota (352,000 lb (159,665 kg), round weight; 317,117 lb (143,842 kg), gutted weight) to ensure that the allocations established through Amendment 28, and scheduled to be implemented in 2016, if approved by the Secretary, are effective for the 2016 fishing year. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

NMFS expects this proposed rule, if implemented, to directly affect commercial vessels that harvest red snapper in the Gulf. Based on commercial logbook data, over the period of 2009–2013, an average of 353 vessels per year recorded commercial red snapper harvests. The maximum number of vessels with recorded commercial red snapper harvests during this period was 375 in 2010. However, in 2010, 384 vessels were identified in the red snapper IFQ on-line account program, which tracks activity in the Red Snapper Limited Access Privilege Program. This system, however, is not the official record for trip harvests of all species by vessels with commercial harvests of red snapper, nor does it capture all landings, or associated revenues, from all species harvested on all trips by vessels that also harvest red snapper. Therefore, data from both sources are used for this analysis to estimate the number of potentially affected entities. As a result, this proposed rule would be expected to apply to 353–384 commercial fishing vessels. The average annual gross revenue from all species harvested on all trips by the vessels identified with recorded red snapper harvests in logbook data over the period 2009–2013 (353 vessels) was approximately $110,000 (2013 dollars).

NMFS has not identified any other entities that would be expected to be directly affected by this proposed rule.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its

field of operation (including its affiliates), and has combined annual receipts not in excess of $20.5 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. All commercial fishing vessels expected to be directly affected by this proposed rule are determined to be small business entities.

This proposed rule would withhold from distribution 4.9 percent or 352,000 lb (159,665 kg), round weight; 317,117 lb (143,842 kg), gutted weight, of the 2016 Gulf red snapper commercial quota, valued at approximately $1.46 million ($4.75 median ex-vessel price per lb gutted weight, minus the 3-percent IFQ program cost recovery fee, all vessels; 2013 dollars). This is equivalent to the amount of red snapper quota proposed to be reallocated from the commercial sector to the recreational sector in proposed Amendment 28. Across all vessels (353–384 vessels), this amount of quota would be equivalent to an average of approximately 826–898 lb (375–407 kg), gutted weight, of red snapper per vessel, valued at approximately $3,800-$4,100. Thus, the proposed quota withholding in this framework action would result in a reduction in ex-vessel revenue in 2016 to the entities in this fishery; however, this reduction is consistent with the analysis and expected economic effects of Amendment 28, which projects a reduction in red snapper commercial quota, and associated economic benefits to commercial fishermen, beginning in 2016. The reallocation would, however, be expected to result in an increase in economic benefits to the recreational sector. If approved by the Secretary, final rulemaking to implement the allocation change proposed by Amendment 28 cannot occur until after January 1, 2016, whereas distribution of the commercial quota to IFQ shareholders occurs at the start of each fishing year to allow vessels to begin harvesting red snapper on January 1. After the annual red snapper quota is distributed to shareholders, it cannot be effectively recalled. Thus, to ensure the effects of Amendment 28 are realized in 2016, NMFS is withholding from distribution the commensurate amount of quota equivalent to the amount reallocated in Amendment 28 for the 2016 fishing season. If NMFS implements the proposed rulemaking and the reallocation in Amendment 28, then the effects of the reduced commercial quota, including this proposed withholding, will be attributable to and analyzed with Amendment 28's rulemaking. If NMFS does not implement the proposed reallocation in Amendment 28, then the portion of the quota withheld through this framework action will be distributed as soon as possible to the appropriate shareholders. Because this allocation would be available later in the fishing year, a reduction in normal total revenue (disruption of the timing of harvest may reduce the price and total revenue received), alteration of the flow of receipts, and disruption of normal business operation may occur. However, these effects would be expected to be minor because only a small portion of the available quota (4.9 percent) would be affected for only a portion of the year.

Based on the discussion above, NMFS determines that this proposed rule, if implemented, would not have a significant adverse economic effect on a substantial number of small entities.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf of Mexico, Recreational, Red snapper, Reef fish.

Dated: October 14, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.39, add paragraphs (a)(1)(i)(B) (*1*) and (*2*) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(B) * * *

(*1*) NMFS will withhold distribution of 4.9 percent of the 2016 IFQ allocation of red snapper commercial quota on January 1, 2016, totaling 352,000 lb (159,665 kg), round weight, of the 2016 red snapper commercial quota specified in § 622.39(a)(1)(i)(B).

(*2*) As determined by NMFS, remaining 2016 IFQ allocation of red snapper will be distributed to the current shareholders based on their current shares held as of the date of distribution.

* * * * *

[FR Doc. 2015–26471 Filed 10–16–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 201
Monday, October 19, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

Submission for OMB Review; Comment Request

October 13, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Petitions for Rulemaking.

OMB Control Number: 0583–0136.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Product Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. The Administrative Procedures Act requires that Federal agencies give interested persons the right to petition for issuance, amendment, or repeal of a rule (5 U.S.C. 553 (e)).

Need and Use of the Information: FSIS will use the information associated with petitions to assess the merits of the petition and to determine whether to issue, amend, or repeal its regulations. FSIS will use the information provided to assess the merits of the petition.

Description of Respondents: Business or other for-profit.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 400.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–26420 Filed 10–16–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2015–0038]

Notice of Request To Renew an Approved Information Collection (Laboratories)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to renew the approved information collection on two laboratory programs. FSIS is requesting a reduction in the estimated burden associated with these two programs from 24 hours to 13 hours based on historical use of certain forms to collect the information on the laboratories in the programs. The current approval for this information collection will expire on December 31, 2015.

DATES: Submit comments on or before December 18, 2015.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2015–0038. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence

Avenue SW., Room 6065, South Building, Washington, DC 20250; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Laboratories.

OMB Control Number: 0583–0158.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and correctly labeled. FSIS is requesting renewal of the approved information collection addressing paperwork requirements regarding two different forms to collect information for two laboratory programs. FSIS is requesting a reduction in the estimated burden from 24 hours to 13 hours based on historical use of the forms described below to collect the information on the laboratories in the programs. FSIS uses the PEPRL–F–0008.04 form as a self-assessment audit checklist to collect information related to the quality assurance/quality control procedures in place at in-plant and private laboratories participating in the Pasteurized Egg Product Recognized Laboratory (PEPRLab) program (9 CFR 590.580). FSIS uses the data collected in the desk audit of existing labs or the appraisal of a new applicant.

Any non-Federal laboratory that is applying for the FSIS Accredited Laboratory program needs to complete an Application for FSIS Accredited Laboratory Program form (9 CFR 439). State or private laboratories need only submit the application once for entry into the program. FSIS uses the information collected by the form to help access the laboratory applying for admission to the FSIS Accredited Laboratory program.

FSIS has made the following estimates based upon an information collection assessment.

Estimate of Burden: FSIS estimates that it will take respondents an average of 0.96 hours per year to complete a laboratory form.

Respondents: Laboratories.

Estimated Number of Respondents: 13.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 13 hours. Copies of this information collection assessment can be obtained from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence SW., Room 6077, South Building, Washington, DC 20250, (202)690–6510.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

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

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

USDA Non-Discrimination Statement

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

How To File a Complaint of Discrimination

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

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

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

Fax: (202) 690–7442,

Email: program.intake@usda.gov.

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

Done at Washington, DC on: October 13, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–26428 Filed 10–16–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice in the Rocky Mountain Region, Which Includes Colorado, Kansas, Nebraska, and Parts of South Dakota and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that Ranger Districts, Forests, and the Regional Office of the Rocky Mountain Region will use to publish legal notices required under 36 CFR part 218 and 219. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for opportunities to comment or file an administrative

review on USDA Forest Service proposals.

DATES: Publication of legal notices in the listed newspapers will begin on the date of this publication and continue until further notice.

ADDRESSES: USDA Forest Service, Rocky Mountain Region; ATTN: Regional Administrative Review Coordinator; 740 Simms Street, Golden, Colorado, 80401

FOR FURTHER INFORMATION CONTACT: Nancy Miller, Regional Administrative Review Coordinator, 303 275–5373.

SUPPLEMENTARY INFORMATION: The administrative review procedures at 36 CFR 218 and 219 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR 218 and 219. In general, the notices will identify: The decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or requests for administrative review. The date the notice is published will be used to establish the official date for the beginning of the comment or filing period. The newspapers to be used are as follows:

Rocky Mountian Regional Office

Regional Forester decisions affecting National Forest System lands in Colorado, Kansas, Nebraska and those portions of South Dakota and Wyoming within the Rocky Mountain Region: *The Denver Post,* published daily in Denver, Colorado.

Arapaho and Roosevelt National Forests and Pawnee National Grassland, Colorado

Forest Supervisor decisions: *Coloradoan,* published daily in Fort Collins, Colorado.

District Ranger decisions for Canyon Lakes District: *Coloradoan,* published daily in Fort Collins, Colorado.

District Ranger decisions for Pawnee District: *Greeley Tribune,* published daily in Greeley, Colorado.

District Ranger decisions for Boulder District: *Daily Camera,* published daily in Boulder, Colorado.

District Ranger decisions for Clear Creek District: *Clear Creek Courant,* published weekly in Idaho Springs, Colorado.

District Ranger decisions for Sulphur District: *Middle Park Times,* published weekly in Granby, Colorado.

Bighorn National Forest, Wyoming

Forest Supervisor decisions: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

District Ranger decisions: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

Black Hills National Forest, South Dakota and Eastern Wyoming

Forest Supervisor decisions: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

District Ranger decision: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

Grand Mesa, Uncompahgre, and Gunnison National Forests, Colorado

Forest Supervisor decisions: *Grand Junction Daily Sentinel,* published daily in Grand Junction, Colorado.

District Ranger decisions for Grand Valley District: *Grand Junction Daily Sentinel,* published daily in Grand Junction, Colorado.

District Ranger decisions for Paonia District: *Delta County Independent,* published weekly in Delta, Colorado.

District Ranger decisions for Gunnison Districts: *Gunnison Country Times,* published weekly in Gunnison, Colorado.

District Ranger decisions for Norwood District: *Telluride Daily Planet,* published daily in Telluride, Colorado.

District Ranger decisions for Ouray District: *Montrose Daily Press,* published daily in Montrose, Colorado.

Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Colorado and Wyoming

Forest Supervisor decisions: *Laramie Daily Boomerang,* published daily in Laramie, Albany County, Wyoming.

District Ranger decisions for Laramie District: *Laramie Daily Boomerang,* published daily in Laramie, Albany County, Wyoming.

District Ranger decisions for Douglas District: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

District Ranger decisions for Brush Creek-Hayden District: *Rawlins Daily Times,* published daily in Rawlins, Carbon County, Wyoming.

District Ranger decisions for Hahns Peak-Bears Ears District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

District Ranger decisions for Yampa District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

District Ranger decisions for Parks District: *Jackson County Star,* published weekly in Walden, Jackson County, Colorado.

Nebraska National Forest, Nebraska and South Dakota

Forest Supervisor decisions: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

District Ranger decisions for Bessey District/Charles E. Bessey Tree Nursery: *The North Platte Telegraph,* published daily in North Platte, Lincoln County, Nebraska.

District Ranger decisions for Pine Ridge District: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

District Ranger decisions for Samuel R. McKelvie National Forest: *The North Platte Telegraph,* published daily in North Platte, Lincoln County, Nebraska.

District Ranger decisions for Fall River and Wall Districts, Buffalo Gap National Grassland: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

District Ranger decisions for Fort Pierre National Grassland: *The Capital Journal,* published Monday through Friday in Pierre, Hughes County, South Dakota.

Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands, Colorado and Kansas

Forest Supervisor decisions: *Pueblo Chieftain,* published daily in Pueblo, Colorado.

District Ranger decisions for San Carlos District: *Pueblo Chieftain,* published daily in Pueblo, Colorado.

District Ranger decisions for Comanche District-Carrizo Unit: *Plainsman Herald,* published weekly in Springfield, Colorado.

District Ranger decisions for Comanche District-Timpas Unit: *Tribune Democrat,* published daily in La Junta, Colorado.

District Ranger decisions for Cimarron District: The Elkhart *Tri-State News,* published weekly in Elkhart, Kansas.

District Ranger decisions for South Platte District: *Douglas County News Press,* published weekly in Castle Rock, Colorado.

District Ranger decisions for Leadville District: *Herald Democrat,* published weekly in Leadville, Colorado.

District Ranger decisions for Salida District: *The Mountain Mail,* published daily in Salida, Colorado.

District Ranger decisions for South Park District: *Fairplay Flume,* published weekly in Bailey, Colorado.

District Ranger decisions for Pikes Peak District: *The Gazette,* published daily in Colorado Springs, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor decisions: *Valley Courier,* published Tuesday through Saturday in Alamosa, Colorado.

District Ranger decisions for all Districts: *Valley Courier,* published, published Tuesday through Saturday in Alamosa, Colorado.

San Juan National Forest, Colorado

Forest Supervisor decisions: *Durango Herald,* published daily in Durango, La Plata County, Colorado.

District Ranger decisions for Columbine and Pagosa Districts: *Durango Herald,* published daily in Durango, La Plata County, Colorado.

District Ranger decisions for Dolores District: *Cortez Journal,* published two times per week in Cortez, Montezuma County, Colorado.

Shoshone National Forest, Wyoming

Forest Supervisor decisions: *Cody Enterprise,* published twice weekly in Cody, Park County, Wyoming.

District Ranger decisions for Clarks Fork District: *Powell Tribune,* published twice weekly in Powell, Park County, Wyoming.

District Ranger decisions for Wapiti and Greybull Districts: *Cody Enterprise,* published twice weekly in Cody, Park County, Wyoming.

District Ranger decisions for Wind River District: *The Dubois Frontier,* published weekly in Dubois, Fremont County, Wyoming.

District Ranger decisions for Washakie District: *Lander Journal,* published twice weekly in Lander, Fremont County, Wyoming.

White River National Forest, Colorado

Forest Supervisor decisions: *The Glenwood Springs Post Independent,* published daily in Glenwood Springs, Garfield County, Colorado.

District Ranger decisions for Aspen-Sopris District: *Aspen Times,* published daily in Aspen, Pitkin County, Colorado.

District Ranger decisions for Blanco District: *Rio Blanco Herald Times,* published weekly in Meeker, Rio Blanco County, Colorado.

District Ranger decisions for Dillon District: *Summit Daily,* published daily in Frisco, Summit County, Colorado.

District Ranger decisions for Eagle-Holy Cross District: *Vail Daily,* published daily in Vail, Eagle County, Colorado.

District Ranger decisions for Rifle District: *Citizen Telegram,* published weekly in Rifle, Garfield County, Colorado.

Dated: September 28, 2015.

Jacqueline Buchanan,

Deputy Regional Forester, Rocky Mountain Region.

[FR Doc. 2015–26415 Filed 10–16–15; 8:45 am]

BILLING CODE 3410–11–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday and Tuesday, November 9–10, 2015 at the times and location listed below.

DATES: The schedule of events is as follows:

Monday, November 9, 2015

1:30–2:30 p.m. Ad Hoc Committee on Frontier Issues
2:30–3:00 Ad Hoc Committee on Design Guidance
3:00–4:30 Technical Programs Committee

Tuesday, November 10, 2015

10:30–11:00 a.m. Ad Hoc Committee Meetings: Closed
11:00–11:30 Planning and Evaluation Committee
11:30–Noon Budget Committee
1:30–3:00 Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Tuesday, November 10, 2015, the Access Board will consider the following agenda items:

- Approval of the draft September 10, 2015 meeting minutes (vote)
- Ad Hoc Committee Reports: Frontier Issues; Design Guidance; Information and Communications Technologies; and, Public Rights-of-Way and Shared Use Paths
- Budget Committee
- Technical Programs Committee
- Planning and Evaluation Committee
- Election Assistance Commission Report
- Executive Director's Report
- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Tuesday, November 10, 2015. Any individual interested in providing comment is asked to pre-register by sending an email to *bunales@access-board.gov* with the subject line ''Access Board meeting—Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public comment must be received by Wednesday, November 4, 2015. Commenters will be called on in the order by which they pre-registered. Due to time constraints, each commenter is limited to two minutes. Commenters on the telephone will be in a listen-only capacity until they are called on. Use the following call-in number: (877) 701–1628; passcode: 41662680 and dial in 5 minutes before the meeting begins at 1:30 p.m.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings.

Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

You may view the Tuesday, November 10, 2015 meeting through a live captioned webcast from 1:30 p.m. to 3:00 p.m. at: *http://www.access-board.gov/webcast.*

David M. Capozzi,

Executive Director.

[FR Doc. 2015–26430 Filed 10–16–15; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–937]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2014–2015

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

SUMMARY: The Department of Commerce (''the Department'') is rescinding the administrative review of the antidumping duty order on citric acid and certain citrate salts (''citric acid'') from the People's Republic of China (''the PRC'') for the period of review May 1, 2014, through April 30, 2015.

DATES: *Effective Date:* October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2015, the Department published the notice of opportunity to request an administrative review of the order on citric acid from the PRC for the period of review May 1, 2014, through April 30, 2015.[1] On May 28, 2015, Laiwu Taihe Biochemistry Co., Ltd. (''Taihe'') requested that the Department conduct an administrative review of its period of review (''POR'') sales.[2] On May 29, 2015, RZBC Co., Ltd., RZBC Import & Export Co., Ltd., and RZBC (Juxian) Co., Ltd. (collectively, ''RZBC'') requested an administrative review of its POR sales.[3] On June 1, 2015, Archer Daniels Midland Company, Cargill Incorporated, and Tate & Lyle Ingredients Americas LLC (''Petitioners'') requested an administrative review of the POR sales of Taihe and RZBC.[4] RZBC withdrew its request for an administrative review on July 2, 2015.[5] Taihe withdrew its request for an administrative review on July 31, 2015.[6] Petitioners withdrew their request for an administrative review on July 31, 2015.[7]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, all parties withdrew their requests for administrative reviews within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of citric acid from the PRC. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

Notifications

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 review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). 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 sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 9, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–26487 Filed 10–16–15; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 80 FR 37588, 37593 (July 1, 2015).

[2] *See* Letter from Taihe to the Department, dated May 28, 2015.

[3] *See* Letter from RZBC to the Department, dated May 29, 2015.

[4] *See* Letter from Petitioners to the Department, dated June 1, 2015.

[5] *See* Letter from RZBC, dated July 2, 2015.

[6] *See* Letter from Taihe, dated July 31, 2015.

[7] *See* Letter from Petitioners, dated July 31, 2015.

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 84–26A12]

Export Trade Certificate of Review

ACTION: Notice of Application for an Amended Export Trade Certificate of Review by Northwest Fruit Exporters, Application No. 84–26A12.

SUMMARY: The Secretary of Commerce, through the International Trade Administration, Office of Trade and Economic Analysis (OTEA), has received an application for an amended Export Trade Certificate of Review (''Certificate'') from Northwest Fruit Exporters. This notice summarizes the proposed amendment and seeks public comments on whether the amended Certificate should be issued.

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

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2015). OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a notice in the **Federal Register** identifying the applicant and summarizing the conduct for which certification is sought. Under 15 CFR 325.6(a), interested parties may, within twenty days after the date of this notice, submit written comments to the Secretary on the application.

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

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

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–26A12.''

Description of Amendments to the Certificate

1. Under the heading Products, add ''fresh pears.''

2. Under the heading Export Trade Activities and Methods of Operation, add ''fresh pears'' to the subtitles of sections 1 and 3.

3. Add coverage for Export Trade Activities and Methods of Operation relating to ''fresh pears'' for the following existing Members of the Certificate (within the meaning of section 325.2(l) of the regulations (15 CFR 325.2(l)):

Apple House Warehouse & Storage, Inc.
Blue Bird, Inc.
Blue Star Growers, Inc.
Borton & Sons, Inc.
Chelan Fruit Cooperative
Congdon Packing Co. L.L.C.
Conrad & Adams Fruit L.L.C.
Crane & Crane, Inc.
Diamond Fruit Growers Inc.
Gold Digger Apples, Inc.
Hansen Fruit & Cold Storage Co., Inc.
Highland Fruit Growers, Inc.
HoneyBear Growers, LLC
Matson Fruit Company
McDougall & Sons, Inc.
Stadelman Fruit, L.L.C.
Stemilt Growers, LLC
Strand Apples, Inc.
The Dalles Fruit Company, LLC/
Underwood Fruit & Warehouse Co.
Valley Fruit III L.L.C.

4. Add the following new Members of the Certificate (within the meaning of section 325.2(l) of the regulations (15 CFR 325.2(l)), for Export Trade Activities and Methods of Operation relating to ''fresh pears'':

Duckwall Fruit
Naumes, Inc.
Peshastin Hi-Up Growers

5. Add the following new Members of the Certificate for Export Trade Activities and Methods of Operation relating to apples:

Piepel Premium Fruit Packing LLC
Ron LeFore, d/b/a Ron LeFore Apple Farms
Western Traders LLC

6. Remove the following companies as Members of the Certificate: Blue Mountain Growers, Inc. (Milton-Freewater, OR), and Obert Cold Storage (Zillah, WA); and

7. Change the name of the following existing Members: The Apple House, Inc. (Brewster, WA) is now Apple House Warehouse & Storage, Inc. (Brewster, WA); C&M Fruit Packers (Yakima, WA) is now Columbia Fruit Packers/Airport Division (Yakima, WA); Domex Marketing (Yakima, WA) is now Domex Superfresh Growers LLC (Yakima, WA); Stemilt Growers Inc. is now Stemilt Growers, LLC; and The Dalles Fruit Company, LLC is now The Dalles Fruit Company, LLC Underwood Fruit & Warehouse Co. (Dallesport, WA).

NWF's Export Trade Certificate of Review complete amended membership is listed below:

1. Allan Bros., Naches, WA
2. AltaFresh L.L.C. dba Chelan Fresh Marketing, Chelan, WA
3. Apple House Warehouse & Storage, Inc., Brewster, WA
4. Apple King, L.L.C., Yakima, WA
5. Auvil Fruit Co., Inc., Orondo, WA
6. Baker Produce, Inc., Kennewick, WA
7. Blue Bird, Inc., Peshastin, WA
8. Blue Star Growers, Inc., Cashmere, WA
9. Borton & Sons, Inc., Yakima, WA
10. Brewster Heights Packing & Orchards, LP, Brewster, WA
11. Broetje Orchards LLC, Prescott, WA
12. C.M. Holtzinger Fruit Co., Inc., Yakima, WA
13. Chelan Fruit Cooperative, Chelan, WA
14. Chiawana, Inc. dba Columbia Reach Pack, Yakima, WA
15. Columbia Fruit Packers, Inc., Wenatchee, WA
16. Columbia Fruit Packers/Airport Division, Yakima, WA
17. Columbia Marketing International Corp., Wenatchee, WA
18. Columbia Valley Fruit, L.L.C., Yakima, WA
19. Congdon Packing Co. L.L.C., Yakima, WA
20. Conrad & Adams Fruit L.L.C., Grandview, WA
21. Cowiche Growers, Inc., Cowiche, WA
22. CPC International Apple Company, Tieton, WA
23. Crane & Crane, Inc., Brewster, WA
24. Custom Apple Packers, Inc., Brewster, Quincy, and Wenatchee, WA
25. Diamond Fruit Growers, Odell, OR
26. Domex Superfresh Growers LLC, Yakima, WA
27. Douglas Fruit Company, Inc., Pasco, WA
28. Dovex Export Company, Wenatchee, WA
29. E. Brown & Sons, Inc., Milton-Freewater, OR
30. Evans Fruit Co., Inc., Yakima, WA
31. E.W. Brandt & Sons, Inc., Parker, WA
32. Frosty Packing Co., LLC, Yakima, WA
33. G&G Orchards, Inc., Yakima, WA
34. Garrett Ranches Packing, Wilder, ID
35. Gilbert Orchards, Inc., Yakima, WA
36. Gold Digger Apples, Inc., Oroville, WA
37. Hansen Fruit & Cold Storage Co., Inc., Yakima, WA
38. Henggeler Packing Co., Inc., Fruitland, ID
39. Highland Fruit Growers, Inc., Yakima, WA
40. HoneyBear Growers, Inc., (Brewster, WA)
41. Honey Bear Tree Fruit Co., LLC, Wenatchee, WA
42. Hood River Cherry Company, Hood River, OR
43. Ice Lakes LLC, E. Wenatchee, WA
44. JackAss Mt. Ranch, Pasco, WA
45. Jenks Bros Cold Storage Packing (Royal City, WA)
46. Kershaw Fruit & Cold Storage, Co., Yakima, WA
47. L&M Companies, Selah, WA
48. Larson Fruit Co., Selah, WA
49. Manson Growers Cooperative, Manson, WA
50. Matson Fruit Company, Selah, WA
51. McDougall & Sons, Inc., Wenatchee, WA
52. Monson Fruit Co.—Apple operations only, Selah, WA
53. Morgan's of Washington dba Double Diamond Fruit, Quincy, WA
54. Northern Fruit Company, Inc., Wenatchee, WA
55. Olympic Fruit Co., Moxee, WA
56. Oneonta Trading Corp., Wenatchee, WA
57. Orchard View Farms, Inc., The Dalles, OR
58. Pacific Coast Cherry Packers, LLC, Yakima, WA
59. Phillippi Fruit Company, Inc., Wenatchee, WA
60. Polehn Farm's Inc., The Dalles, OR
61. Price Cold Storage & Packing Co., Inc., Yakima, WA
62. Pride Packing Company, Wapato, WA
63. Quincy Fresh Fruit Co., Quincy, WA
64. Rainier Fruit Company, Selah, WA
65. Roche Fruit, Ltd., Yakima, WA
66. Sage Fruit Company, L.L.C., Yakima, WA
67. Smith & Nelson, Inc., Tonasket, WA
68. Stadelman Fruit, L.L.C., Milton-Freewater, OR, and Zillah, WA
69. Stemilt Growers, LLC, Wenatchee, WA
70. Strand Apples, Inc., Cowiche, WA
71. Symms Fruit Ranch, Inc., Caldwell, ID
72. The Dalles Fruit Company, LLC Underwood Fruit & Warehouse Co., Dallesport, WA

73. Valicoff Fruit Co., Inc., Wapato, WA
74. Valley Fruit III L.L.C., Wapato, WA
75. Washington Cherry Growers, Peshastin, WA
76. Washington Fruit & Produce Co., Yakima, WA
77. Western Sweet Cherry Group, LLC, Yakima, WA
78. Whitby Farms, Inc. dba: Farm Boy Fruit Snacks LLC, Mesa, WA
79. Yakima Fresh, Yakima, WA
80. Yakima Fruit & Cold Storage Co., Yakima, WA
81. Zirkle Fruit Company, Selah, WA

Dated: October 13, 2015.

Joseph Flynn,

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

[FR Doc. 2015–26419 Filed 10–16–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 141021884–5743–02]

Announcing the Withdrawal of Six (6) Federal Information Processing Standards (FIPS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: This notice announces the withdrawal of six Federal Information Processing Standards (FIPS): FIPS 181, FIPS 185, FIPS 188, FIPS 190, FIPS 191 and FIPS 196.

These FIPS are obsolete and are being withdrawn because they have not been updated to reference current or revised voluntary industry standards, federal specifications, or federal data standards. Federal agencies are responsible for using current voluntary industry standards and current federal specifications and data standards in their acquisition and management activities.

DATES: The withdrawal of FIPS 181, FIPS 185, FIPS 188, FIPS 190, FIPS 191 and FIPS 196 is effective on October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Honeycutt, telephone (301) 975–8443, National Institute of Standards and Technology, 100 Bureau Drive, MS 8930, Gaithersburg, MD 20899–8930 or via email at *dhoneycutt@nist.gov*

Authority:

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce, pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104–106), and the Federal Information Security Management Act of 2002 (Pub. L. 107–347).

SUPPLEMENTARY INFORMATION: The Information Technology Management Reform Act of 1996 (Division E of Pub. L. 104–106) and Executive Order 13011 emphasize agency management of information technology and Government-wide interagency support activities to improve productivity, security, interoperability, and coordination of Government resources. Under the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113), Federal agencies and departments are directed to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. Voluntary industry standards are the preferred source of standards to be used by the Federal government. The use of voluntary industry standards eliminates the cost to the government of developing its own standards, and furthers the policy of reliance upon the private sector to supply goods and services to the government.

A notice was published in the **Federal Register** (80 FR 2398) on January 16, 2015, announcing the proposed withdrawal of FIPS 181, FIPS 185, FIPS 188, FIPS 190, FIPS 191 and FIPS 196. The **Federal Register** notice solicited comments from the public, users, the information technology industry, and Federal, State, and local government organizations concerning the withdrawal of the FIPS.

Comments were received from one commenter: an industry organization. These comments are posted at *http://csrc.nist.gov/publications/PubsFIPS.html.*

Following is a summary of the comments received.

The single set of comments received was from an industry organization and pertained solely to the withdrawal of FIPS 185, Escrowed Encryption Standard. The comments supported the withdrawal of FIPS 185, Escrowed Encryption Standard. The commenter stated that the citation of Skipjack as the reference algorithm, vulnerabilities in Escrowed Encryption Standards, and potential for misuse of escrowed encryption keys were reasons for supporting the withdrawal of FIPS 185.

No comments were received concerning the other five standards that had been proposed for withdrawal.

The FIPS number and title for each of the six FIPS being withdrawn are:

FIPS 181, Automated Password Generator,
FIPS 185, Escrowed Encryption Standard,
FIPS 188, Standard Security Label for Information Transfer,
FIPS 190, Guideline for the Use of Advanced Authentication Technology Alternatives,
FIPS 191, Guideline for the Analysis of Local Area Network Security, and
FIPS 196, Entity Authentication using Public Key Cryptography.

Withdrawal means that these FIPS will no longer be part of a subscription service that is provided by the National Technical Information Service, and federal agencies will no longer be required to comply with these FIPS. NIST will continue to provide relevant information on standards and guidelines by means of electronic dissemination methods. Current versions of the data standards and specifications are available through the Web pages of the Federal agencies that develop and maintain the data codes. NIST will keep references to these withdrawn FIPS on its FIPS Web pages, and will link to current versions of these standards and specifications where appropriate.

Richard Cavanagh,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2015–26429 Filed 10–16–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; NIST Generic Clearance for Program Evaluation Data Collections

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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: Written comments must be submitted on or before December 18, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental

Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Darla Yonder, Management Analyst, NIST, 100 Bureau Drive, MS 1710, Gaithersburg, MD 20899–1710, telephone 301–975–4064 or via email to *darla.yonder@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of surveys—both quantitative and qualitative—designed to evaluate our current programs from a customer's perspective. NIST proposes to perform program evaluation data collections by means of, but not limited to, focus groups, reply cards that accompany product distributions, and Web-based surveys and dialogue boxes that offer customers the opportunity to express their views on the programs they are asked to evaluate. NIST will limit its inquiries to data collections that solicit strictly voluntary opinions and will not collect information that is required or regulated. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

II. Method of Collection

NIST will collect this information by electronic means when possible, as well as by mail, fax, telephone and person-to-person interviews.

III. Data

OMB Control Number: #0693–0033.

Form Number(s): None.

Type of Review: Regular submission [revision of a currently approved information collection.]

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government.

Estimated Number of Respondents: 12,000.

Estimated Time per Response: Varied, dependent upon the data collection method used. The response time may vary from two minutes for a response card or two hours for focus group participation. The average time per response is expected to be 30 minutes.

Estimated Total Annual Burden Hours: 5,000.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 14, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–26466 Filed 10–16–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE195

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of correction to a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Habitat Protection and Ecosystem-Based Management (Habitat) Advisory Panel (AP) in St. Petersburg, FL. The meeting is open to the public.

DATES: The meeting will be held from 9 a.m. until 4:30 p.m. on Tuesday, November 17, 2015, and from 9 a.m. until 4:30 p.m. Wednesday, November 18, 2015.

ADDRESSES: *Meeting address:* The meeting will be held at the Florida Fish and Wildlife and Resources Institute (FWRI), Florida Fish and Wildlife Conservation Commission, 100 8th Ave SE 3370, St. Petersburg, FL; phone: (727) 896–8626.

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

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC, 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: This notice being re-published in its entirety is a correction to a meeting notice that published on October 2, 2015 (80 FR 59739). The original notice stated in the SUMMARY that the meeting was to be held in N. Charleston, SC. The **ADDRESSES** section, however, was correct. The meeting is to be held in St. Petersburg, FL.

Items to be addressed or sessions to be conducted during the Habitat AP meeting include but not limited to: The review and completion of a redrafted Council Essential Fish Habitat (EFH) Policy Statement on Energy Exploration, Development and Transportation; a presentation on the Florida Artificial Reef Program and discussion on the developing Artificial Reef Policy Statement; a roundtable discussion on issues associated with South Atlantic Climate Variability and Fisheries and South Atlantic Food Webs and Connectivity for possible future policy statement development; and a Panel member working session highlighting regional research program activities and facilitating the update of Volume V of Fishery Ecosystem Plan (FEP) II, Regional Programs and Data Needs and associated appendices presenting Council, State, Commission and partner research, monitoring and data needs. Other status reports will focus on regional ecosystem modelling, threats to EFH, and EFH updates associated with FEP II development.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

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

Dated: October 14, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–26472 Filed 10–16–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE254

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC's) Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Monday, November 9, 2015 from 1 p.m. to 5 p.m. and on Tuesday, November 10, 2015 from 9 a.m. to 3 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will be held at the Providence Biltmore, Curio Collection by Hilton, 11 Dorrance Street, Providence, RI 02903; telephone: (401) 421–0700.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; Web site: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet from Monday, November 9 through Tuesday, November 10 (see **DATES** and **ADDRESSES**). Topics to be addressed include:

(1) Monitoring Committee recommendations for recreational management measures for the summer flounder, scup, and black sea bass fisheries for the 2016 fishing year;

(2) Possible discussion of Monitoring Committee review of commercial management measures for summer flounder, scup, and black sea bass fisheries, depending on progress made prior to meeting.

A detailed agenda and background documents will be made available on the Council's Web site (*www.mafmc.org*) prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: October 14, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–26473 Filed 10–16–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Greater Atlantic Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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: Written comments must be submitted on or before December 18, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to James St.Cyr, (978) 281–9369 or *James.StCyr@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resource. Thus, as regional Fishery Management Councils develop specific Fishery Management Plans (FMP), the Secretary has promulgated rules for the issuance and use of a vessel Interactive Voice Response (IVR) system, a Vessel Monitoring System (VMS) and vessel logbooks (VTR) to obtain fishery-dependent data to monitor, evaluate, and enforce fishery regulations.

Fishing vessels permitted to participate in Federally-permitted fisheries in the Northeast are required to submit logbooks containing catch and effort information about their fishing trips. Participants in the herring, tilefish and red crab fisheries are also required to make weekly reports on their catch through IVR. In addition, vessels fishing under a days-at sea (DAS) management system can use the IVR system to request a DAS credit when they have canceled a trip for unforeseen circumstances. The information submitted is needed for the management of the fisheries.

II. Method of Collection

Most information is submitted on paper forms, although some vessels are utilizing an electronic vessel trip reporting system (EVTR). The IVR system is used by vessel owners to provide supplemental information related to specific activities such as harvesting research set-aside quota species, conducting exempted fishing activities, or declaring a block of days out of the fishery. In the herring and tilefish fisheries vessel owners or operators must provide weekly catch information to an IVR system. In the NE Multispecies fishery, vessel owners or operators must declare catch and discards of groundfish species of concern through VMS for all trips.

III. Data

OMB Control Number: 0648–0212.

Form Number: NOAA Forms 88–30 and 88–40.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 4,346.

Estimated Time per Response: 5 minutes per Fishing Vessel Trip Report page (FVTR); 12.5 minutes per response for the Shellfish Log; 4 minutes for a herring or red crab report to the IVR system; 2 minutes for a tilefish report to the IVR system; 30 seconds for voluntary additional halibut information; and 5 minutes for each DAS credit request.

Estimated Total Annual Burden Hours: 12,228.

Estimated Total Annual Cost to Public: $43,012.00.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 14, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–26468 Filed 10–16–15; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 18, 2015.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0085. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0085, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and to the Commission through the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or by Hand Delivery/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://reginfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Peter A. Kals, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418–5466; email: *pkals@cftc.gov* and refer to OMB Control No. 3038–0085.

SUPPLEMENTARY INFORMATION:

Title: Rule 50.50 End-User Notification of Non-Cleared Swap (OMB Control No. 3038–0085). This is a request for extension of a currently approved information collection.

Abstract: Rule 50.50 specifies requirements for non-financial end-users who elect the exception from the Commission's swap clearing requirement set forth in section 2(h)(7) of the Commodity Exchange Act. Among the requirements of Rule 50.50 is reporting certain information to a swap data repository registered with the Commission.

Burden Statement: The respondent burden for this collection is estimated to require between 10 minutes and one hour per response.

Respondents/Affected Entities: Non-financial end-users.

Estimated Number of Respondents: 1,092.

Estimated Total Average Annual Burden on Respondents: 633 hours.

Frequency of Collection: On occasion; annually.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: October 14, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–26465 Filed 10–16–15; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 18, 2015.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0079. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0079, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and to the

Commission through the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or by Hand Deliver/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://reginfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5496, email: *jchachkin@cftc.gov,* and refer to OMB Control No. 3038–0079.

SUPPLEMENTARY INFORMATION:

Title: Conflict of Interest Policies and Procedures by Swap Dealers and Major Swap Participants (OMB Control No. 3038–0079). This is a request for an extension of a currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Commission regulation 23.605 (Conflicts of interest policies and procedures) under section 4s(j)(5) [1] of the Commodity Exchange Act (''CEA''). Commission regulation 23.605 requires, among other things, that swap dealers (''SD'') [2] and major swap participants (''MSP'') [3] adopt and implement conflicts of interest procedures and disclosures, establish written policies and procedures reasonably designed to ensure compliance with the conflicts of interest and disclosure obligations within the regulations, and maintain specified records related to those requirements.[4] The Commission believes that the information collection obligations imposed by Commission regulation 23.605 are essential to ensuring that SDs and MSPs develop and maintain the conflicts of interest systems, procedures and disclosures required by the CEA and Commission regulations, and to the effective evaluation of these registrants' actual compliance with the CEA and Commission regulations.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

Number of Registrants: 125.

Estimated Average Burden Hours Per Registrant: 44.5.

Estimated Aggregate Burden Hours: 5,562.5.

Frequency of Recordkeeping/Third-party Disclosure: As applicable.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 13, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–26421 Filed 10–16–15; 8:45 am]

BILLING CODE 3651–01–P

[1] 7 U.S.C. 6s(j)(5).

[2] For the definition of SD, *see* section 1a(49) of the CEA and Commission regulation 1.3(ggg). 7 U.S.C. 1a(49) and 17 CFR 1.3(ggg).

[3] For the definitions of MSP, *see* section 1a(33) of the CEA and Commission regulation 1.3(hhh). 7 U.S.C. 1a(33) and 17 CFR 1.3(hhh).

[4] *See* 17 CFR 23.605.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2013–HA–0192]

Proposed collection; comment request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed revision to the existing DoD Suicide Event Report (DoDSER) information collection system, and seeks public comment on the revisions thereof. Comments are invited on: (a) whether the proposed revisions will impact the proper performance and functions of the DoDSER system, including whether the revisions shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed revisions; (c) ways to enhance the quality, utility, and clarity of the information to be revised; and (d) ways to minimize the burden of the information collection on respondents, including how these revisions shall affect user burden.

DATES: Consideration will be given to all comments received by December 18, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title 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. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the National Center for Telehealth and Technology (T2), 9933 West Hayes Street, BOX 339500 MS 34, Joint Base Lewis-McChord 98431 or call (253) 968–2946.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Suicide Event Report; DD2996; OMB Control Number 0720–0058.

Needs and Uses: The revision of this information collection system is necessary to the continued provision of integrated enterprise and survey data to be used for direct reporting of suicide events and ongoing population-based health surveillance activities. These surveillance activities include the systematic collection, analysis, interpretation, and reporting of outcome-specific data for use in planning, implementation, evaluation, and prevention of suicide behaviors within the Department of Defense. Data is collected on individuals with reportable suicide and self-harm behaviors (to include suicide attempts, self-harm behaviors, and suicidal ideation). All other DoD active and reserve military personnel records collected without evidence of reportable suicide and self-harm behaviors will exist as a control group. Records are integrated from enterprise systems and created and revised by civilian and military personnel in the performance of their duties. We propose to revise the system to make specific changes that have been recommended for improving the completeness of DoDSER data.

Affected Public: Individuals and households.

Annual Burden Hours: 330.

Number of Respondents: 1975.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: As required by qualifying event.

Form completers are behavioral and medical health providers, military unit leadership or their designees. The DoDSER form is used to collect information regarding suicide events of military service members. Form completers collect information from military personnel records, military medical records, enterprise data systems within the DoD and persons (respondent) familiar with the event details. Respondents include but are not limited to family members, friends, unit members, unit leadership and clergy members. The DoDSER form data is used to produce ad hoc reports for services leadership and the DoDSER Annual Report. The annual report is a comprehensive description and analysis of the data collected, which provides information for DoD suicide prevention efforts.

Dated: October 14, 2015.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–26461 Filed 10–16–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2015–OS–0099]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense.

ACTION: Notice of Proposed Amendments to the Manual for Courts-Martial, United States (2012 ed.) and Notice of Public Meeting.

SUMMARY: The Department of Defense requests comments on proposed changes to the *Manual for Courts-Martial, United States* (2012 ed.) (MCM). The proposed changes concern the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial. The approval authority for these changes is the President. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.01, ''Preparing, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters, and Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

The proposed changes also concern supplementary materials that accompany the rules of procedure and evidence and punitive articles. The Department of Defense, in conjunction with the Department of Homeland Security, publishes these supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Discussion (accompanying the Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, and the Punitive Articles), an Analysis, and various appendices. The approval authority for changes to the supplementary materials is the General Counsel, Department of Defense; changes to these items do not require Presidential approval.

The proposed amendments would change military justice practice by implementing recommendations made by the Response Systems to Adult Sexual Assault Crimes Panel, incorporating recent amendments to the Federal Rules of Evidence into the Military Rules of Evidence, and modifying the Rules for Courts-Martial, Military Rules of Evidence, and Punitive Articles explanation to reflect recent statutory amendments and developments in case law.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003.

The JSC invites members of the public to comment on the proposed changes; such comments should address specific recommended changes and provide supporting rationale.

This notice also sets forth the date, time, and location for a public meeting of the JSC to discuss the proposed changes.

This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

DATES: Comments on the proposed changes must be received no later than December 18, 2015. A public meeting for comments will be held on November 5, 2015, at 10 a.m. in the United States Court of Appeals for the Armed Forces building, 450 E Street NW., Washington DC 20442–0001.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

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: Captain Harlye S. Carlton, USMC, Executive Secretary, JSC, (703) 693–9299, *harlye.carlton@usmc.mil.* The JSC Web site is located at *http://jsc.defense.gov.*

SUPPLEMENTARY INFORMATION: The proposed amendments to the MCM are as follows:

Annex

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) A new R.C.M. 103(22) is inserted and reads as follows:

''(22) The definition of ''signature'' below includes a digital or electronic signature.''

(b) The title of R.C.M. 104(b)(1) is amended to read as follows:

''(1) *Evaluation of member, defense counsel, or special victims' counsel.''*

(c) R.C.M. 104(b)(1)(B) is amended to read as follows:

''(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, ''special victims' counsel'' are judge advocates who, in accordance with 10 U.S.C. 1044e, are designated as Special Victims' Counsel by the Judge Advocate General of the armed force in which the judge advocates are members, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps.''

(d) A new R.C.M. 305(i)(2)(A)(v) is inserted and reads as follows:

''(v) *Victim's right to be reasonably protected from the prisoner.* A victim of

an alleged offense committed by the prisoner has the right to be reasonably protected from the prisoner.''

(e) R.C.M. 306(b) is amended to read as follows:

''(b) *Policy.*

(1) *Generally.* Allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition listed in subsection (c) of this rule.''

(f) A new R.C.M. 306(b)(2) is inserted and reads as follows:

''(2) *Victims of a sex-related offense.*

(A) For purposes of this subsection, a ''sex-related offense'' means any allegation of a violation of Article 120, 120a, 120b, 120c, or 125 or any attempt thereof under Article 80, UCMJ.

(B) Under such regulations as the Secretary concerned may prescribe, for alleged sex-related offenses committed in the United States, the victim of the sex-related offense shall be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. The commander shall consider such views as to the victim's preference for jurisdiction, if available, prior to making an initial disposition decision. For purposes of this rule, ''victim'' is defined as an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an alleged sex-related offense as defined in subsection (A).

(C) Under such regulations as the Secretary concerned may prescribe, if the victim of an alleged sex-related offense expresses a preference for prosecution of the offense in a civilian court, the convening authority shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution. If the convening authority learns of any decision by the civilian authority to prosecute or not prosecute the offense in civilian court, the convening authority shall ensure the victim is notified.''

(g) R.C.M. 405(i)(2)(A) is amended to read as follows:

''(2) *Notice to and presence of the victim(s).*

(A) The victim(s) of an offense under the UCMJ has the right to reasonable, accurate, and timely notice of a preliminary hearing relating to the alleged offense, the right to be reasonably protected from the accused, and the reasonable right to confer with counsel for the government during the preliminary hearing. For the purposes of this rule, a ''victim'' is a person who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration.''

(h) R.C.M. 705(c)(2)(A) is amended to read as follows:

''(A) A promise to enter into a stipulation of fact concerning offenses to which a plea of guilty or a confessional stipulation will be entered;''

(i) A new R.C.M. 705(d)(3) is inserted and reads as follows:

''(3) *Victim consultation.* Whenever practicable, prior to the convening authority accepting a pretrial agreement the victim shall be provided an opportunity to express views concerning the pretrial agreement terms and conditions in accordance with regulations prescribed by the Secretary concerned. The convening authority shall consider any such views provided prior to accepting a pretrial agreement. For purposes of this rule, a ''victim'' is an individual who is alleged to have suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration.''

(j) R.C.M. 705(d)(3) is renumbered as R.C.M. 705(d)(4).

(k) R.C.M. 705(d)(4) is renumbered as R.C.M. 705(d)(5).

(l) A new R.C.M. 806(b)(2) is inserted and reads as follows:

''(2) *Right of victim to notice.* A victim of an alleged offense committed by the accused has the right to reasonable, accurate, and timely notice of court-martial proceedings relating to the offense.''

(m) R.C.M. 806(b)(2) is renumbered as R.C.M. 806(b)(3).

(n) R.C.M. 806(b)(3) is renumbered as R.C.M. 806(b)(4).

(o) R.C.M. 806(b)(4) is renumbered as R.C.M. 806(b)(5).

(p) A new R.C.M. 806(b)(6) is inserted and reads as follows:

''(b)(6) *Right of victim to be reasonably protected from the accused.* A victim of an alleged offense committed by the accused has the right to be reasonably protected from the accused.''

(q) R.C.M. 907(b)(1) is amended to read as follows:

''(1) *Nonwaivable grounds.* A charge or specification shall be dismissed at any stage of the proceedings if the court-martial lacks jurisdiction to try the accused for the offense.''

(r) R.C.M. 907(b)(1)(A)–(B) is deleted.

(s) R.C.M. 907(b)(3) is amended to read as follows:

''(3) *Permissible grounds.* A specification may be dismissed upon timely motion by the accused if:

(A) The specification is so defective that it substantially misled the accused, and the military judge finds that, in the interest of justice, trial should proceed on remaining charges and specifications without undue delay;

(B) The specification is multiplicious with another specification, is unnecessary to enable the prosecution to meet the exigencies of proof through trial, review, and appellate action, and should be dismissed in the interest of justice; or

(C) The specification fails to state an offense.''

(t) R.C.M. 910(f)(4) is amended to read as follows:

''(4) *Inquiry.* The military judge shall inquire to ensure:

(A) That the accused understands the agreement;

(B) That the parties agree to the terms of the agreement; and

(C) That the victim was provided an opportunity to express views as to the terms and conditions of the agreement as provided in R.C.M. 705.''

(u) R.C.M. 1002 is amended to read as follows:

''(a) *Generally.* Subject to limitations in this Manual, the sentence to be adjudged is a matter within the discretion of the court-martial; except when a mandatory minimum sentence is prescribed by the code, a court-martial may adjudge any punishment authorized in this Manual, including the maximum punishment or any lesser punishment, or may adjudge a sentence of no punishment.

(b) *Unitary Sentencing.* Sentencing by a court-martial is unitary. The court will adjudge a single sentence for all the offenses of which the accused was found guilty. A court-martial may not impose separate sentences for each finding of guilty, but may impose only a single, unitary sentence covering all of the guilty findings in their entirety.''

(v) R.C.M. 1103(b)(2)(B)(i) is amended to read as follows:

''(i) Any part of the sentence adjudged exceeds twelve months confinement, forfeiture of pay greater than two-thirds pay per month, or any forfeiture of pay for more than twelve months or other punishments that may be adjudged by a special court-martial; or''

(w) The Note currently located immediately following the title of R.C.M. 1107 and prior to R.C.M. 1107(a) is amended to read as follows:

''[Note: R.C.M. 1107(b)–(f) apply to offenses committed on or after 24 June 2014; however, if at least one offense resulting in a finding of guilty in a case occurred prior to 24 June 2014, then the prior version of R.C.M. 1107 applies to all offenses in the case, except that

mandatory minimum sentences under Article 56(b) and applicable rules under R.C.M. 1107(d)(1)(D)–(E) still apply.]''

(x) R.C.M. 1107(b)(5) is amended to remove the last sentence starting with ''Nothing'' and ending with ''sentence.''

(y) R.C.M. 1107(c) is amended to read as follows:

''(c) *Action on findings.* Action on the findings is not required. However, the convening authority may take action subject to the following limitations:

(1) Where a court-martial includes a finding of guilty for an offense listed in (c)(1)(A), the convening authority may not take the actions listed in subsection (c)(1)(B):

(A) *Offenses*

(i) Article 120(a) or (b), Article 120b, or Article 125;

(ii) Offenses for which the maximum sentence of confinement that may be adjudged exceeds two years without regard to the jurisdictional limits of the court; or

(iii) Offenses where the adjudged sentence for the case includes dismissal, dishonorable discharge, bad-conduct discharge, or confinement for more than six months.

(B) *Prohibited actions*

(i) Dismiss a charge or specification by setting aside a finding of guilty thereto; or

(ii) Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(2) The convening authority may direct a rehearing in accordance with subsection (e) of this rule.

(3) For offenses other than those listed in subsection (c)(1)(A):

(A) The convening authority may change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification; or

(B) Set aside any finding of guilty and:

(i) Dismiss the specification and, if appropriate, the charge; or

(ii) Direct a rehearing in accordance with subsection (e) of this rule.

(4) If the convening authority acts to dismiss or change any charge or specification for an offense, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of trial and action thereon.''

(z) R.C.M. 1107(d) is amended to read as follows:

''(d) *Action on the sentence.*

(1) The convening authority shall take action on the sentence subject to the following*:*

(A) The convening authority may disapprove, commute, or suspend, in whole or in part, any portion of an adjudged sentence not explicitly prohibited by this rule, to include reduction in pay grade, forfeitures of pay and allowances, fines, reprimands, restrictions, and hard labor without confinement.

(B) Except as provided in subsection (d)(1)(C), the convening authority may not disapprove, commute, or suspend, in whole or in part, that portion of an adjudged sentence that includes:

(i) confinement for more than six months; or

(ii) dismissal, dishonorable discharge, or bad-conduct discharge.

(C) *Exceptions*

(i) *Trial counsel recommendation.* Upon the recommendation of the trial counsel, in recognition of the substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the convening authority or another person authorized to act under this section shall have the authority to disapprove, commute, or suspend the adjudged sentence, in whole or in part, even with respect to an offense for which a mandatory minimum sentence exists.

(ii) *Pretrial agreement.* If a pretrial agreement has been entered into by the convening authority and the accused, as authorized by R.C.M. 705, the convening authority or another person authorized to act under this section shall have the authority to approve, disapprove, commute, or suspend a sentence, in whole or in part, pursuant to the terms of the pretrial agreement. However, if a mandatory minimum sentence of a dishonorable discharge applies to an offense for which an accused has been convicted, the convening authority or another person authorized to act under this section may commute the dishonorable discharge to a bad-conduct discharge pursuant to the terms of the pretrial agreement.

(D) If the convening authority acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense listed in subsection (c)(1)(A), the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of trial and action thereon.''

(aa) R.C.M. 1107(e) is amended to read as follows:

''(e) *Ordering rehearing or other trial.*

(1) *Rehearings not permitted.* A rehearing may not be ordered by the convening authority where the adjudged sentence for the case includes a sentence of dismissal, dishonorable discharge, or bad-conduct discharge or confinement for more than six months.

(2) *Rehearings permitted.*

(A) *In general.* Subject to subsection (e)(1) and subsections (e)(2)(B) through (e)(2)(E) of this rule, the convening authority may in the convening authority's discretion order a rehearing. A rehearing may be ordered as to some or all offenses of which findings of guilty were entered and the sentence, or as to sentence only.

(B) *When the convening authority may order a rehearing.* The convening authority may order a rehearing:

(i) *When taking action on the court-martial under this rule.* Prior to ordering a rehearing on a finding, the convening authority must disapprove the applicable finding and the sentence and state the reasons for disapproval of said finding. Prior to ordering a rehearing on the sentence, the convening authority must disapprove the sentence.

(ii) *When authorized to do so by superior competent authority.* If the convening authority finds a rehearing as to any offenses impracticable, the convening authority may dismiss those specifications and, when appropriate, charges.

(iii) *Sentence reassessment.* If a superior competent authority has approved some of the findings of guilty and has authorized a rehearing as to other offenses and the sentence, the convening authority may, unless otherwise directed, reassess the sentence based on the approved findings of guilty and dismiss the remaining charges. Reassessment is appropriate only where the convening authority determines that the accused's sentence would have been at least of a certain magnitude had the prejudicial error not been committed and the reassessed sentence is appropriate in relation to the affirmed findings of guilty.''

(C) *Limitations.*

(i) *Sentence approved.* A rehearing shall not be ordered if, in the same action, a sentence is approved.

(ii) *Lack of sufficient evidence.* A rehearing may not be ordered as to findings of guilty when there is a lack of sufficient evidence in the record to support the findings of guilty of the offense charged or of any lesser included offense. A rehearing may be ordered, however, if the proof of guilt consisted of inadmissible evidence for which there is available an admissible substitute. A rehearing may be ordered as to any lesser offense included in an offense of which the accused was found guilty, provided there is sufficient

evidence in the record to support the lesser included offense.

(iii) *Rehearing on sentence only.* A rehearing on sentence only shall not be referred to a different kind of court-martial from that which made the original findings. If the convening authority determines a rehearing on sentence is impracticable, the convening authority may approve a sentence of no punishment without conducting a rehearing.

(D) *Additional charges.* Additional charges may be referred for trial together with charges as to which a rehearing has been directed.

(E) *Lesser included offenses.* If at a previous trial the accused was convicted of a lesser included offense, a rehearing may be ordered only as to that included offense or as to an offense included in that found. If, however, a rehearing is ordered improperly on the original offense charged and the accused is convicted of that offense at the rehearing, the finding as to the lesser included offense of which the accused was convicted at the original trial may nevertheless be approved.

(3) *''Other'' trial.* The convening or higher authority may order an ''other'' trial if the original proceedings were invalid because of lack of jurisdiction or failure of a specification to state an offense. The authority ordering an ''other'' trial shall state in the action the basis for declaring the proceedings invalid.''

(bb) The Note currently located immediately following the title of R.C.M. 1108(b) and prior to the first line, ''The convening authority may. . .'' is amended to read as follows:

''[Note: R.C.M. 1108(b) applies to offenses committed on or after 24 June 2014; however, if at least one offense in a case occurred prior to 24 June 2014, then the prior version of R.C.M. 1108(b) applies to all offenses in the case.]''

(cc) R.C.M. 1109(a) is amended to read as follows:

__''(a) *In general.* Suspension of execution of the sentence of a court-martial may be vacated for violation of any condition of the suspension as provided in this rule.''

(dd) R.C.M. 1109(c)(4)(A) is amended to read as follows:

''(A) *Rights of probationer.* Before the preliminary hearing, the probationer shall be notified in writing of:''

(ee) R.C.M. 1109(c)(4)(C) is amended to read as follows:

''(C) *Decision.* The hearing officer shall determine whether there is probable cause to believe that the probationer violated the conditions of the probationer's suspension. If the hearing officer determines that probable cause is lacking, the hearing officer shall issue a written order directing that the probationer be released from confinement. If the hearing officer determines that there is probable cause to believe that the probationer violated a condition of suspension, the hearing officer shall set forth this determination in a written memorandum that details therein the evidence relied upon and reasons for making the decision. The hearing officer shall forward the original memorandum or release order to the probationer's commander and forward a copy to the probationer and the officer in charge of the confinement facility.''

(ff) A new sentence is added to the end of R.C.M. 1109(d)(1)(A) and reads as follows:

''The purpose of the hearing is for the hearing officer to determine whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension.''

(gg) R.C.M. 1109(d)(1)(C) is amended to read as follows:

''(C) *Hearing.* The procedure for the vacation hearing shall follow that prescribed in subsection (h) of this rule.''

(hh) A new sentence is added to the end of R.C.M. 1109(d)(1)(D) and reads as follows:

''This record shall include the recommendation, the evidence relied upon, and reasons for making the decision.''

(ii) R.C.M. 1109(d)(2)(A) is amended to read as follows:

''(A) *In general.* The officer exercising general court-martial jurisdiction over the probationer shall review the record produced by and the recommendation of the officer exercising special court-martial jurisdiction over the probationer, decide whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising general court-martial jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence.''

(jj) A new sentence is added to the end of R.C.M. 1109(e)(1) and reads as follows:

''The purpose of the hearing is for the hearing officer to determine whether there is probable cause to believe that the probationer violated the conditions of the probationer's suspension.''

(kk) R.C.M. 1109(e)(3) is amended to read as follows:

''(3) *Hearing.* The procedure for the vacation hearing shall follow that prescribed in subsection (h) of this rule.''

(ll) A new sentence is added to the end of R.C.M. 1109(e)(5) and reads as follows:

''This record shall include the recommendation, the evidence relied upon, and reasons for making the decision.''

(mm) R.C.M. 1109(e)(6) is amended to read as follows:

''(6) *Decision.* The special court-martial convening authority shall review the record produced by and the recommendation of the person who conducted the vacation proceeding, decide whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence.''

(nn) A new sentence is added to the end of R.C.M. 1109(g)(1) and reads as follows:

''The purpose of the hearing is for the hearing officer to determine whether there is probable cause to believe that the probationer violated the conditions of the probationer's suspension.''

(oo) R.C.M. 1109(g)(3) is amended to read as follows:

''(3) *Hearing.* The procedure for the vacation hearing shall follow that prescribed in subsection (h) of this rule.''

(pp) A new sentence is added to the end of R.C.M. 1109(g)(5) and reads as follows:

''This record shall include the recommendation, the evidence relied upon, and reasons for making the decision.''

(qq) R.C.M. 1109(g)(6) is amended to read as follows:

''(6) *Decision.* A commander with authority to vacate the suspension shall review the record produced by and the recommendation of the person who conducted the vacation proceeding, decide whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence.''

(rr) A new R.C.M. 1109(h) is inserted and reads as follows:

''(h) *Hearing procedure*

(1) *Generally.* The hearing shall begin with the hearing officer informing the probationer of the probationer's rights. The government will then present evidence. Upon the conclusion of the government's presentation of evidence, the probationer may present evidence. The probationer shall have full opportunity to present any matters in defense, extenuation, or mitigation. Both the government and probationer shall be afforded an opportunity to cross-examine adverse witnesses. The hearing officer may also question witnesses called by the parties.

(2) *Rules of evidence.* The Military Rules of Evidence—other than Mil. R. Evid. 301, 302, 303, 305, 412, and Section V—shall not apply. Nor shall Mil. R. Evid. 412(b)(1)(C) apply. In applying these rules to a vacation hearing, the term ''military judge,'' as used in these rules, shall mean the hearing officer, who shall assume the military judge's authority to exclude evidence from the hearing, and who shall, in discharging this duty, follow the procedures set forth in these rules. However, the hearing officer is not authorized to order production of communications covered by Mil. R. Evid. 513 or 514.

(3) *Production of witnesses and other evidence.* The procedure for the production of witnesses and other evidence shall follow that prescribed in R.C.M. 405(g), except that R.C.M. 405(g)(3)(B) shall not apply. The hearing officer shall only consider testimony and other evidence that is relevant to the limited purpose of the hearing.

(4) *Presentation of testimony.* Witness testimony may be provided in person, by video teleconference, by telephone, or by similar means of remote testimony. All testimony shall be taken under oath, except that the probationer may make an unsworn statement.

(5) *Other evidence.* If relevant to the limited purpose of the hearing, and not cumulative, a hearing officer may consider other evidence, in addition to or in lieu of witness testimony, including statements, tangible evidence, or reproductions thereof, offered by either side, that the hearing officer determines is reliable. This other evidence need not be sworn.

(6) *Presence of probationer.* The taking of evidence shall not be prevented and the probationer shall be considered to have waived the right to be present whenever the probationer:

(i) After being notified of the time and place of the proceeding is voluntarily absent; or

(ii) After being warned by the hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct that is such as to justify exclusion from the proceeding.

(7) *Objections.* Any objection alleging failure to comply with these rules shall be made to the convening authority via the hearing officer. The hearing officer shall include a record of all objections in the written recommendations to the convening authority.

(8) *Access by spectators.* Vacation hearings are public proceedings and should remain open to the public whenever possible. The convening authority who directed the hearing or the hearing officer may restrict or foreclose access by spectators to all or part of the proceedings if an overriding interest exists that outweighs the value of an open hearing. Examples of overriding interests may include: Preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety or privacy of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Convening authorities or hearing officers must conclude that no lesser methods short of closing the hearing can be used to protect the overriding interest in the case. Convening authorities or hearing officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a convening authority or hearing officer believes closing the hearing is necessary, the convening authority or hearing officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the record.

(9) *Victim's rights.* Any victim of the underlying offense for which the probationer received the suspended sentence, or any victim of the alleged offense that is the subject of the vacation hearing, has the right to reasonable, accurate, and timely notice of the vacation hearing. For purposes of this rule, the term ''victim'' is defined as an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense.''

Section 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) Mil. R. Evid. 304(c) is amended to read as follows:

''(c) *Corroboration of a Confession or Admission.*

(1) An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been admitted into evidence that would tend to establish the trustworthiness of the admission or confession.

(2) Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this independent evidence. If the independent evidence raises an inference of the truth of the admission or confession, then it may be considered as evidence against the accused. Not every element or fact contained in the confession or admission must be independently proven for the confession or admission to be admitted into evidence in its entirety.

(3) Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

(4) *Quantum of Evidence Needed.* The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the admission or confession. The amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(5) *Procedure.* The military judge alone is to determine when adequate evidence of corroboration has been received. Corroborating evidence must be introduced before the admission or confession is introduced unless the military judge allows submission of such evidence subject to later corroboration.''

(b) Mil. R. Evid. 311(a) is amended to read as follows:

''(a) *General rule.* Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if:

(1) The accused makes a timely motion to suppress or an objection to the evidence under this rule;

(2) the accused had a reasonable expectation of privacy in the person, place or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or

seizure under the Constitution of the United States as applied to members of the Armed Forces; and

(3) exclusion of the evidence results in appreciable deterrence for future Fourth Amendment violations and the benefits of such deterrence outweigh the costs to the justice system.''

(c) A new Mil. R. Evid. 311(c)(4) is inserted and reads as follows:

''(4) *Reliance on Statute.* Evidence that was obtained as a result of an unlawful search or seizure may be used when the official seeking the evidence acts in objectively reasonable reliance on a statute later held violative of the Fourth Amendment.''

(d) Mil. R. Evid. 414(d)(2)(A) is amended to read as follows:

''(A) any conduct prohibited by Article 120 and committed with a child, or prohibited by Article 120b.''

(e) Mil. R. Evid. 504 is amended to read as follows:

''Rule 504. Marital privilege

(a) *Spousal Incapacity.* A person has a privilege to refuse to testify against his or her spouse. There is no privilege under subdivision (a) when, at the time of the testimony, the parties are divorced, or the marriage has been annulled.

(b) *Confidential Communication Made During the Marriage.*

(1) *General Rule.* A person has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, any confidential communication made to the spouse of the person while they were married and not separated as provided by law.

(2) *Who May Claim the Privilege.* The privilege may be claimed by the spouse who made the communication or by the other spouse on his or her behalf. The authority of the latter spouse to do so is presumed in the absence of evidence of a waiver. The privilege will not prevent disclosure of the communication at the request of the spouse to whom the communication was made if that spouse is an accused regardless of whether the spouse who made the communication objects to its disclosure.

(c) *Exceptions.*

(1) *To Confidential Communications Only.* Where both parties have been substantial participants in illegal activity, those communications between the spouses during the marriage regarding the illegal activity in which they have jointly participated are not marital communications for purposes of the privilege in subdivision (b) and are not entitled to protection under the privilege in subdivision (b).

(2) *To Spousal Incapacity and Confidential Communications.* There is no privilege under subdivisions (a) or (b):

(A) In proceedings in which one spouse is charged with a crime against the person or property of the other spouse or a child of either, or with a crime against the person or property of a third person committed in the course of committing a crime against the other spouse;

(B) When the marital relationship was entered into with no intention of the parties to live together as spouses, but only for the purpose of using the purported marital relationship as a sham, and with respect to the privilege in subdivision (a), the relationship remains a sham at the time the testimony or statement of one of the parties is to be introduced against the other; or with respect to the privilege in subdivision (b), the relationship was a sham at the time of the communication; or

(C) In proceedings in which a spouse is charged, in accordance with Article 133 or 134, with importing the other spouse as an alien for prostitution or other immoral purpose in violation of 8 U.S.C. 1328; with transporting the other spouse in interstate commerce for prostitution, immoral purposes, or another offense in violation of 18 U.S.C. 2421–2424; or with violation of such other similar statutes under which such privilege may not be claimed in the trial of criminal cases in the United States district courts.

(d) *Definitions.* As used in this rule:

(1) ''A child of either'' means a biological child, adopted child, or ward of one of the spouses and includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is:

(A) an individual under the age of 18; or

(B) an individual with a mental handicap who functions under the age of 18.

(2) ''Temporary physical custody'' means a parent has entrusted his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody, nor is a written agreement required. Rather, the focus is on the parent's agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of his or her child for recurring care or during absences due to temporary duty or deployments.

(3) As used in this rule, a communication is ''confidential'' if made privately by any person to the spouse of the person and is not intended to be disclosed to third persons other than those reasonably necessary for transmission of the communication.''

(f) Mil. R. Evid. 801(d)(1)(B) is amended to read as follows:

''(B) is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or''

(g) The first sentence of Mil. R. Evid. 803(6)(E) is amended to read as follows:

''(E) the opponent does not show that the source of information or the method or circumstance of preparation indicate a lack of trustworthiness.''

(h) Mil. R. Evid. 803(7)(C) is amended to read as follows

''(C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.''

(i) The first sentence of Mil. R. Evid. 803(8)(B) is amended to read as follows:

''(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.''

(j) Mil. R. Evid. 803(10)(B) is amended to read as follows:

''(B) a counsel for the government who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the accused does not object in writing within 7 days of receiving the notice—unless the military judge sets a different time for the notice or the objection.''

Section 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows: Paragraph 110, Article 134—Threat, communicating, subparagraph c. is amended to read as follows:

''c. *Explanation.* For purposes of this paragraph, to establish that the communication was wrongful it is necessary that the accused transmitted the communication for the purpose of issuing a threat, with the knowledge that the communication would be viewed as a threat, or acted recklessly with regard to whether the communication would be viewed as a threat. However, it is not necessary to establish that the accused actually intended to do the injury threatened. Nor is the offense committed by the mere statement of intent to commit an unlawful act not involving injury to another. *See also* paragraph 109, Threat

or hoax designed or intended to cause panic or public fear.''

Section 4. Appendix 21, Analysis of Rules for Courts-Martial is amended as follows:

(a) Rule 306 is amended by inserting the following at the end:

''*2016 Amendment:* R.C.M. 306(b)(2) was added to implement Section 534(b) of the National Defense Authorization Act for Fiscal Year 2015, P.L. 113–291, 19 December 2014.''

(b) Rule 401 is amended by inserting the following at the end:

''*2016 Amendment:* The first paragraph of the R.C.M. 401(c) Discussion was added in light of the recommendation in the Response Systems to Adult Sexual Assault Crimes Panel's (RSP) June 2014 report for trial counsel to convey victims' preferences as to disposition to the convening authority. This discussion implements this recommendation by allowing Service regulations to determine the appropriate authority responsible for communicating the victims' views to the convening authority. The RSP was a congressionally mandated panel tasked to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses.''

(c) Rule 604 is amended by inserting the following at the end:

''*2016 Amendment:* The fourth paragraph of the R.C.M. 604(a) Discussion was added to align the Discussion with R.C.M. 705(d)(3).''

(d) Rule 907 is amended inserting the following at the end:

''*2016 Amendment:* R.C.M. 907(b) was amended in light of *United States* v. *Humphries,* 71 M.J. 209 (C.A.A.F. 2012), where the court held that a defective specification does not constitute structural error or warrant automatic dismissal.''

(e) Rule 910 is amended by inserting the following at the end:

''*2016 Amendment:* R.C.M. 910(f)(4)(C) was added in light of the recommendation in the Response Systems to Adult Sexual Assault Crimes Panel's (RSP) June 2014 report for victims to be consulted regarding a pretrial agreement. The RSP was a congressionally mandated panel tasked to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses.''

(f) Rule 1002 is amended by inserting the following at the end:

''*2016 Amendment:* R.C.M. 1002(b) was added to clarify the military's unitary sentencing concept. *See United States* v. *Gutierrez,* 11 M.J. 122, 123 (C.M.A. 1981). *See generally Jackson* v. *Taylor,* 353 U.S. 569 (1957).''

(g) Rule 1103(b) is amended by inserting the following immediately before the paragraph beginning with ''Subsection 2(C)'':

''*2016 Amendment:* R.C.M. 1103(b)(2)(B)(i) was amended to align the requirement for a verbatim transcript with special courts-martial jurisdictional maximum punishments.''

(h) Rule 1108 is amended by inserting the following at the end:

''*2016 Amendment:* The R.C.M. 1107(b) Discussion was amended to clarify that the limitations contained in Article 60 apply to the convening authority or other commander acting under Article 60.''

(i) Rule 1109 is amended by inserting the following at the end:

''*2016 Amendment:* R.C.M. 1109 was revised in light of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, amendments to Article 32 and the resulting changes to R.C.M. 405 as promulgated by Executive Order 13696. It was further revised to clarify throughout the rule that the purpose of vacation hearings is to determine whether there is probable cause that the probationer violated any condition of the probationer's suspension.''

Section 5. Appendix 22, Analysis of the Military Rules of Evidence is amended as follows:

(a) Rule 304(c) is amended by inserting the following at the end:

''*2016 Amendment:* This change was adopted to bring military practice in line with federal practice. *See Opper* v. *United States,* 348 U.S. 84 (1954), and *Smith* v. *United States,* 348 U.S. 147 (1954).''

(b) Rule 311 is amended by inserting the following at the end:

''*2016 Amendment:* Rule 311(a)(3) was added to incorporate the balancing test limiting the application of the exclusionary rule set forth in *Herring* v. *United States,* 555 U.S. 135 (2009), where the Supreme Court held that to trigger the exclusionary rule, ''the deterrent effect of suppression must be substantial and outweigh any harm to the justice system.'' *Id.* at 147; *see also United States* v. *Wicks,* 73 M.J. 93, 104 (C.A.A.F. 2014) (''The exclusionary rule applies only where it results in appreciable deterrence for future Fourth Amendment violations and where the benefits of deterrence must outweigh the costs'' (internal quotation marks omitted)).

Rule 311(c)(4) was added to adopt the expansion of the ''good faith'' exception to the exclusionary rule set forth in *Illinois* v. *Krull,* 480 U.S. 340 (1987), where the Supreme Court held that the exclusionary rule is inapplicable to evidence obtained by an officer acting in objectively reasonable reliance on a statute later held violative of the Fourth Amendment.''

(c) Rule 504 is amended by inserting the following at the end:

''*2016 Amendment:* References to gender were removed throughout the Rule. Rule 504(c)(1) was amended to make clear that the exception only applies to confidential communications. The definition of ''confidential communications'' was moved to Rule 504(d).''

(d) Rule 801 is amended by inserting the following at the end:

''*2016 Amendment.* Rule 801(d)(1)(B)(ii) was added in accordance with an identical change to Federal Rule of Evidence 801(d)(1)(B). The amendment retains the requirement set forth in *Tome* v. *United States,* 513 U.S. 150 (1995): that under Rule 801(d)(1)(B), a consistent statement offered to rebut a charge of recent fabrication of improper influence or motive must have been made before the alleged fabrication or improper inference or motive arose. The intent of the amendment is to extend substantive effect to consistent statements that rebut other attacks on a witness—such as the charges of inconsistency or faulty memory. The amendment does not change the traditional and well-accepted limits on bringing prior consistent statements before the factfinder for credibility purposes. It does not allow impermissible bolstering of a witness. As before, prior consistent statements under the amendment may be brought before the factfinder only if they properly rehabilitate a witness whose credibility has been attacked. As before, to be admissible for rehabilitation, a prior consistent statement must satisfy the strictures of Rule 403. As before, the trial court has ample discretion to exclude prior consistent statements that are cumulative accounts of an event. The amendment does not make any consistent statement admissible that was not admissible previously—the only difference is that prior consistent statements otherwise admissible for rehabilitation are now admissible substantively as well.''

(e) The fourth paragraph of Rule 803(6), beginning with, ''Paragraph 144 d'' is amended to read as follows:

''Paragraph 144 *d* prevented a record ''made principally with a view to prosecution, or other disciplinary or legal action;'' from being admitted as a business record.''

(f) Rule 803(6) is amended by inserting the following at the end:

''*2016 Amendment:* Rule 803(6)(E) was modified based on the amendment to Fed. R. Evid. 803(6), effective 1 December 2014. It clarifies that if the proponent of a record has established the requirements of the exception, then the burden is on the opponent to show a lack of trustworthiness. In meeting its burden, the opponent is not necessarily required to introduce affirmative evidence of untrustworthiness. It is appropriate to impose the burden of proving untrustworthiness on the opponent, as the basic admissibility requirements are sufficient to establish a presumption that the record is reliable.''

(g) Rule 803(7) is amended by inserting the following at the end:

''*2016 Amendment:* Rule 803(7)(C) was modified based on the amendment to Fed. R. Evid. 803(7), effective 1 December 2014. It clarifies that if the proponent has established the stated requirements of the exception then the burden is on the opponent to show a lack of trustworthiness.''

(h) Rule 803(8) is amended by inserting the following at the end:

''*2016 Amendment:* Rule 803(8)(B) was modified based on the amendment to Fed. R. Evid. 803(8)(B), effective 1 December 2014. The amendment clarifies that if the proponent has established that the record meets the stated requirements of the exception then the burden is on the opponent to show a lack of trustworthiness as public records have justifiably carried a presumption of reliability. The opponent, in meeting its burden is not necessarily required to introduce affirmative evidence of untrustworthiness. A determination of untrustworthiness necessarily depends on the circumstances.''

(i) Rule 803(8) is amended by deleting the following:

''Rule 803(8)(C) makes admissible, but only against the Government, ''factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.'' This provision will make factual findings made, for example, by an Article 32 Investigating Officer or by a Court of Inquiry admissible on behalf of an accused. Because the provision applies only to ''factual findings,'' great care must be taken to distinguish such factual determinations from opinions, recommendations, and incidental inferences.''

(j) Rule 803(10) is amended by inserting the following at the end:

''*2016 Amendment:* Rule 803(10) was modified based on the amendment to Fed. R. Evid. 803(10), effective 1 December 2013. The amendment of the Federal Rules was in response to *Melendez-Diaz* v. *Massachusetts,* 557 U.S. 305 (2009). The *Melendez-Diaz* Court declared that a testimonial certificate could be admitted if the accused is given advance notice and does not timely demand the presence of the official who prepared the certificate. The amendment to Rule 803(10) is taken largely from the amendment to the Fed. R. Evid. 803(10) but has been modified to adapt it to the military environment.''

Section 6. Appendix 23, Analysis of Punitive Articles is amended as follows:

Paragraph 110, Article 134—Threat, communicating, is amended by inserting the following at the end:

''*2016 Amendment:* Subparagraph (c) was amended in light of *Elonis* v. *United States,* 135 S. Ct. 2001 (2015).

Section 7. The Discussion to Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) A new Discussion is inserted after R.C.M. 306(b)(2)(B) and before R.C.M. 306(b)(2)(C) and reads as follows:

''Any preferences as to disposition expressed by the victim regarding jurisdiction, while not binding, should be considered by the cognizant commander prior to making initial disposition.

The cognizant commander should continue to consider the views of the victim as to jurisdiction until final disposition of the case.''

(b) Section (H)(ii) of the Discussion immediately following 307(c)(3) is amended to read as follows:

''(ii) *Victim.* In the case of an offense against the person or property of a person, the first name, middle initial, and last name or first, middle, and last initials of such person should be alleged, if known. If the name of the victim is unknown, a general physical description may be used. If this cannot be done, the victim may be described as ''a person whose name is unknown.'' Military rank or grade should be alleged, and must be alleged if an element of the offense, as in an allegation of disobedience of the command of a superior officer. If the person has no military position, it may otherwise be necessary to allege the status as in an allegation of using provoking words toward a person subject to the code. *See* paragraph 42 of Part IV. Counsel for the government should be aware that if initials of victims are used, additional notice of the identity of victims will be required.''

(c) The Discussion immediately following R.C.M. 401(c) is amended by inserting the following new paragraph at the beginning of the Discussion:

''When an alleged offense involves a victim, the victim should, whenever practicable, be provided an opportunity to express views regarding the disposition of the charges. The commander with authority to dispose of charges should consider such views of the victim prior to deciding how to dispose of the charges and should continue to consider the views of the victim until final disposition of the case. A ''victim'' is an individual who is alleged to have suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration.''

(d) The Discussion immediately after R.C.M. 604(a) is amended by inserting the following new paragraph between the third and fourth paragraphs:

''When an alleged offense involves a victim, the victim should, whenever practicable, be provided an opportunity to express views regarding the withdrawal of any charges or specifications in which the victim is named. The convening authority or other individual authorized to act on the charges should consider such views of the victim prior to withdrawing said charges or specifications and should continue to consider the views of the victim until final disposition of the case. A ''victim'' is an individual who is alleged to have suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration.''

(e) A new Discussion section is inserted immediately following R.C.M. 705(c)(2)(C) and reads as follows:

''A promise to provide restitution includes restitution to a victim of an alleged offense committed by the accused in accordance with Article 6b(a)(6).''

(f) The Discussion section following R.C.M. 907(b)(1)(B) is deleted.

(g) The Discussion section following R.C.M. 910(f)(4) is amended to read as follows:

''If the plea agreement contains any unclear or ambiguous terms, the military judge should obtain clarification from the parties. If there is doubt about the accused's understanding of any terms in the agreement, the military judge should explain those terms to the accused. *See also* subsection (e) of this rule. The victim is not a party to the agreement.''

(h) The Discussion immediately after the sole paragraph in R.C.M. 1002 is

moved to immediately after R.C.M. 1002(b).

(i) The Discussion section following R.C.M. 1105(b)(2)(C) is amended to read as follows:

''For example, post-trial conduct of the accused, such as providing restitution to the victim of the accused's offense in accordance with Article 6b(a)(6), or exemplary behavior, might be appropriate.''

(j) The Discussion section following R.C.M. 1107(b)(1) is amended to read as follows:

''The action is taken in the interests of justice, discipline, mission requirements, clemency, and other appropriate reasons. If errors are noticed by the convening authority, the convening authority may take corrective action under this rule to the extent that the convening authority is empowered by Article 60.''

(k) A new Discussion section is inserted immediately following R.C.M. 1107(c)(2) and reads follows:

''The military follows a unitary sentencing model where the court-martial may impose only a single, unitary sentence covering all of the offenses for which there was a finding of guilty; courts-martial do not impose sentences per offense. *See* R.C.M. 1002(b). Therefore, where the adjudged sentence for the case includes dismissal, dishonorable discharge, bad-conduct discharge, or confinement for more than six months, the sentence adjudged for the entire case, and not per offense, controls when deciding what actions are available to the convening authority.''

(l) A new Discussion section is inserted immediately following R.C.M. 1107(e)(1)(C)(ii) and reads as follows:

''Per Article 60(c)(4)(A) and subsection (d)(1)(A) and (B) of this rule, disapproval of the sentence is not authorized where a court-martial's adjudged sentence for the case includes confinement for more than six months or a sentence of dismissal, dishonorable discharge, or bad- conduct discharge. In such cases, the convening authority may not order a rehearing because disapproval of the sentence is required for a convening authority to order a rehearing. *See* Article 60(f)(3).''

(m) The Discussion following R.C.M. 1107(e)(1)(B)(iii) is deleted.

(n) A new Discussion is inserted after the new R.C.M. 1107(2)(B)(iii) and reads as follows:

''A sentence rehearing, rather than a reassessment, may be more appropriate in cases where a significant part of the government's case has been dismissed. The convening authority may not take any actions inconsistent with directives of superior competent authority. Where that directive is unclear, appropriate clarification should be sought from the authority issuing the original directive. For purposes of R.C.M. 1107(e)(1)(B), the term ''superior competent authority'' does not include superior convening authorities but rather, for example, the appropriate Judge Advocate General or a court of competent jurisdiction.''

(o) A new Discussion is inserted after the new R.C.M. 1107(2)(C)(ii) and reads as follows:

''For example, if proof of absence without leave was by improperly authenticated documentary evidence admitted over the objection of the defense, the convening authority may disapprove the findings of guilty and sentence and order a rehearing if there is reason to believe that properly authenticated documentary evidence or other admissible evidence of guilt will be available at the rehearing. On the other hand, if no proof of unauthorized absence was introduced at trial, a rehearing may not be ordered.''

(p) A new paragraph is added to the end of the Discussion immediately following R.C.M. 1108(b) and reads as follows:

''The limitations on suspension of the execution of any sentence or part thereof contained in Article 60 apply to a decision by a convening authority or other person acting on the case under Article 60, as opposed to an individual remitting or suspending a sentence pursuant to a different authority, such as Article 74. *See* R.C.M. 1107(d).''

(q) A new Discussion section is inserted immediately following the new R.C.M. 1109(h)(4) and reads as follows:

''The following oath may be given to witnesses:

''Do you (swear) (affirm) that the evidence you give shall be the truth, the whole truth, and nothing but the truth (so help you God)?''

The hearing officer is required to include in the record of the hearing, at a minimum, a summary of the substance of all testimony.

All hearing officer notes of testimony and recordings of testimony should be preserved until the end of trial.

If during the hearing any witness subject to the Code is suspected of an offense under the Code, the hearing officer should comply with the warning requirements of Mil. R. Evid. 305(c), (d), and, if necessary, (e).

Bearing in mind that the probationer and government are responsible for preparing and presenting their cases, the hearing officer may ask a witness questions relevant to the limited purpose of the hearing. When questioning a witness, the hearing officer may not depart from an impartial role and become an advocate for either side.''

Dated: October 14, 2015.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–26485 Filed 10–16–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Agency Information Collection Activities: Proposed Collection; Comment Request; Personal Identity Verification (PIV) Request

AGENCY: DOE-Bonneville Power Administration (BPA)

ACTION: 60-Day notice of submission of information collection approval from the Office of Management and Budget (OMB) and request for comments.

SUMMARY: BPA is seeking comments on a proposed submission to OMB for clearance of a collection of information under the provisions of the Paperwork Reduction Act of 1995. BPA collects information necessary to verify the personal identity of potential employees and contractors. The information assists BPA in the performance of identity verification and registration prior to issuance of a DOE Security Badge and ensures compliance with Homeland Security Presidential Directive–12 (HSPD–12), a mandatory, Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors.

DATES: Comments must be received on or before December 18, 2015.

ADDRESSES: Written comments may be submitted by first class mail to: Christopher M. Frost, CGC–7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232, or by email: *IGLM@bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance Officer, Christopher M. Frost, at the mailing address above or by email: *IGLM@bpa.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

I. Abstract

A recent internal audit of PRA compliance determined that this existing collection does not have an OMB clearance number. BPA is seeking approval for an information collection on personally identifiable information (PII) of new and existing Federal and

contract personnel that will be used during the identity verification process. This information helps BPA determine eligibility for employment and access to BPA and DOE facilities. The relevant form, BPA F 5632.09e, collects name, home and email address, date and place of birth, Social Security number, and relevant Federal or contract work history. No third party notification or public disclosure burden is associated with this collection.

II. Request for Comments

BPA requests that you send your comments to the locations listed in the **ADDRESSES** section above. Your comments should include:

(a) The necessity of the information collection for the proper performance of BPA's functions, including whether the information will have practical utility;

(b) The accuracy of our estimate of the burden (hours and costs) of the collection of the information;

(c) Ways BPA could enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways BPA could minimize the burden of the collection of the information, such as through the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid Office of Management and Budget control number. Comments may be made available to the public, including your address, phone number, and email address. You may request that BPA withholds your personally identifiable information, but there is no guarantee that BPA will be able to do so.

III. Data

OMB Control Number: New.

Information Collection Request Title: Personal Identity Verification (PIV) Request.

Type of Request: New.

Respondents: BPA employees (Federal and contract) and applicants.

Annual Estimated Number of Respondents: 1350.

Annual Estimated Number of Total Responses: 1350.

Average Minutes per Response: 3.

Annual Estimated Number of Burden Hours: 67.5.

Annual Estimated Reporting and Recordkeeping Cost Burden: $0.

Issued in Portland, Oregon, on October 8, 2015.

Christopher M. Frost,

Agency Records Officer, FOIA/Privacy Officer, Governance and Internal Controls.

[FR Doc. 2015–26470 Filed10–16–15; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9934–54–Region 2]

New York State Prohibition of Discharges of Vessel Sewage; Notice of Final Determination; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination; correction.

SUMMARY: The Environmental Protection Agency (EPA) published a document in the **Federal Register** of September 9, 2015, regarding the petition by New York State to establish a No Discharge Zone for the New York State waters of Seneca Lake, Cayuga Lake and the Seneca River. The document contained an incomplete sentence.

FOR FURTHER INFORMATION CONTACT: Moses Chang, (212) 637–3867, email address: *chang.moses@epa.gov.*

Correction

In the **Federal Register** of September 9, 2015, FR Document 2015–22694 [FRL–9933–54–Region 2], on page 54281, in the second column, in line 9 from the bottom, the following sentence: ''These comments are consistent with New York's determination of need.'' is corrected to read: ''Therefore, while these comments are consistent with New York's determination of need, that determination is beyond the scope of EPA's review.''

Dated: September 10, 2015.

Moses Chang,

R2 No Discharge Zone Coordinator, Aquatic Biologist, EPA R2, Clean Water Division.

[FR Doc. 2015–26484 Filed 10–16–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0528; FRL–9935–85–ORD]

Board of Scientific Counselors Homeland Security Subcommittee; Notification of Public Teleconference Meeting and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public teleconference meeting and public comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the Board of Scientific Counselors (BOSC) Homeland Security Subcommittee will host a public teleconference meeting on Tuesday, November 3, 2015, from 12 noon to 2:00 p.m. Eastern Time. The primary discussion will focus on the draft report summarizing recommendations from the August 25–27, 2015, meeting and subsequent public teleconference on October 1, 2015. There will be a public comment period from 1:45 p.m. to 2 p.m. Eastern Standard Time (EST). Members of the public are encouraged to provide comments relevant to the topics of the meeting.

For additional information about registering to attend the meeting or to provide public comment, please see the *Registration* and **SUPPLEMENTARY INFORMATION** sections below. Due to a limited number of telephone lines, attendance will be on a first-come, first-served basis. Pre-registration is required. Registration for the teleconference meeting closes at 12 noon EST, Friday, October 30, 2015. The deadline to sign up to speak during the public comment period, or to submit written public comment, is also 12 noon, Friday, October 30, 2015.

DATES: The BOSC Homeland Security Subcommittee teleconference meeting on Tuesday, November 3, 2015, will begin promptly at 12 noon Eastern Time.

Registration: In order to participate on the teleconference you must register at the following site: *https://www.eventbrite.com/e/us-epa-bosc-homeland-security-subcommittee-conference-call-registration-18979090972.* Once you have completed the online registration you will be contacted and provided with call-in instructions.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the teleconference meeting should be directed to Tom Tracy, Designated Federal Officer, Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., (MC 8104 R), Washington, DC 20460; by telephone at 202–564–6518; or via email at *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: The Charter of the BOSC states that the advisory committee shall provide

independent advice to the Administrator on technical and management aspects of the Office of Research and Development's research program. Additional information about the BOSC is available at: *http://www2.epa.gov/bosc.*

Oral Statements: Members of the public who wish to provide oral comment during the Tuesday, November 3, 2015, public teleconference meeting must pre-register by 12 noon, Eastern Time on Friday, October 30, 2015 at: *https://www.eventbrite.com/e/us-epa-bosc-homeland-security-subcommittee-conference-call-registration-18979090972.* Individuals or groups making remarks during the public comment period will be limited to five (5) minutes. To accommodate the number of people who want to address the BOSC Homeland Security Subcommittee, only one representative of a particular community, organization, or group will be allowed to speak.

Written Statements: Written comments for the public meeting must be received by 12 noon, Eastern Time on Friday, October 30, 2015, and will be included in the materials distributed to the BOSC Homeland Security Subcommittee prior to the teleconference. Written comments should be sent to Tom Tracy, Environmental Protection Agency, via email at *tracy.tom@epa.gov* or by mail to 1200 Pennsylvania Avenue NW., (MC 8104 R), Washington, DC 20460 or submitted through regulations.gov, Docket ID No. EPA–HQ–ORD–2015–0528.

Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Tom Tracy, at 202–564–6518 or via email at *tracy.tom@epa.gov.* To request special accommodations for a disability, please contact Tom Tracy no later than Friday, October 30, 2015 to give the Environmental Protection Agency sufficient time to process your request. All requests should be sent to the address, email, or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: October 8, 2015.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2015–26483 Filed 10–16–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0293; FRL–9935–46–OAR]

Notice of Opportunity To Comment on an Analysis of the Greenhouse Gas Emissions Attributable to Production and Transport of Jatropha Curcas Oil for Use in Biofuel Production

Correction

In Notice Document 2015–26039, appearing on pages 61406–61419, in the Issue of Tuesday, October 13, 2015, make the following correction:

On page 61406, in the second column, under the heading ''**DATES:**'' the entry ''October 13, 2015'' is corrected to read ''November 12, 2015''.

[FR Doc. C1–2015–26039 Filed 10–16–15; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1101]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

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

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 18, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

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

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

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1101.

Title: Children's Television Requests for Preemption Flexibility.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 15 respondents; 15 responses.

Estimated Time per Response

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 150 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

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

Needs and Uses: On September 26, 2006, the Commission adopted a Second Order on Reconsideration and Second Report and Order in MM Docket 00–167, FCC 06–143, In the Matter of Children's Television Obligations of Digital Television Broadcasters. The Second Order addressed several matters relating to the obligation of television licensees to provide educational programming for children and the obligation of television licensees and cable operators to protect children from excessive and inappropriate commercial messages. Among other things, the Second Order adopts a children's programming preemption policy. This

policy requires all networks requesting preemption flexibility to file a request with the Media Bureau by August 1 of each year. The request identifies the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change. Preemption flexibility requests are not mandatory filings. They are requests that may be filed by networks seeking preemption flexibility.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015–26431 Filed 10–16–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 14–252; GN Docket No. 12–268; WT Docket No. 12–269; DA 15–1129]

Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The *Auction 1000 Prohibited Communications Guidance PN* addresses the application of the Federal Communications Commission (Commission) rules prohibiting certain communications during the broadcast television spectrum incentive auction and related Auction 1000 issues. This document also clarifies certain aspects of the rules that apply to applicants in both the reverse and the forward auctions.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: Erik Salovaara at (202) 418–0660 or *Erik.Salovaara@fcc.gov* for informal guidance on the applicability of the prohibited communications rules.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 1000 Prohibited Communication Guidance Pubic Notice (PN),* AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 14–252, DA 15–1129, released on October 6, 2015. The complete text of this document is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC's Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Auction 1000 Prohibited Communications Guidance PN addresses the application of the Commission's rules prohibiting certain communications during the broadcast television spectrum incentive auction, Auction 1000, and related issues. The rules apply to applicants in both the reverse and the forward auction. In response to numerous questions on this topic, the Commission's Wireless Telecommunications Bureau (Bureau) also takes this opportunity to clarify certain aspects of the rules. Finally, the Bureau discusses the applicability of the antitrust laws and administrative issues.

II. The Reverse Auction Rule Prohibiting Certain Communications

A. Background

2. 47 CFR 1.2205(b) provides that, subject to specified exceptions, ''beginning on the deadline for submitting applications to participate in the reverse auction and until the results of the incentive auction are announced by public notice, all full power and Class A broadcast television licensees are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any other full power or Class A broadcast television licensee or to any forward auction applicant.'' For purposes of the rule, a full power or a Class A broadcast television licensee includes all controlling interests in the licensee, and all officers, directors, and governing board members of the licensee. With respect to the bids and bidding strategies that are the focus of the rule, ''an incentive auction applicant'' is the party identified as the applicant in an application to participate in either the reverse or forward auction. A forward auction applicant includes all controlling interests in the entity applying to participate in the forward auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity. Generally, a party that submits an application becomes an applicant under this rule at the deadline for submitting applications to participate in the reverse auction, and for purposes of the rule that party's status does not change based on subsequent developments during the auction process. The prohibition on communicating directly or indirectly includes public disclosures as well as private communications.

3. 47 CFR 1.2205(b) applies solely to communications that directly or indirectly communicate an incentive auction applicant's bids or bidding strategies. The Commission has emphasized that the rule is limited in scope and only prohibits disclosure of information that affects, or has the potential to affect, bids and bidding strategies. Business discussions and negotiations that are *unrelated* to bids and bidding strategies and that do not convey information about bids and bidding strategies are not prohibited by the rule.

4. There are three exceptions to 47 CFR 1.2205(b) under which communications regarding bids or bidding strategies are permissible. Under the first, such communications between covered broadcast licensees are permissible if the licensees share a common controlling interest, director, officer, or governing board member as of the deadline for submitting applications to participate in the reverse auction. The second exception permits such communications between a broadcast licensee and a forward auction applicant if a controlling interest, director, officer or governing board member of the broadcast licensee is also a controlling interest, director, officer, or holder of any 10 percent or greater ownership interest in the forward auction applicant as of the deadline for submitting application to participate in the reverse auction. The third exception permits such communications between broadcast licensees that are parties to a channel sharing agreement that was executed prior to the deadline for submitting applications to participate in the reverse auction and that was disclosed on an application to participate in the reverse auction.

B. Discussion

5. Overview. The Commission has previously explained that the rule prohibiting certain communications should result in minimal intrusion into broadcasters' routine business practices, since covered television licensees may structure their business practices to avoid violations. The Bureau recognizes that broadcast licensees engage in a myriad of business arrangements with one another, or with affiliated entities, that are not directly related to bids and bidding strategies in the incentive auction. Such arrangements include, but are not limited to, network affiliation

agreements, retransmission consent agreements, and syndicated exclusivity arrangements, as well as tower sharing or other agreements related to shared physical facilities. Broadcasters also routinely engage in financial undertakings that may be affected by their auction activities, such as raising funds from lenders or, in the case of noncommercial broadcasters, from the public or underwriters. The Bureau provides guidance regarding the applicability of the reverse auction rule prohibiting certain communications during the ''quiet period'' covered by the rule to enable broadcasters to carry on business as usual to the fullest extent possible during the quiet period while complying with the rule.

6. Communicating Merely Whether a Licensee Has or Has Not Applied to Participate Does Not Violate the Rule. Communicating directly or indirectly that a licensee has or has not filed an application to participate in the reverse auction does not constitute communication regarding an applicant's bids or bidding strategies and therefore does not violate the reverse auction rule prohibiting certain communications. Filing an application is a prerequisite to bidding in the reverse auction, but the mere fact that an application has been filed does not require the applicant to bid, nor does it reveal an applicant's specific bids or bidding strategies, *e.g.,* the applicant's selected bid options, an applicant's decision to switch bid options during the course of the bidding, or an applicant's decision to drop out of the bidding.

7. Accordingly, a licensee may explain in the course of its business communications that it has applied to participate in the auction, for example, as the basis for seeking a short-term extension of an agreement rather than a full term renewal or in communications with legislators. Alternatively, a licensee seeking a multi-year contract may state that it has not applied. Noncommercial broadcasters may refer to their decision to apply or not to apply to participate in the auction when engaging in fundraising activities, including public pledge drives and private discussions with existing and potential donors. Such communications would not violate the rule. Moreover, while another broadcast licensee or forward auction applicant might attempt to infer specific bids or bidding strategies based solely on a licensee's status as an applicant, such an inference without more support does not constitute a communication regarding the applicant's bids or bidding strategies.

8. Communicating How a Licensee Will Participate in the Auction Is Prohibited by the Rule. In contrast to communications solely about whether or not a licensee has applied to participate in the auction, communications regarding the specific nature of a licensee's participation, including without limitation the bid options or bidding actions that have been or will be selected or taken, may convey bids and bidding strategy and are therefore prohibited by the rule after the quiet period commences. Unlike the submission of an application, such communications convey information about specific bids or bidding strategies; some of these may represent irrevocable obligations or commitments by an applicant. The rule prohibits such communications whether direct or indirect, express or implied. An applicant that communicates details regarding its application or bidding actions, such as indicating which option or options it has selected or stating that it has dropped out of bidding, may be disclosing its bids and bidding strategy in violation of the rule. A communication concerning the existence or details of a channel sharing agreement during the quiet period is also potentially a disclosure in violation of the rule. The Commission recognizes that broadcasters will continue operations during the auction and any broadcaster, regardless of its bids or bidding strategies, may need to do so indefinitely after the auction. Accordingly, a broadcaster communicating that it will continue broadcasting does not thereby disclose any bids or bidding strategies, whether or not it is an applicant. For instance, a noncommercial station that states that it has applied to participate in the incentive auction and subsequently undertakes a pledge drive could lead others to draw an inference that the station intends to either channel share or move to a new band, or perhaps anticipates that it will not accept the prices ultimately offered in the auction. Merely undertaking the pledge drive does not, however, create a clear or reliable inference with respect to its particular strategy, and in connection with the pledge drive the station may state publicly that it will continue broadcasting after the auction.

9. Although communications regarding whether or not a broadcaster has applied to participate in the auction are permissible under the rule, licensees should take care when communicating about their applicant or non-applicant status that their communications does not convey or appear to convey information about specific bids or bidding strategies. For example, a communication that a broadcaster ''is not bidding'' in the auction, in contrast to ''is not an applicant,'' could constitute an apparent violation of the rule—and create issues with respect to any failure to make a violation report.

10. Routine Business Communications Do Not Violate the Rule if They Do Not Convey Bids or Bidding Strategies. If no prohibited communications occur during normal course transactions, other information communicated in the course of such transactions would not be considered communications regarding an applicant's bids or bidding strategies. Absent express statements of bids or bidding strategies, communications regarding legitimate, non-auction-related business topics are unlikely to support reliable inferences by other covered entities regarding bids or bidding strategies. While another broadcaster or forward auction applicant might attempt to infer bids or bidding strategies based on communications regarding a licensee's decision whether or not to apply to bid in the auction, circumstances make it unlikely that anyone will be able to reliably infer a covered broadcast licensee's detailed bids or bidding strategies from communications on other topics. While a bidder cannot control what inferences another covered entity may draw from the bidder's communication regarding whether or not it has applied to bid in the auction, *the bidder's* use of inferences or other indirect communication to convey information regarding bids or bidding strategy could constitute an apparent violation of the rule. So, for example, an applicant's statements or actions premised on continuing broadcast operations do not necessarily support an inference about the licensee's bids or bidding strategies in the auction. Conversely, a licensee might consider near term operational changes for any of several reasons, including auction-related ones (such as bidding to go off-air and cease operations, bidding to go off air to share a channel, changing its current operations to host another station), or for other reasons completely unrelated to the auction (such as plans to sell the station or change programming).

11. Moreover, no one can know with certainty what the outcome of the auction will be. Accordingly, no licensee can count on a bid being accepted, whether the bid is to go off-air and cease operations, to go off-air to share a channel, or to move to a new band. Non-applicants can count, of

course, on the fact that they will not relinquish spectrum usage rights in the auction. But even non-applicants may be subject to channel reassignment in the repacking process and cannot rule out the possibility of a sale or other transfer of their license in the wake of the auction. Consequently, a covered broadcaster that takes care not to communicate expressly about its bids or bidding strategies should be able to communicate with another covered party as needed for non-auction-related business purposes, even during the prohibition period, without violating the rule.

12. Communications With Third Parties. The prohibited communications rule prohibits only communications among covered parties (that is, eligible broadcast television licensees and forward auction applicants), not necessarily communications to third parties. During the period the prohibition on certain communications is in effect, covered parties may want or need to communicate bids or bidding strategies to third parties such as counsel, consultants or lenders. The rule does not prohibit such communications, provided that the covered entity takes any steps necessary to prevent the third party from becoming a conduit for communicating bids or bidding strategies to other covered parties.

13. Commission precedent provides guidance for how a covered party can guard against a third party becoming a conduit for prohibited communications to other covered parties. For instance, a licensee might require a third party, such as a lender, to sign a non-disclosure agreement before the licensee communicates any information regarding bids or bidding strategy to the third party. This approach might be useful where the third party needs to know the licensee's bids or bidding strategies but will not be advising other covered parties about bids or bidding strategies. For third parties that may advise multiple licensees on bids or bidding strategies, such as attorneys or auction consultants, firewalls and other compliance procedures should be implemented to help prevent such third parties from becoming conduits for the communication of bids or bidding strategies of one covered party to another.

14. Information firewalls or equivalent procedures are not an absolute defense against an alleged violation of the prohibited communications rule. As the Bureau has explained, however, such procedures are strongly encouraged because demonstrating that precautionary actions were taken places the respondent to claims of a violation in a stronger legal position. At the very least, claims of negligent ignorance of the situation can be rejected with some dispatch. In the *Nevada Wireless* case, for example, the parties did not certify in their application what measures had been taken to prevent communications between two attorneys in the same firm when each was listed as an authorized bidder by two different applicants. *See Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM–CO Economic Area (EA 155) Frequency Band A,* Memorandum Opinion and Order, DA 98–1137. After a claim was made that the applicants engaged in prohibited communications, an investigation was conducted. The parties produced sworn testimony, including a statement that a ''Chinese Wall'' was constructed between relevant attorneys at the firm. In addition, there was undisputed testimony that the attorney for one of the applicants was listed as a bidder solely in the event of emergency and in fact never learned any bidding information from the applicant. Even with such a record, the Bureau also looked at the bidding patterns in the auction before concluding that the parties did not coordinate their bidding.

15. Based in part on the foregoing precedent, the Mass Media Practice Committee (MMPC) of the Federal Communications Bar Association contends that an individual attorney or law firm may be informed of bids and bidding strategies by multiple clients covered by the reverse auction rule without becoming a conduit for prohibited communications so long as those attorneys do not reveal such information provided by one client to another client. The MMPC further asserts that the canons of ethics applicable to attorneys should provide the Commission with sufficient comfort that the effectiveness of its anti-collusion rule would not be compromised by attorneys possessing bids or bidding strategy information with respect to more than one client. The Bureau disagrees with MMPC's suggestion that the fact that an individual or law firm is subject to a canon of ethics should be sufficient, without more, to demonstrate that no violation has occurred. Other professionals also have raised this issue. *See, e.g., Ex Parte Filing of Terence P. Dunn, GN Docket 12–268 (filed Sept. 22, 2015).* This guidance applies to those other professionals as well. Other suggestions, *e.g.,* to revise the prohibited communication rule, delay the start of the auction, and hold a second auction for non-commercial stations, would require Congressional or Commission action and, therefore, exceed the scope of this Public Notice. For the same reasons, the Bureau declines proposals by J.H. Snider to revise the rules in various ways, *e.g.,* requiring additional personal certifications from chief officers of licensees and banning any and all communications among stations in the same local TV market. *See J.H. Snider Comments, AU Docket No. 14–252, at 1 (filed Feb. 24, 2015).* Under Commission precedent, the fact that an individual or law firm is subject to a canon of ethics will not, by itself, suffice to demonstrate that no violation has occurred or could have occurred. The Bureau notes that while a law firm taking appropriate precautions may represent more than one covered licensee that has bids or bidding strategies, in the case of an individual the objective precautionary measure of a firewall is not available. Thus, an individual possessing information regarding the bids and bidding strategies of more than one covered party could provide advice to another covered party that is influenced by the information he or she possesses, perhaps unintentionally, thereby resulting in a violation of the rule. The canons of ethics would not necessarily prevent this from happening. Whether a prohibited communication has taken place in a given case will depend on all of the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction. The Bureau cautions that an individual practitioner that holds bids or bidding information of more than one covered party presents a greater risk of engaging in such a communication.

16. Disclosures Required by Other Laws. Representatives of some potential reverse auction applicants have raised the concern that legal obligations to disclose information could result in a violation of the prohibited communications rule. For example, they have raised the concern that a non-commercial broadcaster might be required by state or local sunshine laws to publicly disclose its decision making, financial status, or operational plans, all of which might include reverse auction bids or bidding strategies. Given the limited duration of the prohibition period imposed by the rule and the customary sunshine law exemptions with respect to sensitive business information, however, such concerns may not be realized. If a licensee can

avoid communications that might violate the rule, it should refrain from those communications. In the event that a licensee believes that a particular disclosure required by law or regulation in fact will result in a violation of the rule, the Commission strongly encourage applicants to consult with the Commission staff in the Auctions and Spectrum Access Division before making the disclosure.

17. Reporting by the News Department of a Broadcast Licensee. As part of its operations, broadcast licensees often report news to the public. In that role, a licensee's reporter-employee might obtain information regarding the licensee's or another covered party's bids and bidding strategies to be used in a news story. The Bureau will not automatically impute a reporter's dissemination of the licensee's bids and bidding strategy, or the bids or bidding strategies of other incentive auction applicants, to the licensee. In determining whether to impute to the licensee the reporter's dissemination of such information, the Bureau will consider all of the facts and circumstances, including the existence of separation between a licensee's management and editorial decision-making functions. Covered entities can limit their potential risk by undertaking careful and comprehensive compliance education for their employees in advance of the auction, particularly for those employees with access to information about bids and bidding strategies, and establish internal safeguards to limit the availability of this information to those with a need to know. This approach provides some certainty to covered entities and is consistent with First Amendment objectives.

18. Communicating Pursuant to Exceptions to the Prohibition. Licensees that may communicate with one or more other covered parties under the exceptions to the reverse auction rule prohibiting certain communications must take care that their communications related to bids or bidding strategies with particular parties fall within the scope of the exception. Thus, consistent with the Commission's intent in establishing the exception that channel sharing partners should be able to fully engage as various options are presented during the auction process, bidding-related communications are permitted solely between the specific licensees covered by a particular channel sharing arrangement (CSA) that is submitted with one of the licensee's auction applications, and only with regard to the stations involved in the arrangement. A broadcast licensee owning multiple licenses must execute separate CSAs for each of its stations that will be channel sharing with a different, not commonly owned, licensee. Further, the channel sharing exception does not permit coordination across multiple markets. Permissible communication between unaffiliated (*i.e.,* non-commonly-owned or -controlled) parties under the channel sharing exception will be limited to DMA-specific bidding, *i.e.,* to the bidding of prospective channel partners under a particular channel sharing arrangement. Similarly, communications among parties that are commonly owned must be confined to the commonly owned parties.

19. The exceptions are not cumulative. Accordingly, the parent of multiple stations may be informed of the bids and bidding strategies of all of its stations, as well as the terms and conditions of any CSAs its stations entered into before the auction. However, the licensee that entered into a CSA may not communicate to its parent or other commonly owned licensees the bids and bidding strategies of the channel sharing station's channel sharing partner(s). Similarly, while parties to a channel sharing agreement disclosed on an auction application may communicate about the bids or bidding strategies of the stations covered by their agreement, they may not communicate regarding the bids or bidding strategies of any commonly owned stations of a party to the agreement that are not subject to the agreement.

20. A covered licensee that is permitted to communicate with more than one other covered licensee under the exceptions to the rule must take precautions to prevent the prohibited communication of bids or bidding strategies with other licensees. A covered party might implement information firewalls to prevent the inadvertent sharing of information regarding bids or bidding strategies among parties that are not covered by the same exception. Such firewall might, for example, take the form of separate teams informed of bids and bidding strategies for stations that are involved in a particular channel sharing agreement disclosed in an auction application, but are not informed of the bids and bidding strategies for other, commonly owned stations that are involved in a different channel sharing agreement. As an alternative to establishing separate teams of personnel and information firewalls, a covered party might instead share a bidder with a prospective channel sharing partner, possibly the other licensee, or a corporate affiliate, to execute bids in accordance with instructions developed prior to the application deadline. In such a case, the party using a shared bidder in place of a firewall would be precluded from communicating with the bidder during the prohibition period.

21. License Assignments and Transfers of Control. Licensees that file an application to bid in the auction or that have information regarding another applicant's bids or bidding strategies must take care not to communicate such information in any context, including the negotiation or execution of license assignments or transfers of control. Thus, after the auction application deadline, the negotiations necessary to reach agreement between or among covered licensees regarding a transaction for the assignment of any such licenses that are the subject of an auction application or the transfer of control of the applicant could create the risk of a violation of the prohibited communications rule. The Bureau emphasizes, however, that the rule does not *per se* preclude the negotiation or execution of sales agreements even when a license subject to the sales agreement is in the auction. For example, an entity that owns a license could apply to participate in the auction and have one team of personnel informed of and handling auction activities, including bids and bidding strategies, while another team of personnel engage in negotiations with respect to the assignment of that license, or the acquisition of another license.

22. Separate and apart from the prohibited communications rule, the Commission's auction application rules require that the applicant on a reverse auction application must be the broadcast licensee that would relinquish spectrum usage rights if it becomes a winning bidder in the auction. In addition, the rules bar changes in control of an applicant after the auction application filing deadline if such changes would constitute an assignment or transfer of control. These rules could effectively prevent a licensee from changing hands after the application is filed until after the auction is over.

23. The Bureau *sua sponte* waives the bar in the auction rules on the assignment of licenses or transfer of control of an applicant in the reverse auction, provided that the assignment or transfer application (1) has been accepted for filing with the Commission as of the deadline to submit an application to participate in the reverse auction, and (2) includes the express representation that the party that will hold the license(s) upon consummation agrees to be bound by the original

applicant's actions in the auction with respect to the license(s). While the parties to the transaction may continue to communication regarding the transaction during the auction, they may not communicate regarding their respective bids or bidding strategies during the quiet period unless one of the exception to the rule applies. In contrast to the forward auction, for which parties may create bidding entities that are insulated from a transaction involving existing wireless licenses, an assignment or transfer of control affecting broadcast licenses would result in a change in control of the very licenses that are the subject of bids in the reverse auction. Consequently, the bar on the assignment of a station subject to an auction application or transfer of control of a reverse auction applicant would have a greater preclusive effect on potential transactions among broadcast licensees than the similar bar necessarily does for parties with an interest in the forward auction. Moreover, while licenses offered in the forward auction may become available after the auction in the well-established secondary market for wireless licenses, there is no additional incentive auction contemplated in which the Commission would acquire a broadcaster's spectrum usage rights for later auction. Finally, application of the bar on the assignment of the station involved in the reverse auction, or the transfer of control of its licensee, might discourage broadcasters from participating in the auction, contrary to the Commission's policy of facilitating such participation in order to promote its goals for the incentive auction.

24. For all of these reasons, the Bureau waives the bar on assignments of a license subject to an auction application or transfers of control of reverse auction applicants during the incentive auction. The waiver is limited to those instances in which the transaction resulting in the assignment of license or transfer or control of the licensee, has been accepted for filing with the Commission at the deadline for submitting reverse auction applications. This preserves in the reverse auction one of the safeguards of the underlying rule by assuring that all relevant parties are identified to the Commission prior to the auction. Furthermore, the Commission limits the waiver to transactions in which the party that will hold the licenses upon consummation of the transaction agrees, in the agreement filed with the application, to be bound by the original applicant's actions in the auction with respect to the licensee. This assures that the application, and all attendant representations and certifications, remain effective and enforceable notwithstanding the transaction.

III. The Forward Auction Rule Prohibiting Certain Communications

A. Background

25. 47 CFR 1.2105(c) provides that, subject to specified exceptions, after the deadline for filing applications to participate in the forward auction ''all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.'' In addition, beginning at the ''application filing deadline for the forward auction and until the results of the incentive auction are announced by public notice, all forward auction applicants are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any full power or Class A broadcast television licensee.''

26. ''Applicant'' for purposes of this rule includes the officers and directors of the applicant, all controlling interests in the entity applying to participate in the forward auction, as well as all holders of interests amounting to 10 percent or more of the entity. As with the reverse auction, a party that submits an application becomes an ''applicant'' under the rule at the application deadline and that status does not change based on subsequent developments.

27. The forward auction rule prohibiting certain communications does not apply to an applicant's communications regarding any arrangement relating to the licenses being auctioned that is excluded from the prohibition on joint bidding, provided such arrangement is disclosed on the applicant's auction application. Arrangements expressly excluded from the rule prohibiting joint bidding include solely operational agreements relating to roaming, spectrum leasing and other spectrum use arrangements, or device acquisition. Similarly, the Commission expressly noted that agreements solely for funding purposes, and not with regard to bids, bidding strategies, or post-auction market structure relating to the licenses being auctioned, are not prohibited arrangements. Permissible arrangements also include agreements to form consortia or joint ventures that will become the applicant in the auction. Additionally, they include agreements for assignment or transfer of licenses, provided that any such agreement does not both relate to the licenses at auction and address or communicate directly or indirectly bidding at auction (including prices) or bidding strategies (including the specific licenses on which to bid) or post-auction market structure. The forward auction rule also provides an exception for communications between forward auction applicants and covered broadcast licensees that have certain ownership interests or management officials in common, mirroring the exception to the reverse auction rule.

28. The Commission expressly requires that an applicant establish internal controls to preclude any person or entity with a disclosable interest in more than one applicant in a spectrum license auction from possessing information about the bids or bidding strategies of more than one applicant and from communicating information that it has about one applicant to another applicant.

B. Discussion

29. Overview. In the course of providing service, wireless service providers engage in a wide variety of communications and business arrangements with one another, or with affiliated entities, that are not directly related to licenses offered in pending auctions and auction bids or bidding strategies or post-auction market structure. Such arrangements range from industry-wide matters, such as technical standards setting for spectrum bands, to matters concerning particular service providers, such as tower-siting and use arrangements.

30. In the *Incentive Auction R&O,* 79 FR 48411, August 15, 2014, the Commission stressed that ''business discussions and negotiations that are *unrelated* to bids and bidding strategies or to post-auction market structure are not prohibited by the rule,'' in response to Verizon's contentions regarding uncertainties about the scope of the rule. Verizon argued in later comments on auction procedures that the rule should be modified to apply only to qualified bidders in the incentive auction, rather than all applicants. *See Verizon Comments, AU Docket No. 14–252, at 20–21 (filed Feb. 20, 2015).* Verizon's suggestion would require Commission action and therefore

exceeds the scope of this Public Notice. The Commission also explained that consistent with the approach it has taken in spectrum license auctions generally, forward auction applicants may continue to communicate with covered television licensees and competing forward auction applications regarding matters wholly unrelated to the incentive auction. Furthermore, the Commission emphasized that the rule is limited in scope and only prohibit[s] disclosure of information that affects, or has the potential to affect, bids and bidding strategies.

31. More recently, the Commission clarified in the *Part 1 R&O,* 80 FR 56764, September 18, 2015, the types of arrangements and communications that do not present concerns in Commission auctions. The Bureau now provides further guidance in order to enable wireless service providers to comply with the rule and continue conducting operations and providing service to the fullest extent possible during the time period covered by the rule.

32. Permissible Communications. The Commission's recently adopted provisions banning joint bidding, and the relevant exceptions, help clarify the scope of the ''applicant's bids or bidding strategies (including post-auction market structure)'' that are the subject of the prohibition on communications in 47 CFR 1.2105(c). In the *Part 1 R&O,* the Commission revised the forward auction rule prohibiting certain communications to expressly allow communications that fall within the scope of a variety of pre-existing agreements to which an applicant may be party, provided that such agreements are disclosed as required on the applicant's auction application. Only agreements relating to licenses in the auction must be disclosed, and the required disclosure is limited to the parties to the agreement and a brief description of the agreement. This removes uncertainty that the prohibition might disrupt existing operational agreements and transactions where such arrangements do not violate the ban on joint bidding. The ban on joint bidding spells out that the ban applies only to understandings of any kind relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure. Thus, bid or bidding strategies or post-auction market structure must relate to the licenses being auctioned to be subject to the ban.

33. The Bureau further clarifies that the communication of ''bids or bidding strategies (including post-auction market structure)'' prohibited by 47 CFR 1.2105(c) must relate to the licenses being auctioned, as does the prohibition on joint bidding agreements in 47 CFR 1.2105(a)(2). In that regard, agreements, arrangements, or understandings not subject to the prohibition on joint bidding arrangements under 47 CFR 1.2105(a)(2)(ix) similarly are not subject to the prohibition on communications in 47 CFR 1.2105(c). As the Commission noted in the *Incentive Auction R&O,* past application of the rule prohibiting communications has never required total suspension of essential ongoing business.

34. The Bureau also clarifies that a forward auction applicant may negotiate new agreements after the application deadline, provided that the communications involved do not relate both to the licenses being auctioned and to bids or bidding strategies or post-auction market structure. Such agreements include, for example, agreements addressing operational aspects of providing a mobile service, including but not limited to agreements for roaming, device acquisition, and spectrum leasing and other spectrum use arrangements that do not otherwise involve prohibited communications. Other such agreements could include spectrum partitioning and disaggregation and interconnection agreements. The standard for evaluating whether an agreement is exempt from the prohibited communications rule hinges on whether the agreement relates to (1) the licenses being auctioned; and (2) bids or bidding strategies or post-auction market structure. Under the rules, forward auction applicants that enter into any such agreements during the auction would be subject to the same disclosure obligations as they would for agreements existing at the deadline for filing the application.

35. In addition, the Bureau clarifies that, absent communication both relating to the licenses being auctioned and communicating or addressing bids or bidding strategies or post-auction market structure, broad industry discussions regarding setting technical standards for the spectrum band for which licenses will be auctioned do not constitute communications prohibited by 47 CFR 1.2105(c). Though the technical standards may be applied to the licenses after the auction, such discussion does not by itself raise post-auction market structure issues within the rule's concern in the absence of discussion relating to which parties may or may not obtain particular licenses through the auction. Likewise, discussions in connection with the First Responder Network Authority (FirstNet) draft request for proposals for construction of the Nationwide Public Safety Broadband Network that may involve discussions of post-auction market structure will not violate the rule so long as they do not relate to the licenses being auctioned in the incentive auction.

36. Ongoing discussions between broadcast licensees and wireless service providers that become forward auction applicants with respect to voluntary relocation of the broadcasters out of channel 51 also may continue, so long as the discussions do not communicate ''an incentive auction applicant's bids or bidding strategies.'' Discussions involving forward auction applicants and broadcast licensees are subject to similar provisions of the forward auction and reverse auction rules, which prohibit only communication of ''an incentive auction applicant's bids or bidding strategies.'' The fact that the channel 51 license is in the reverse auction would not be itself preclude such discussions. A channel 51 licensee may communication whether or not it applied to participate in the reverse auction without violating the rule.

37. Of course, participants in the discussions can take additional steps to help prevent these discussions from becoming a forum for prohibited communications by, for example, utilizing different personnel for auction operations and for other discussions, such as technical standards settings, FirstNet discussions, or channel 51 relocation arrangements.

38. Application Requirements and Additional Precautions May Help Prevent Potential Violations of the Prohibition on Certain Communications. Certain arrangements and relationships that may facilitate the communication of bids and bidding strategies through conduits are specifically addressed by the revised rule. For example, with limited exceptions relating to specified rural partnerships, no party may have a controlling interest in more than one application in a spectrum license auction such as the forward auction. Consistent with the ban on most joint bidding agreements in spectrum license auctions, the revised rule also expressly bars an individual from serving as an authorized bidder for more than one auction applicant. This bar does not apply to the reverse auction and there may be circumstances in which reverse auction applicants might share the same bidder.

39. As in the past, forward auction applicants must take care to avoid unintentional communication of bids and bidding strategies in the course of

other communications. In contrast to the reverse auction, in which every licensee must prepare for a wide range of potential outcomes regardless of its bids and bidding strategies, forward auction applicants may be at greater risk of disclosing bids and bidding strategies through other communications. For example, the Commission consistently has cautioned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies, but only to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.

40. As with any communication, all of the surrounding facts and circumstances must be considered when determining whether a particular communication violates the rule. As an initial matter, the communication must be to another party covered by the rule for it to constitute a violation. In other words, confidential communications within the applicant or to a third party source of funding would not violate the rule, unless it created a conduit for communication to a covered party. Thus, for instance, a capital call that does not expressly communicate bids or bidding strategies and that, after consideration of all the facts and circumstances, does not strongly support an inference of specific bids or bidding strategies likely would not violate the rule. On the other hand, the Commission has found a violation of 47 CFR 1.2105(c) where an applicant used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

41. Forward auction applicants should use caution in their dealings with third parties, such as members of the press, financial analysts, or others who might become conduits for the prohibited communication of regarding bids or bidding strategies. For example, when bidding eligibility information is not public, an applicant's statement to the press that it has lost bidding eligibility or intends to stop bidding in the auction could give rise to a finding of a 47 CFR 1.2105(c) violation. Similarly, once it has filed an application to participate and the prohibition period has begun, an applicant's public statement of intent not to bid could also violate the rule, as it would disclose the bidding strategy of a party covered by the rule. Public disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the forward auction rule that prohibits certain communications.

42. In addition, when submitting its application to participate, each applicant should avoid any statements or disclosures that may violate 47 CFR 1.2105(c). Specifically, an applicant should avoid including any information in its short-form applications that might convey information regarding its license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose the applicant's license selections.

IV. Applicability of Antitrust Laws

43. The prohibited communications rule does not supplant the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. For instance, a violation of the antitrust laws could arise out of actions taking place before the deadline for auction applications, which is the start of the prohibition period under the Commission's rules. In addition, compliance with the rule does not insulate parties from the antitrust laws. Where specific instances of collusion in the competitive bidding process are alleged, the Commission may conduct an investigation or refer such complaints to the Department of Justice for investigation.

44. Parties that violate the antitrust laws or related Commission rules are subject to severe sanctions. These may include, but are not limited to, forfeiture of reverse auction winning bid incentive payments and revocation of licenses, where applicable, forfeiture of forward auction upfront payments, or forward auction winning bid down or final payments, where applicable. Furthermore, parties may be barred from participating in future Commission auctions, and Commission licensees may be subject to revocation of their license(s).

V. Administering the Reverse Auction and Forward Auction Rules Prohibiting Certain Communications

45. Prohibition Period. The prohibition has a limited duration. Pursuant to both the rule for the reverse auction and the rule for the forward auction, the prohibition on certain communications begins with the deadline for filing applications to participate. Thus, the prohibition period under the reverse auction rule commences with the reverse auction application filing deadline, and the prohibition period under the forward auction rule commences with the forward auction application filing deadline. Under the reverse auction rule, the prohibition period ends with the announcement of the incentive auction results. For communications between forward auction applicants and broadcast television licensees, the mirroring forward auction rule prohibition period likewise ends with the announcement of the results of the incentive auction in the *Channel Reassignment Public Notice.* For communications between forward auction applicants and related parties, by contrast, the prohibition period continues until the post-auction deadline for making down payments on winning bids. The ultimate duration of the prohibition period will depend on the length of the auction.

46. Duty to Report. The rules require covered parties to report violations to the Commission. For Auction 1000, reports must be filed with Margaret W. Wiener, the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener at the following email address: *auction1000@fcc.gov.* Any report in hard copy must be delivered only to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Failure to make a timely report under the rule constitutes a continuing violation of the rule, with attendant consequences.

47. Any party subject to either the reserve or forward auction rule should take special care in circumstances where their employees or subsidiaries may receive information directly or indirectly relating to any incentive auction applicant's bids or bidding strategies. Precedent has not addressed a situation where non-principals of a party subject to the rule (*i.e.,* those who are not officers or directors, and thus not considered to be the party) receive information regarding bids or bidding strategies. Nor has it addressed whether that information should be presumed to be communicated to the party. The more attenuated the relationship between the recipient of the information and the party subject to the rule, of course, the less likely there is to be any presumptive communication. For

example, without additional information, there is no apparent reason that a corporate affiliate not within the control of an applicant or an applicant's direct owner should be presumed to share information with the applicant. Nevertheless, the corporate affiliate, much like a third party, must take care not to become a conduit for a prohibited communication.

48. Compliance Education. All eligible broadcast television licensees are subject to the reverse auction rule and all forward auction applicants are subject to the forward auction rule. Accordingly, all these parties should become familiar with the relevant rule in advance of the auction application process. The Bureau reiterates that the rules apply only with respect to communications regarding bids and bidding strategies of incentive auction applicants. The rules should not impose any significant burden on full power and Class A television broadcasters that neither participate in the auction nor have information regarding bids or bidding strategies of any applicants. The main burden of the reverse auction rule will fall on broadcasters that apply to participate in the auction, or that may possess information regarding the bids and bidding strategies of others that do. These broadcasters and forward auction applicants also should become familiar with the Commission precedent regarding application of the prohibition of communications regarding bids and bidding strategies. These precedents apply slightly different rules in the context of past Commission auctions, and the details of the rules applied have changed over time. Nevertheless, the purpose underlying the prohibition reflected in all versions of the rule has remained consistent, making the precedents a potentially helpful resource for parties with respect to particular circumstances.

49. Parties also should educate employees and agents regarding compliance, particularly those employees and agents with access to bids and bidding strategy information. Limiting such access to persons with a definite need will both strengthen and simplify compliance.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2015–26525 Filed 10–16–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0405 and 3060–0009]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 18, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

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

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

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number: FCC Form 349.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents and Responses: 1,200 respondents; 2,400 responses.

Estimated Time per Response: 1–1.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,500 hours.

Total Annual Cost: $4,598,100.

Privacy Act Impact Assessment: No impact(s).

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

Needs and Uses: FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations.

Form 349 also contains a third party disclosure requirement, pursuant to Section 73.3580. This rule requires stations applying for a new broadcast station, or to make major changes to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice must be placed in the station's public inspection file along with the application, pursuant to Section 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060–0214, which covers Section 73.3527.

OMB Control Number: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License, FCC Form 316.

Form Number: FCC Form 316.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit

institutions; State, local or tribal government.

Number of Respondents and Responses: 750 respondents, 750 responses.

Estimated Time per Response: 1.5–4.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain benefits. Statutory authority for this collection of information is contained in Sections 154(i) and 310(d) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,231 hours.

Total Annual Cost: $711,150.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Confidentiality is not required with this collection of information.

Needs and Uses: FCC Form 316 is required when applying for authority for assignment of a broadcast station construction permit or license, or for consent to transfer control of a corporation holding a broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of interest is not a controlling one; there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder; and, in the case of LPFM stations, where there is a voluntary transfer of a controlling interest in the licensee or permittee entity. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015–26404 Filed 10–16–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0316, 3060–0419 and 3060–0692]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

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

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 18, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

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

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

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0316.

Title: 47 CFR 76.1700, Records to be maintained locally by Cable System Operators; 76.1702, Equal Employment Opportunity; 76.1703, Commercial Records on Children's Programs; 76.170, Leased Access; 76.1711, Emergency Alert System (EAS) Tests and Activation.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,000 respondents and 3,000 responses.

Estimated Hours per Response: 25 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 75,000 hours.

Total Annual Cost: None.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 76.1700 requires cable television systems having 1,000 or more subscribers to maintain a public inspection file of certain records. Section 76.1702 requires that EEO program annual reports and equal employment opportunity program information be maintained in the public files of employers; Section 1703 requires that cable operators airing children's programming must maintain records sufficient to verify compliance with Section 76.225 and make records available to the public. Section 76.1707 requires that if a cable operator adopts and enforces a written policy regarding indecent leased access programming pursuant to Section 76.701, the policy must be published in the operator's public inspection file; Section 76.1711, requires records to be kept for each test and activation of the Emergency Alert System (EAS) procedures pursuant to requirement of Part 11 and the EAS Operating Handbook.

OMB Control Number: 3060–0419.

Title: Network Non-duplication Protection and Syndication Exclusivity: Sections 76.94, Notification; 76.95, Exceptions; 76.105, Notifications; 76.106, Exceptions; 76.107, Exclusivity Contracts; and 76.1609, Non-Duplication and Syndicated Exclusivity.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,555 respondents; 199,304 responses.

Estimated Time per Response: 0.5–2.0 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement; Third party disclosure requirement.

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

Total Annual Burden: 183,856.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

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

Needs and Uses: The Commission rules that are covered under this collection require television stations, broadcast television stations and program distributors to notify cable television system operators of non-duplication protection and exclusivity rights being sought within prescribed limitations and terms of contractual agreements. These various notification and disclosure requirements are to protect broadcasters who purchase the exclusive rights to transmit syndicated programming in their recognized markets.

OMB Control Number: 3060–0692.

Type of Review: Extension of a currently approved collection.

Title: Sections 76.802 and 76.804, Home Wiring Provisions; Section 76.613, Interference from a Multi-channel Video Programming Distributor (MVPD).

Form Number: N/A.

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

Number of Respondents: 22,000.

Estimated Time per Response: 0.083–2 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Annual reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 4, 224, 251, 303, 601, 623, 624 and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 36,114 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

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

Needs and Uses: In the Cable Television Consumer Protection and Competition Act of 1992, Congress directed the FCC to adopt rules governing the disposition of home wiring owned by a cable operator when a subscriber terminates service. The rules at 76.800 *et seq.,* implement that directive. The intention of the rules is to clarify the status and provide for the disposition of existing cable operator-owned wiring in single family homes and multiple dwelling units upon the termination of a contract for cable service by the home owner or MDU owner. Section 76.613(d) requires that when Multichannel Video Programming Distributors (MVPDs) cause harmful signal interference MVPDs may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015–26403 Filed 10–16–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 13, 2015.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *BNC Bancorp,* High Point, North Carolina; to acquire 100 percent of the voting shares of Southcoast Financial Corporation, and thereby indirectly acquire voting shares of Southcoast Community Bank, both in Mount Pleasant, South Carolina.

Board of Governors of the Federal Reserve System, October 14, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–26464 Filed 10–16–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senior Executive Service Performance Review Board

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Federal Retirement Thrift Investment Board. The purpose of the Performance Review Boards is to make written recommendations on annual summary ratings and awards to the appointing authorities on the performance of senior executives.

DATES: This notice is effective October 14, 2015.

FOR FURTHER INFORMATION CONTACT: Kelly Powell, HR Specialist, at 202–942–1681.

SUPPLEMENTARY INFORMATION: Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before Board service commences. The following persons will serve on the Federal Retirement Thrift Investment Board's Performance Review Boards which will review initial summary ratings to ensure the ratings are consistent with established performance requirements, reflect meaningful distinctions among senior executives based on their relative performance and organizational results and provide recommendations for ratings, awards, and pay adjustments in a fair and equitable manner: Jay Ahuja,

Scott Cragg, Susan Crowder, Ravindra Deo, Gisile Goethe, and Kim Weaver.

James B. Petrick,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2015–26469 Filed 10–16–15; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: U.S. Repatriation Program Forms.

OMB No.: 0970–NEW (two of the forms have prior OMB No: [SSA–3955 & SSA–2061]).

Description: The United States (U.S.) Repatriation Program was established by Title XI, Section 1113 of the Social Security Act (Assistance for U.S. Citizens Returned from Foreign Countries) to provide temporary assistance to U.S. citizens and their dependents who have been identified by the Department of State (DOS) as having returned, or been brought from a foreign country to the U.S. because of destitution, illness, war, threat of war, or a similar crisis, and are without available resources immediately accessible to meet their needs. The Secretary of the Department of Health and Human Services (HHS) was provided with the authority to administer this Program. On or about 1994, this authority was delegated by the HHS Secretary to the Administration for Children and Families (ACF) and later re-delegated by ACF to the Office of Refugee Resettlement. The Repatriation Program works with States, Federal agencies, and non-governmental organizations to provide eligible individuals with temporary assistance for up to 90-days. This assistance is in the form of a loan and must be repaid to the Federal Government.

The Program was later expanded in response to legislation enacted by Congress to address the particular needs of persons with mental illness (24 U.S.C. Sections 321 through 329). Further refinements occurred in response to Executive Order (EO) 11490 (as amended) where HHS was given the responsibility to ''develop plans and procedures for assistance at ports of entry to U.S. personnel evacuated from overseas areas, their onward movement to final destination, and follow-up assistance after arrival at final destination.'' In addition, under EO 12656 (53 CFR 47491), ''Assignment of emergency preparedness responsibilities,'' HHS was given the lead responsibility to develop plans and procedures in order to provide assistance to U.S. citizens and others evacuated from overseas areas.

In order to effectively and efficiently manage these legislative authorities, the Program has been divided into two major activities, Emergencies and Non-Emergencies Repatriation Activities. Operationally, these two Program activities involve different kinds of preparation, resources, and implementation. However, the core Program statute, regulations, policies and administrative procedures for these two Programs are essentially the same. The ongoing routine arrivals of individual repatriates and the repatriation of individuals with mental illness constitute the Program Non-emergency activities. Emergency Activities are characterized by contingency events such as civil unrest, war, threat of war or similar crisis, among other incidents. Depending on the type of event, number of evacuees and resources available, ACF will provide assistance utilizing two scalable mechanisms, emergency repatriations or group repatriations. Emergency repatriations assume the evacuation of 500 or more individuals, while group repatriations assume the evacuation of 50–500 individuals.

The Program provides services through agreements with the States, U.S. Territories, Federal agencies, and Non-governmental agencies. The list of Repatriation Forms is as follows:

1. *The HHS Repatriation Program: Emergency and Group Processing Form:* under 45 CFR 211 and 212, HHS is to make findings setting forth the pertinent facts and conclusions according to established standards to determine whether an individual is an eligible person. This form allows authorized staff to gather necessary information to determine eligibility and needed services. This form is to be utilized during emergency repatriation activities. Individuals interested in receiving Repatriation assistance will complete appropriate portions of this form. State personnel assisting with initial intake activities will use this form as a guide to perform a preliminary eligibility assessment. An authorized federal staff from the ACF will make final eligibility determinations.

2. *The HHS Repatriation Program: Privacy and Repayment Agreement Form:* under 45 CFR 211 and 212, individuals who receive Program assistance are required to repay the federal government for the cost associated to the services received. This form authorizes HHS to release personal identifiable information to partners for the purpose of providing services to eligible repatriates. In addition, through this form, eligible repatriates agree to accept services under the terms and conditions of the Program. Specifically, eligible repatriates commit to repay the federal government for all temporary services received through the Program. This form is to be completed by eligible repatriates or authorized legal custodians. Exemption applies to unaccompanied minors and individuals eligible under 45 CFR 211, if no legal custodian is identified.

3. *The HHS Repatriation Program: Refusal of Temporary Assistance Form:* for individuals who are eligible to receive repatriation assistance but opt to relinquish services, this form is utilized to confirm and record repatriate's decision to refuse receiving Program assistance. This form is to be completed by eligible repatriates or authorized legal custodian. Exemption applies to unaccompanied minors and individuals eligible under 45 CFR 211, if no legal custodian is identified.

4. *The HHS Repatriation Program: Emergency and Group Repatriation Financial Form:* under Section 1113 of the Social Security Act, HHS is authorized to provide temporary assistance directly or through utilization of the services and facilities of appropriate public or private agencies and organizations, in accordance with agreements providing for payment, as may be determined by HHS. This form is to be utilized and completed by agencies that have entered into an agreement with ORR to request reimbursement of reasonable and allowable costs, both administrative and actual temporary services.

5. *The HHS Repatriation Program: Non-emergency Monthly Financial Statement Form:* under Section 1113 of the Social Security Act, HHS is authorized to provide temporary assistance directly or through arrangements, in accordance with agreements providing for payment, as may be determined by HHS. This form is to be utilized and completed by the States and other authorized ORR agencies to request reimbursement of reasonable and allowable costs, both administrative and actual temporary services, associated to the direct provision of temporary assistance to eligible repatriates.

6. *The HHS Repatriation Program: Repatriation Loan Waiver and Deferral Request Form:* in accordance with 45 CFR 211 & 212 individuals who have received Repatriation assistance may be

eligible to receive a waiver or deferral of their repatriation loan. This form is to be completed by eligible repatriates, authorized legal custodian, or authorized agency/individual. Exemption applies to unaccompanied minors and individuals eligible under 45 CFR 211, if no legal custodian is identified.

7. *The HHS Repatriation Program: Temporary Assistance Extension Request Form:* under 45 CFR 211 & 212 temporary assistance may be furnished beyond the 90 days eligibility period if the repatriate meets the qualifications established under Program regulations. This form is to be completed by the eligible repatriate, authorized legal custodian, or the authorized agency/individual. This form should be submitted to ORR or its designated grantee generally 14 days prior to the expiration of the 90 days eligibility period.

8. *The HHS Repatriation Program: State Request for Federal Support Form:* During emergency repatriation activities, States activated by ORR are to use this form to request support and/or assistance from HHS, including but not limited to required pre-approval of expenditures, augmentation of State personnel, funding, reimbursement, among other things.

Respondents: Designated state, federal, and/or non-governmental agencies/individuals and eligible repatriates. Responders are authorized by 42 U.S.C. 1313 and 24 U.S.C. 321–329; Executive Order 12656 (as amended by E.O. 13074, February 9, 1998; E.O. 13228, October 8, 2001; E.O. 13286, February 28, 2003); and regulations found under 45 CFR 211 & 212.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
The HHS Repatriation Program: Emergency and Group Processing Form.	25,000 or more depending on the Emergency.	1	0.30	7,500 or more.
The HHS Repatriation Program: Privacy and Repayment Agreement Form.	1,000 will increase during emergencies	1	0.05	50 or more.
The HHS Repatriation Program: Refusal of Temporary Assistance Form.	15 or more	1	0.05	0.75 or more.
The HHS Repatriation Program: Emergency and Group Repatriation Financial Form.	15 or more	1	0.30	4.5 or more.
The HHS Repatriation Program: Non-emergency Monthly Financial Statement Form.	52 or more	12	0.30	187 or more.
The HHS Repatriation Program: Repatriation Loan Waiver and Referral Request Form.	800 or more	1	0.30	240 or more.
The HHS Repatriation Program: State Request for Federal Support.	20 or more	1	0.30	6 or more.
The HHS Repatriation Program: Temporary Assistance Extension Request Form.	50 or more	1 or more	0.30	15 or more.

Estimated Total Annual Burden Hours: 8,003.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–26467 Filed 10–16–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Office of Women's Health General Update on Strategic Priorities and Initiatives

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following meeting: Office of Women's Health General Update on Strategic Priorities and Initiatives. FDA staff will provide updates on strategic priorities, educational outreach, and research initiatives of interest to national organizations focused on the health of women.

DATES: The meeting will be held on November 30, 2015, 9 a.m. to 11 a.m.

ADDRESSES: The meeting will be held at the AARP Cy Brickfield Center, 601 East St. NW., Washington, DC 20049.

FOR FURTHER INFORMATION CONTACT: Deborah Kallgren, Office of Women's Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–9440, FAX: 301–847–8604, *deborah.kallgren@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: There is no fee, but pre-registration is required. Send registration information (including name, title, firm or organization name, address, telephone, and fax number) to Deborah Kallgren. Seating is limited to 25 participants (1 person per organization).

If you need special accommodations due to a disability, please contact Deborah Kallgren (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Dated: October 13, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–26439 Filed 10–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0471]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; User Fee Cover Sheet; Form FDA 3397

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 November 18, 2015.

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 0910–0297. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

User Fee Cover Sheet; Form FDA 3397 (OMB Control Number 0910–0297)—Extension

Under the prescription drug user fee provisions of the Federal Food, Drug, and Cosmetic Act (sections 735 and 736 (21 U.S.C. 379g and 379h)), as amended, FDA has the authority to assess and collect user fees for certain drug and biologics license applications (BLAs) and supplements to those applications. Under this authority, pharmaceutical companies pay a fee for certain new human drug applications (NDAs), BLAs, or supplements submitted to the Agency for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application by FDA cannot begin until the fee is submitted. The Prescription Drug User Fee Cover Sheet, Form FDA 3397, is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fee submitted for an application by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of NDAs, BLAs, and/or, supplemental applications to those applications.

Respondents to this collection of information are new drug and biologics manufacturers. Based on FDA's database system for fiscal year (FY) 2014, there are an estimated 290 manufacturers of products subject to the Prescription Drug User Fee Act (Pub. L. 105–115). The total number of annual responses is based on the number of submissions received by FDA in FY 2014. CDER received 3,005 annual responses that include the following submissions: 128 NDAs; 7 BLAs; 1,586 manufacturing supplements; 1,081 labeling supplements; and 203 efficacy supplements. CBER received 705 annual responses that include the following submissions: 11 BLAs; 611 manufacturing supplements; 64 labeling supplements; and 19 efficacy supplements. The estimated hours per response are based on past FDA experience with the various submissions.

In the **Federal Register** of April 15, 2015 (80 FR 20232), 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]

FDA Form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
FDA 3397	290	12.79	3,710	0.5 (30 min.)	1,855

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 13, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–26435 Filed 10–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0776]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Reclassification Petitions for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Reclassification Petitions for Medical Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver

Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On June 16, 2015, the Agency submitted a proposed collection of information entitled ''Reclassification Petitions for Medical Devices'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0138. The approval expires on September 30, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 13, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–26434 Filed 10–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3655]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which both domestic and foreign bottled water manufacturers that sell bottled water in the United States maintain records of microbiological testing and corrective measures, in addition to existing recordkeeping requirements.

DATES: Submit either electronic or written comments on the collection of information by December 18, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions''.

Instructions: All submissions received must include the Docket No. FDA–2015–N–3655 for the information collection request entitled, ''Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water''.

Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions'', publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential''. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency 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, we are publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite 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.

Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water—21 CFR 129.35(a)(3)(i), 129.80(g), and 129.80(h) (OMB Control Number 0910–0658)—Extension

The bottled water regulations in parts 129 and 165 (21 CFR parts 129 and 165) require that if any coliform organisms are detected in weekly total coliform testing of finished bottled water, follow-up testing must be conducted to determine whether any of the coliform organisms are *Escherichia coli* (*E. coli).* The adulteration provision of the bottled water standard (§ 165.110(d)) provides that a finished product that tests positive for *E. coli* will be deemed adulterated under section 402(a)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(3)). In addition, the current good manufacturing practice (CGMP) regulations for bottled water in part 129 require that source water from other than a public water system (PWS) be tested at least weekly for total coliform. If any coliform organisms are detected in the source water, the bottled water manufacturers are required to determine whether any of the coliform organisms are *E. coli.* Source water found to contain *E. coli* is not considered water of a safe, sanitary quality and would be unsuitable for bottled water production. Before a bottler may use source water from a source that has tested positive for *E. coli,* a bottler must take appropriate measures to rectify or otherwise eliminate the cause of the contamination. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24 hour period from the same sampling site are tested and found to be *E. coli* negative.

Description of Respondents: The respondents to this information collection are domestic and foreign bottled water manufacturers that sell bottled water in the United States.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§ 129.35(a)(3)(i), § 129.80(h); Bottlers subject to source water and finished product testing	319	6	1,914	0.08 (5 minutes)	153
§ 129.80(g), § 129.80(h); Bottlers testing finished product only	95	3	285	0.08 (5 minutes)	23
§ 129.35(a)(3)(i), § 129.80(h); Bottlers conducting secondary testing of source water	3	5	15	0.08 (5 minutes)	1
§ 129.35(a)(3)(i), § 129.80(h); Bottlers rectifying contamination	3	3	9	0.25 (15 minutes)	2
Total					179

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The current CGMP regulations already reflect the time and associated recordkeeping costs for those bottlers that are required to conduct microbiological testing of their source water, as well as total coliform testing of their finished bottled water products. We therefore conclude that any additional burden and costs in recordkeeping based on follow-up testing that is required if any coliform organisms detected in the source water test positive for *E.coli* are negligible. We estimate that the labor burden of keeping records of each test is about 5 minutes per test. We also require follow-up testing of source water and finished bottled water products for *E. coli* when total coliform positives occur. We expect that 319 bottlers that use sources other than PWSs may find a total coliform positive sample about three times per year in source testing and about three times in finished product testing, for a total of 153 hours of recordkeeping. In addition to the 319 bottlers, about 95 bottlers that use PWSs may find a total coliform positive sample about three times per year in finished product testing, for a total of 23 hours of recordkeeping. Upon finding a total coliform sample, bottlers will then have to conduct a follow-up test for *E. coli.*

We expect that recordkeeping for the follow-up test for *E. coli* will also take about 5 minutes per test. As shown in Table 1 of this document, we expect that three bottlers per year will have to carry out the additional *E. coli* testing, with a burden of 1 hour. These bottlers will also have to keep records about rectifying the source contamination, for a burden of 2 hours. For all expected total coliform testing, *E. coli* testing, and source rectification, we estimate a total burden of 179 hours. We base our estimate on our experience with the current CGMP regulations.

Dated: October 13, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–26442 Filed 10–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3662]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance on Reagents for Detection of Specific Novel Influenza A Viruses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on guidance on reagents for detection of specific novel influenza A viruses.

DATES: Submit either electronic or written comments on the collection of information by December 18, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–N–3662 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance on Reagents for Detection of Specific Novel Influenza A Viruses.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency 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.

Guidance on Reagents for Detection of Specific Novel Influenza A Viruses—21 CFR Part 866 OMB Control Number 0910–0584—Extension

In accordance with section 513 of the Federal Food, Drug, and Cosmetic Act

(the FD&C Act) (21 U.S.C. 360c), FDA evaluated an application for an in vitro diagnostic device for detection of influenza subtype H5 (Asian lineage), commonly known as avian flu. FDA concluded that this device is properly classified into class II in accordance with section 513(a)(1)(B) of the FD&C Act, because it is a device for which the general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls to provide such assurance. The statute permits FDA to establish as special controls many different things, including postmarket surveillance, development and dissemination of guidance recommendations, and ''other appropriate actions as the Secretary deems necessary'' (section 513(a)(1)(B) of the FD&C Act). This information collection is a measure that FDA determined to be necessary to provide reasonable assurance of safety and effectiveness of reagents for detection of specific novel influenza A viruses.

FDA issued an order classifying the H5 (Asian lineage) diagnostic device into class II on February 3, 2006 (71 FR 14377), establishing the special controls necessary to provide reasonable assurance of the safety and effectiveness of that device and similar future devices. The new classification was codified in 21 CFR 866.3332, a regulation that describes the new classification for reagents for detection of specific novel influenza A viruses and sets forth the special controls that help to provide a reasonable assurance of the safety and effectiveness of devices classified under that regulation. The regulation refers to the special controls guidance document entitled ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses,'' which provides recommendations for measures to help provide a reasonable assurance of safety and effectiveness for these reagents. The guidance document recommends that sponsors obtain and analyze postmarket data to ensure the continued reliability of their device in detecting the specific novel influenza A virus that it is intended to detect, particularly given the propensity for influenza viruses to mutate and the potential for changes in disease prevalence over time. As updated sequences for novel influenza A viruses become available from the World Health Organization, National Institutes of Health, and other public health entities, sponsors of reagents for detection of specific novel influenza A viruses will collect this information, compare them with the primer/probe sequences in their devices, and incorporate the result of these analyses into their quality management system, as required by 21 CFR 820.100(a)(1). These analyses will be evaluated against the device design validation and risk analysis required by 21 CFR 820.30(g) to determine if any design changes may be necessary.

FDA estimates that 10 respondents will be affected annually. Each respondent will collect this information twice per year; each response is estimated to take 15 hours. This results in a total data collection burden of 300 hours.

The guidance also refers to previously approved information collections found in FDA regulations. The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

FD&C Act section	No. of recordkeepers	No. of records per record-keeper	Total annual records	Average burden per recordkeeping	Total hours
513(g)	10	2	20	15	300

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 13, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–26441 Filed 10–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0235]

Evaluating the Effectiveness of New Animal Drugs for the Reduction of Pathogenic Shiga Toxin-Producing *Escherichia coli* in Cattle; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry #229 entitled ''Evaluating the Effectiveness of New Animal Drugs for the Reduction of Pathogenic Shiga Toxin-Producing *E. coli* in Cattle.'' The purpose of this document is to provide recommendations to industry relating to study design and describe criteria the Center for Veterinary Medicine (CVM) thinks are the most appropriate for the evaluation of the effectiveness of new animal drugs that are intended to reduce pathogenic Shiga toxin-producing *E. coli* (STEC) in cattle.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–0235 for ''Evaluating the Effectiveness of New Animal Drugs for the Reduction of Pathogenic Shiga Toxin-Producing *E. coli* in Cattle; Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Joshua R. Hayes, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0585, *joshua.hayes@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 24, 2015 (80 FR 9731), FDA published a notice of availability for a draft guidance entitled ''Evaluating the Effectiveness of New Animal Drugs for the Reduction of Pathogenic Shiga Toxin-Producing *E. coli* in Cattle'' giving interested persons until April 27, 2015, to comment on the draft guidance. FDA received one comment on the draft guidance. An editorial change to improve clarity was made in finalizing this guidance document. The guidance announced in this notice finalizes the guidance dated February 2015.

The guidance discusses general considerations regarding the development of protocols, study conduct, animal welfare, substantial evidence of effectiveness, experimental parameters, nutritional content of experimental diets, and the assessment of drug concentrations in experimental diets. It also discusses the studies and analyses CVM recommends for sponsors to substantiate the effectiveness of pathogenic STEC reduction drugs.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Evaluating the Effectiveness of New Animal Drugs for the Reduction of Pathogenic Shiga Toxin-Producing *E. coli* in Cattle.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: October 13, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–26438 Filed 10–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0306]

Agency Information Collection Activities; Proposed Collection; Comment Request; Administrative Detention and Banned Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for

public comment in response to the notice. This notice solicits comments on information collection for administrative detention and banned medical devices.

DATES: Submit either electronic or written comments on the collection of information by December 18, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–N–0306 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Administrative Detention and Banned Medical Devices.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency 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.

Administrative Detention and Banned Medical Devices—21 CFR 800.55(g)(1) and (g)(2), 800.55(k), 895.21(d), and 895.22 OMB Control Number 0910–0114—Extension

FDA has the statutory authority under section 304(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 334(g)) to detain during established inspections devices that are believed to be adulterated or misbranded. Section 800.55 (21 CFR 800.55), on administrative detention, includes among other things, certain reporting requirements and recordkeeping requirements. Under § 800.55(g), an applicant of a detention order must show documentation of ownership if devices are detained at a place other than that of the appellant. Under § 800.55(k), the owner or other responsible person must supply records about how the devices may have become adulterated or misbranded, in addition to records of distribution of the detained devices. These recordkeeping requirements for administrative detentions permit FDA to trace devices for which the detention period expired before a seizure is accomplished or injunctive relief is obtained.

FDA also has the statutory authority under section 516 of the FD&C Act (21

U.S.C. 360f) to ban devices that present substantial deception or an unreasonable and substantial risk of illness or injury. Section 895.21 (21 CFR 895.21), on banned devices, contains certain reporting requirements. Section 895.21(d) describes the procedures for banning a device when the Commissioner of Food and Drugs (the Commissioner) decides to initiate such a proceeding. Under 21 CFR 895.22, a manufacturer, distributor, or importer of a device may be required to submit to FDA all relevant and available data and information to enable the Commissioner to determine whether the device presents substantial deception, unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial danger to the health of individuals.

During the past several years, there has been an average of less than one new administrative detention action per year. Each administrative detention will have varying amounts of data and information that must be maintained. FDA's estimate of the burden under the administrative detention provision is based on FDA's discussion with one of the firms whose devices had been detained.

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
800.55(g)	1	1	1	25	25
895.21(d)(8) and 895.22(a)	26	1	26	16	416
Total					441

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
800.55(k)	1	1	1	20	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 13, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–26440 Filed 10–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Office of Women's Health Update on Strategic Priorities and Initiatives for Nurses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following meeting: Office of Women's Health Update on Strategic Priorities and Initiatives. FDA staff will provide updates on strategic priorities, educational outreach, and research initiatives of interest to national organizations for nursing professionals and students.

DATES: The meeting will be held on November 18, 2015, 1 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the American Nurses Association, 8515 Georgia Ave., Suite 400, Silver Spring, MD 20910–3492.

FOR FURTHER INFORMATION CONTACT: Deborah Kallgren, Office of Women's Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–9440, FAX: 301–847–8604, *deborah.kallgren@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: There is no fee, but pre-registration is required. Send registration information (including name, title, organization name, address, telephone, and fax number) to Deborah Kallgren. Seating is limited to 35 participants (1 person per organization).

If you need special accommodations due to a disability, please contact Deborah Kallgren (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Dated: October 13, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–26433 Filed 10–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill six vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

DATES: The agency will receive nominations on or before December 18, 2015.

ADDRESSES: All nominations are to be submitted to the Director, Division of Injury Compensation Programs, Healthcare Systems Bureau (HSB),

HRSA, Parklawn Building, Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Annie Herzog, Principal Staff Liaison, Division of Injury Compensation Programs, HSB, HRSA, at (301) 443–6634 or email: *aherzog@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463) and section 2119 of the Act, 42 U.S.C. 300aa-19, as added by Public Law 99–660 and amended, HRSA is requesting nominations for six voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP. The activities of the ACCV include: Recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 of the Act regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying federal, state, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b) of the Act; advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; consulting on the development or revision of Vaccine Information Statements; and recommending to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the VICP.

The ACCV consists of nine voting members appointed by the Secretary as follows: (1) Three health professionals, who are not employees of the United States Government, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians; (2) three members from the general public, of whom at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine related injury or death; and (3) three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for six voting members of the ACCV representing: (1) Two health professionals, who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom both shall be a pediatricians; (2) two members of the general public, of whom at least one shall be legal representative (parent or guardian) of a child who has suffered a vaccine related injury or death; and (3) two attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers. Nominees will be invited to serve a 3-year term beginning the date of appointment.

The Department of Health and Human Services (HHS or Department) will consider nominations of all qualified individuals with a view to ensuring that the ACCV includes the areas of subject matter expertise noted above. Based on a recommendation made by the ACCV, the Secretary will consider having a health professional with expertise in obstetrics as the second member of the general public. Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV.

ACCV members are appointed as Special Government Employees. As such, they are covered by the federal ethics rules, including the criminal conflict of interest statutes governing executive branch employees. For example, an ACCV member may be prohibited from discussions about making changes to the Vaccine Injury Table and Vaccine Information Statements for the Hepatitis B vaccine if he/she or his/her spouse owns stock valued above a certain amount in companies which manufacturer this vaccine, affecting their own pecuniary interests—including interests imputed to them. To evaluate possible conflicts of interest, potential candidates will be asked to fill out the Confidential Financial Disclosure Report, OGE Form 450, to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations made by the ACCV.

A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of the ACCV) and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (3) the name, address, daytime telephone number, and email address at which the nominator can be contacted.

The HHS strives to ensure that the membership of the HHS Federal Advisory Committee is fairly balanced in terms of points of view presented and the committee's function. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS Federal Advisory Committees and, therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to this Committee shall be made without discrimination on basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–26462 Filed 10–16–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–XXXX]

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 section 3507(a)(1)(D) of 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 a new collection. 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 November 18, 2015.

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) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier OS–0990–XXXX for reference.

Information Collection Request Title: Examining Consumer and Producer Responses to Restaurant Menu Labeling Requirements.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting approval on a new information collection request from the Office of Management and Budget (OMB) for purposes of conducting a study about calorie labeling on restaurant menus.

Previous research demonstrates that consumers respond both to information about their options and the way those options are presented. Accordingly, restaurants can utilize presentation effects on menus and menu boards to influence consumer perceptions and choices. By analyzing the consumer response to menu options and design, this study will offer a wide-ranging view of the consumer responses to menu labeling requirements.

Likely Respondents

Online Survey

The goal of the online survey is to evaluate the effect that the calorie labeling will have on consumer choices when ordering at restaurants.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Online Survey	2100	1	20/60	700
Total				700

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2015–26450 Filed 10–16–15; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

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

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

Name of Committee: National Institute on Aging Special Emphasis Panel; ApoE, Neuroinflammation and Glucose Metabolism.

Date: November 12, 2015.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 13, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–26412 Filed 10–16–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel; NCI R03 & R21 Omnibus SEP–13.

Date: November 17–18, 2015.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Kenneth Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Bethesda, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Technologies for Cancer-Relevant Biospecimen Science.

Date: November 17, 2015.

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

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive,

Room 7W238, Bethesda, MD 20892–9750, 240–276–6371, *decluej@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI R03 & R21 Omnibus SEP–12.

Date: December 8–9, 2015.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Kenneth Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Bethesda, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 13, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–26410 Filed 10–16–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee, November 4, 2015, 8:30 a.m. to November 4, 2015, 4:00 p.m., National Institutes of Health, Building 31, 31 Center Drive, C-Wing, 6th Floor, 10, Bethesda, MD 20892 which was published in the **Federal Register** on August 5, 2015, 80 FR 46589.

The meeting notice is amended to change the end time from 4:00 p.m. to 12:30 p.m. The meeting is open to the public.

Dated: October 13, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–26411 Filed 10–16–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel; Environmental Epigenomic Analysis in Tissue Surrogates.

Date: November 9, 2015.

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

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Environmental Epigenomics Data Coordinating Center.

Date: November 10, 2015.

Time: 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Exposure Assessment Applications.

Date: November 10, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone Building, Conference Room 2128, 530 Davis Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, Ph.D., Scientific Review Officer, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: October 13, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–26437 Filed 10–16–15; 8:45 am]

BILLING CODE 4140–01P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

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

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

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; SBIR E-Learning for Hazmat and Emergency Response.

Date: November 12, 2015.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Janice B. Allen, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training, 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 13, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–26436 Filed 10–16–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

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

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

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications.

Date: November 9, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, NIH, 5635 Fishers Lane, CR 2098, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard A. Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: October 13, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–26413 Filed 10–16–15; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Advisory Council on Historic Preservation Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Advisory Council on Historic Preservation Quarterly Business Meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will hold its next quarterly meeting on Wednesday, November 4, 2015. The meeting will be held in Room SR325 at the Russell Senate Office Building at Constitution and Delaware Avenues NE., Washington, DC, starting at 9:00 a.m.

DATES: The quarterly meeting will take place on Wednesday, November 4, 2015, starting at 9:00 a.m.

ADDRESSES: The meeting will be held in Room SR325 at the Russell Senate Office Building at Constitution and Delaware Avenues NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Bienvenue, 202–517–0202, *cbienvenue@achp.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy. The goal of the National Historic Preservation Act (NHPA), which established the ACHP in 1966, is to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. The ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements. For more information on the ACHP, please visit our Web site at *www.achp.gov.*

The agenda for the upcoming quarterly meeting of the ACHP is the following:

Call to Order—9:00 a.m.

I. Chairman's Welcome.

II. Historic Preservation Policy and Programs.

A. Building a More Inclusive Preservation Program.

1. American Latino Heritage Initiative.

2. ACHP Youth Initiatives.

B. Preservation 50 and the ACHP Public Policy Initiative.

C. Policy Statement for Resilient Communities.

D. White House Council on Climate Preparedness and Resilience.

E. Historic Preservation Legislation in the 114th Congress.

1. Veterans Administration Enhanced Use Leasing.

2. National Park Service Centennial.

3. Surface Transportation Legislation.

III. Section 106 Issues.

A. Section 3 Report Recommendations Implementation.

B. Federal Agency Support for SHPOs and THPOs.

IV. ACHP Native American Affairs Committee Activities.

V. New Business.

VI. Adjourn.

The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact Cindy Bienvenue, 202–517–0202 or *cbienvenue@achp.gov,* at least seven (7) days prior to the meeting.

Authority: 54 U.S.C. 304102.

Dated: October 14, 2015.

Javier E. Marques,

Associate General Counsel.

[FR Doc. 2015–26490 Filed 10–16–15; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

U.S. Customs and Border Protection 2015 East Coast Trade Symposium: ''Transforming Global Trade''

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of Trade Symposium.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) will convene the 2015 East Coast Trade Symposium in Baltimore, Maryland, on Wednesday, November 4, 2015, and Thursday, November 5, 2015. The 2015 East Coast Trade Symposium will feature panel discussions involving agency personnel, members of the trade community, and other government agencies, on the agency's role in international trade initiatives and programs. Members of the international

trade and transportation communities and other interested parties are encouraged to attend.

DATES: Wednesday, November 4, 2015, (opening remarks and general sessions, 8:00 a.m.–4:15 p.m. EST) and Thursday, November 5, 2015 (general session, break-out sessions and closing remarks, 8:00 a.m.–4:15 p.m. EST).

ADDRESSES: The CBP 2015 East Coast Trade Symposium will be held at the Baltimore Marriott Waterfront Hotel located at 700 Aliceanna Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: The Office of Trade Relations at (202) 344–1440, or at *tradeevents@dhs.gov.* To obtain the latest information on the Trade Symposium and to register online, visit the CBP Web site at *http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium.* Requests for special needs should be sent to the Office of Trade Relations at *tradeevents@dhs.gov.*

SUPPLEMENTARY INFORMATION: Earlier this year CBP held a Trade Symposium on the West Coast in Tacoma, WA. This document announces that CBP will convene the 2015 East Coast Trade Symposium on Wednesday, November 4, 2015, and Thursday, November 5, 2015 in Baltimore, Maryland. The theme for the 2015 East Coast Trade Symposium will be ''Transforming Global Trade.'' The format of the 2015 East Coast Trade Symposium will be held with general sessions on the first day, and a general session and breakout sessions on the second day. Discussions will be held regarding CBP's role in international trade initiatives and partnerships.

The agenda for the 2015 East Coast Trade Symposium can be found on the CBP Web site (*http://www.cbp.gov*). Registration is now open. The registration fee is $157.00 per person. Interested parties are requested to register immediately, as space is limited. All registrations must be made online at the CBP Web site (*http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium*) and will be confirmed with payment by credit card only.

Hotel accommodations will be announced at a later date on the CBP Web site (*http://www.cbp.gov*).

Dated: October 14, 2015.

Maria Luisa Boyce,

Senior Advisor for Private Sector Engagement, Executive Director, Office of Trade Relations, Office of the Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2015–26509 Filed 10–16–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0063]

Agency Information Collection Activities: Petroleum Refineries in Foreign Trade Sub-Zones

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Petroleum Refineries in Foreign Trade Sub-zones. CBP is proposing that this information collection be extended with no change to the burden hours or Information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 18, 2015 to be assured of consideration.

ADDRESSES: Written comments may be mailed to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Petroleum Refineries in Foreign Trade Sub-zones

OMB Number: 1651–0063

Abstract: The Foreign Trade Zones Act, 19 U.S.C. 81c(d) contains specific provisions for petroleum refinery sub-zones. It permits refiners and U.S. Customs and Border Protection (CBP) to assess the relative value of such products at the end of the manufacturing period during which these products were produced when the actual quantities of these products resulting from the refining process can be measured with certainty.

19 CFR 146.4(d) provides that the operator of the refinery sub-zone is required to retain all records relating to the above mentioned activities for five years after the merchandise is removed from the sub-zone. Further, the records shall be readily available for CBP review at the sub-zone.

Instructions on compliance with these record keeping provisions are available in the Foreign Trade Zone Manual which is accessible at: *http://www.cbp.gov/document/guides/foreign-trade-zones-manual.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 81.

Estimated Number of Total Annual Responses: 81.

Estimated Time per Response: 1000 hours.

Estimated Total Annual Burden Hours: 81,000.

Dated: October 14, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–26492 Filed 10–16–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3373–EM; Docket ID FEMA–2015–0002]

South Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of South Carolina (FEMA–3373–EM), dated October 3, 2015, and related determinations.

DATES: *Effective date:* October 3, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 3, 2015, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of South Carolina resulting from severe storms and flooding beginning on October 1, 2015, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of South Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of South Carolina have been designated as adversely affected by this declared emergency:

All 46 South Carolina counties and the Catawba Nation for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–26460 Filed 10–16–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4241–DR; Docket ID FEMA–2015–0002]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4241–DR), dated October 5, 2015, and related determinations.

DATES: *Effective Date:* October 5, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 5, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Carolina resulting from severe storms and flooding beginning on October 1, 2015, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Carolina have been designated as adversely affected by this major disaster:

Charleston, Dorchester, Georgetown, Horry, Lexington, Orangeburg, Richland, and Williamsburg Counties for Individual Assistance.

Berkley, Charleston, Clarendon, Dorchester, Georgetown, Horry, Lexington, Orangeburg, Richland, Sumter, and Williamsburg Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance.

All areas within the State of South Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–26459 Filed 10–16–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4241–DR; Docket ID FEMA–2015–0002]

South Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4241–DR), dated October 5, 2015, and related determinations.

DATES: *Effective Date:* October 9, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 5, 2015.

Bamberg, Colleton, and Greenwood Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–26451 Filed 10–16–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4241–DR; Docket ID FEMA–2015–0002]

South Carolina; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4241–DR), dated October 5, 2015, and related determinations.

DATES: *Effective date:* October 7, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 5, 2015.

Calhoun, Darlington, Florence, Kershaw, and Lee Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–26454 Filed 10–16–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4241–DR; Docket ID FEMA–2015–0002]

South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4241–DR), dated October 5, 2015, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 5, 2015.

Berkeley, Clarendon, and Sumter Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030,

Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–26457 Filed 10–16–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4240–DR; Docket ID FEMA–2015–0002]

California; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4240–DR), dated September 22, 2015, and related determinations.

DATES: *Effective Date:* October 8, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include Public Assistance (Categories A–G) among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 22, 2015.

Calaveras and Lake Counties for Public Assistance [Categories A–G] (already designated for Individual Assistance and emergency protective measures [Category B], limited to direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–26452 Filed 10–16–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0060]

Homeland Security Science and Technology Advisory Committee (HSSTAC)

AGENCY: Science and Technology Directorate, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet on November 2–3, 2015 in Washington, DC. The meeting will be both in-person and virtual (webinar)—open session.

DATES: The HSSTAC will meet in-person Monday, November 2, 2015, from 12:45 p.m.–4:30 p.m. and Tuesday, November 3, 2015, from 8:00 a.m.–4:30 p.m.

Due to security, screening pre-registration is required for this event. Please see registration information below. Also, please note the meeting may close early if the committee has completed its business.

ADDRESSES: Homeland Security Acquisition Institute, 90 K Street NW., Suite 1200, Washington, DC 20005.

Virtual Meeting

For information on services for individuals with disabilities or to request special assistance at the meeting, contact Bishop Garrison as soon as possible. If you plan to attend the meeting in-person you must RSVP by Wednesday, October 29, 2015. To register send an email to *HSSTAC@hq.dhs.gov* with the following subject line: RSVP to HSSTAC Meeting. The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending.

To pre-register for the virtual meeting (webinar) please send an email to: *HSSTAC@HQ.DHS.GOV.* The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending.

To facilitate public participation, we invite public comment on the issues to be considered by the committee as listed in the ''Supplementary Information'' below. Written comments must be received by October 18, 2015, Please include the docket number (DHS–2015–0060) and submit via *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *HSSTAC@HQ.DHS.GOV.* Include the docket number in the subject line of the message.
- Fax: 202–254–6176.
- Mail: Bishop Garrison, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number. Comments received will be posted without alteration at *http://www.regulations.gov,*

Docket: For access to the docket to read background documents or comments received by the HSSTAC, go to *http://www.regulations.gov* and enter the docket number into the search function: DHS–2015–0060.

A period is allotted for public comment on November 2 and November 3, 2015 at the end of each open session. Please note that the public comment period may end before the time indicated, following the last call for comments. To register as a speaker, contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Bishop Garrison, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205, 202–254–5617(O), 202–254–6176 (F) *bishop.garrison@HQ.DHS.GOV* (E)

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (Pub. L. 92–463). The committee addresses areas of interest and importance to the Under Secretary for Science and Technology, such as new developments in systems engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other federal agencies and by the private sector. It also advises the Under

Secretary on policies, management processes, and organizational constructs as needed.

Agenda: Day 1: Morning session will be closed for administrative purposes. There will be two afternoon sessions covering emerging threats and engagement with the homeland security industrial base, followed by public comments. Day 2: Dr. Reginald Brothers, Under Secretary for Science and Technology, will provide the mission, goals and deliverables for S&T followed by questions and comments from the public. The afternoon session will cover science and technology management and strategy, as well as research and development to counter current threats, followed by public comment. The DFO will then discuss the Department of Homeland Security's direction to the committee and subcommittee standup. The committee will deliberate on any preliminary recommendations, and formulate initial recommendations on science and technology management and strategy and on research and development to counter current threats for topic consideration at the next HSSTAC meeting.

Dated: October 8, 2015.

Bishop Garrison,

Executive Director, Homeland Security Science and Technology Advisory Committee.

[FR Doc. 2015–26494 Filed 10–16–15; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0080]

Agency Information Collection Activities: USCIS Case Status Online; Extension of an Existing Information Collection; Comment Request

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 18, 2015.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0080 in the subject box, the agency name and Docket ID USCIS–2005–0033. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2005–0033;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2005–0033 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* USCIS Case Status Online.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number (File No. OMB–33); USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households, for-profit organizations, and not-for-profit organizations. This system allows individuals or their representatives to request case status of their pending application through USCIS' Web site.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection USCIS Case Status Online is 7,020,000 and the estimated hour burden per response is 0.075 hours (4.5 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 526,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: October 13, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–26414 Filed 10–16–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2015–N172; FXHC1122 XPSAGEG–156–FF06E13000]

Endangered and Threatened Wildlife and Plants; Enhancement of Survival Permit Applications; Greater Sage-Grouse Umbrella Candidate Conservation Agreement With Assurances for Wyoming Ranch Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received applications for enhancement of survival permits (EOS permits) under the Endangered Species Act of 1973, as amended (Act), pursuant to the Greater Sage-grouse Umbrella Candidate Conservation Agreement with Assurances for Wyoming Ranch Management (Umbrella CCAA). The permit applications, if approved, would authorize incidental take associated with implementation of specified individual Candidate Conservation Agreements with Assurances (individual CCAAs) developed in accordance with the Umbrella CCAA. We invite the public to comment on the EOS permit applications described below. The Act requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by November 18, 2015.

ADDRESSES: *Submitting Comments:* Send written comments by one of the following methods. Please specify the permit(s) you are commenting on by relevant number(s) (*e.g.,* Permit No. TE–XXXXXX).

- *U.S. mail:* Tyler Abbott, Wyoming Ecological Services Field Office (ESFO), U.S. Fish and Wildlife Service, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009.
- *Email: tyler_abbott@fws.gov.*
- *Fax:* Tyler Abbott, (307) 772–2358.

Reviewing Documents: You may review copies of the enhancement of survival permit applications during regular business hours at the Wyoming ESFO (see address above). You may also request hard copies by telephone at (307) 772–2374, ext. 231, or by letter to the Wyoming ESFO. Please specify the permit(s) you are interested in by relevant number(s) (*e.g.,* Permit No. TE–XXXXXX).

FOR FURTHER INFORMATION CONTACT: Tyler Abbott, U.S. Fish and Wildlife Service, (307) 772–2374, ext. 231 (phone); *tyler_abbott@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

A Candidate Conservation Agreement with Assurances is an agreement with the Service in which private and other non-Federal landowners voluntarily agree to undertake management activities and conservation efforts on their properties to enhance, restore, or maintain habitat to benefit species that are proposed for listing under the Act, that are candidates for listing, or that may become candidates. The Service and several State, Federal, and local partners developed the Umbrella CCAA (available at *http://www.fws.gov/wyominges*) to provide Wyoming ranchers with the opportunity to voluntarily conserve greater sage-grouse and its habitat while carrying out their ranching activities. The Umbrella CCAA was made available for public review and comment on February 7, 2013 (see 78 FR 9066), and was executed by the Service on November 8, 2013.

Pursuant to the Umbrella CCAA, ranchers in Wyoming may apply for an EOS permit under the Act by agreeing to implement certain conservation measures for the greater sage-grouse on their properties. These conservation measures are specified in individual CCAAs for their properties, which are developed in accordance with the Umbrella CCAA and are subject to the terms and conditions stated in that agreement. Landowners consult with the Service and other participating agencies to develop an individual CCAA for their property, and submit it to the Service for approval with their EOS permit application. If we approve the individual CCAA and EOS permit application, we will issue an EOS permit, under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*), that authorizes incidental take of greater sage-grouse that results from activities covered by the individual CCAA, should the species become listed. Through the Umbrella CCAA and the individual CCAA and EOS permit, we also provide assurances to participating landowners that, if the greater sage-grouse is listed, and so long as they are properly implementing their individual CCAA, we will not require any conservation measures with respect to greater sage-grouse in addition to those provided in the individual CCAA or impose additional land, water, or financial commitments or restrictions on land, water, or resource use in connection with the species. The EOS permit would become effective on the effective date of listing of the greater sage-grouse as endangered or threatened, and would continue through the end of the individual CCAA's 20-year term. Regulatory requirements and issuance criteria for EOS permits through a CCAA are found in 50 CFR 17.22(d) and 17.32(d), as well as 50 CFR part 13.

Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following EOS permit applications. The Umbrella CCAA, as well as the individual CCAAs submitted with the permit applications, are also available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552). The following applicants request approval of EOS permits for the greater sage-grouse, pursuant to the Umbrella CCAA, for the purpose of enhancing the species' survival.

Permit Application Number TE73336B–0

Applicant: Heward's 7E Ranch LLC, Carbon and Albany Counties, Wyoming.

Permit Application Number TE73339B–0

Applicant: Spring Gulch Cattle Co., Hot Springs County, Wyoming.

Permit Application Number TE73341B–0

Applicant: Garrett Ranch Co., Natrona County, Wyoming.

Permit Application Number TE73342B–0

Applicant: Madeleine S. Murdock, Sublette County, Wyoming.

Permit Application Number TE73343B–0

Applicant: William Matthew Harber, Sublette County, Wyoming.

Permit Application Number TE40463B–1

Applicant: HIP Investments LLC, Johnson County, Wyoming.

Permit Application Number TE73344B–0

Applicant: Huish Outdoors, Sublette County, Wyoming.

Permit Application Number TE73357B–0

Applicant: M and D Land Company, Natrona County, Wyoming.

Permit Application Number TE73359B–0

Applicant: Merle Jay Clark, Crook County, Wyoming.

Permit Application Number TE73361B–0

Applicant: Charles R. Firnekas, Natrona, Johnson, and Washakie Counties, Wyoming.

Permit Application Number TE74947B–0

Applicant: Flitner Ranch Limited Partnership, Big Horn County, Wyoming.

Public Availability of Comments

All comments and materials we receive in response to these requests will become part of the public record, and will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1539(c)).

Dated: September 16, 2015.

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2015–26444 Filed 10–16–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX16EN05ESB0500]

Opening of Nomination Period for Members of the Advisory Committee on Climate Change and Natural Resource Science

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of opening of nomination period.

SUMMARY: The Department of the Interior is inviting nominations for membership on the Advisory Committee on Climate Change and Natural Resource Science. This **Federal Register** Notice opens the nomination period from the date of publication until January 15, 2016

DATES: Written nominations must be received by January 15, 2016.

ADDRESSES: Send nominations to: Robin O'Malley, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 516, Reston, VA 20192, *nccwsc@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Robin O'Malley, Designated Federal Officer for ACCCNRS, Policy and Partnership Coordinator, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 516, Reston, VA 20192, *romalley@usgs.gov,* (703) 648–4086.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Climate Change and Natural Resource Science (ACCCNRS) was chartered in 2013. Twenty-five members were appointed to the committee to provide advice on matters and actions relating to the operations of the U.S. Geological Survey National Climate Change and Wildlife Science Center and the Department of the Interior (DOI) Climate Science Centers. The ACCCNRS Charter can be found at: *https://nccwsc.usgs.gov/acccnrs.*

In May 2016, membership terms for several committee members will expire, creating approximately 12 membership openings. The Department of the Interior is inviting nominations for individuals to be considered for these membership openings. Only nominations in response to this notice will be considered. Existing ACCCNRS members, whose terms are expiring, must be re-nominated during this open nomination period to be considered. Self-nominations will be accepted. Nominations should include a resume that describes the nominee's qualifications in enough detail to enable us to make an informed decision regarding meeting the membership requirements of the Committee and to contact a potential member. Additional information will be requested from those selected for final review before appointment. Members selected for appointment may identify an alternate who can participate in their stead; names of proposed alternates need not be submitted at this time.

The Department of the Interior is soliciting members for ACCCNRS to represent the following interests: (1) State and local governments, including state membership entities; (2) Nongovernmental organizations, including those whose primary mission is professional and scientific and those whose primary mission is conservation and related scientific and advocacy activities; (3) American Indian tribes and other Native American entities; (4) Academia; (5) Landowners, businesses, and organizations representing landowners or businesses.

In 2016 and later, the Committee will meet approximately 2 times annually, and at such times as designated by the DFO. The Secretary of the Interior will appoint members to the Committee. Members appointed as special Government employees are required to file on an annual basis a confidential financial disclosure report. No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Committee.

Privacy Statement

This activity is subject to the Privacy Act of 1974 and the Federal Advisory Committee Act (FACA) of 1972 (Public Law 92–463 Sec. 1, Oct. 6, 1972, 86 Stat. 770.)

Authority: 42 U.S.C. 2000E–16.

Principal Purpose: Information is collected for the purpose of vetting nominees and evaluating qualifications for appointments to the Federal Advisory on Climate Change and Natural Resource Science (ACCCNRS.)

Routine Use: Personally identifiable information will be collected by secure fax, phone, or U.S. mail, will be kept in a secure location, and purged from files at the conclusion of the vetting process. Selection of committee members is made based on the FACA's requirements and the potential member's background and qualifications. Final selection is made by the president or heads of departments or agencies.

Disclosure Is Voluntary: If the individual does not furnish the

information requested, there will be no adverse consequences. However, failure to furnish information requested will prevent appointment to ACCCNRS.

Robin O'Malley,

Designated Federal Officer, Policy and Partnership Coordinator, National Climate Change and Wildlife Science Center.

[FR Doc. 2015–26432 Filed 10–16–15; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXP511025 PPWOBSADF0 PFE00FESW.Z00000 PX.XBSAD0104.00.1]

Privacy Act of 1974, as Amended; Notice To Amend an Existing System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of amendment to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing a public notice of its intent to amend the Department-wide Privacy Act system of records titled, ''The 'America the Beautiful—The National Parks and Federal Recreational Lands Pass' System,'' DOI–06. This system allows the Department of the Interior to manage the Pass program and information about organizations and individuals who participate in Pass program activities and initiatives. The system notice is being amended to reflect new Pass initiatives and updates to the system location, categories of individuals covered by the system, categories of records in the system, authority for maintenance of the system, storage, safeguards, retention and disposal, system manager and address, notification procedures, records access and contesting procedures, records source categories, and to update the routine uses to include activities related to the issuance and management of park passes and programs that support these activities.

DATES: Comments must be received by November 18, 2015. The amendments to the system will be effective November 18, 2015.

ADDRESSES: Any person interested in commenting on this new system of records may do so by submitting written comments to Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 5547 MIB, Washington, DC 20240; hand-delivering comments to Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 5547 MIB, Washington, DC 20240; or emailing comments to *Privacy@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: America the Beautiful—The National Parks and Federal Recreational Lands Pass Program Manager, National Park Service, Org. Code 2608, 1201 Eye St. NW., Washington, DC 20005, or by phone: 202–513–7139.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI) manages the ''America the Beautiful—The National Parks and Federal Recreational Lands Pass'' (hereinafter '''Pass'' or ''Pass System''). The purpose of the Pass System is to manage Pass program activities and information about organizations and individuals who purchase or participate in Pass initiatives, receive the ''America the Beautiful—The National Parks and Federal Recreational Lands Pass'', or register to receive information about the Pass program and stewardship opportunities. Passes may be purchased online, or via mail or telephone. The information collected is required to establish eligibility; process financial transactions to complete Pass purchase requests; fulfill Passes to individuals (''fulfill'' and ''fulfillment'' refer to shipping and handling of Passes), Federal recreation sites, and third parties; and provide associated customer services such as sending renewal notices and providing information about the Pass program and Federal lands. Any entity authorized to sell and fulfill Passes on behalf of the government will be barred from selling, renting, licensing, sharing, or disclosing to third parties any personal information collected. Any such entity will also be barred from using any personal information collected for purposes other than to sell and fulfill Passes. Informational or promotional messages will be sent to individuals and organizations only if they have affirmatively requested such messages through an ''opt-in'' mechanism.

The Every Kid in a Park (EKiP) initiative is an interagency effort between the National Park Service, Bureau of Land Management, Fish and Wildlife Service, Bureau of Reclamation, Forest Service, Department of Education, Army Corps of Engineers, the National Oceanic and Atmospheric Administration, and the General Services Administration to provide free entrance and standard amenity fees to U.S. students. The EKiP program promotes education about America's wildlife, resources, and history, and encourages fourth grade students and their families to visit federal public lands and waters by issuing fee-free annual passes to recreation sites managed by DOI and its Federal partners. These EKiP program activities are managed by DOI with participating bureaus, offices, and partners under the authority of the Federal Lands Recreation Enhancement Act of 2004 (REA), 16 U.S.C. 6804.

DOI is proposing to amend the system notice to provide updates to the Pass System and include information on the EKiP initiative. Amendments to the system include updates to the system location, categories of individuals covered by the system, categories of records in the system, authority for maintenance of the system, storage, safeguards, retention and disposal, system managers and addresses, notification procedures, records access and contesting procedures, records source categories, and updating the routine uses to include activities related to the issuance of Passes and management of the Pass and EKiP programs. This system notice was last published in the **Federal Register** on June 4, 2007, 72 FR 30816.

The amendments to the system will be effective as proposed at the end of the comment period (the comment period will end 30 days after the publication of this notice in the **Federal Register**), unless comments are received that would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal Agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information about an individual is retrieved by the name or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. As a matter of policy, DOI extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of

DOI by complying with DOI Privacy Act regulations located at 43 CFR part 2, subpart K.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains and the routine uses of the information in each system in order to make agency record keeping practices transparent, notify individuals regarding the uses of their records, and assist individuals to more easily find such records within the agency. Below is the description of the amended ''The 'America the Beautiful—The National Parks and Federal Recreational Lands Pass' System,'' DOI–06, system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report concerning this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

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.

Dated: October 13, 2015.

Teri Barnett,

Departmental Privacy Officer.

SYSTEM NAME

America the Beautiful—The National Parks and Federal Recreational Lands Pass System, DOI–06.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records pertaining to Pass System sales and fulfillment are maintained at the U.S. Geological Survey: U.S. Geological Survey Geospatial Information Office, Science Information & Education Branch, MS–306/ Accounting Team, Box 25286, Denver Federal Center, Denver, CO 80225. Records are also located in DOI bureaus and offices that manage Pass program sales, initiatives, and outreach activities; and in facilities of DOI contractors who manage or process Pass sales on behalf of the Department of the Interior. Records pertaining to the Every Kid in a Park program are located in the office of the Every Kid in a Park Program Manager, Department of the Interior, 1849 C St. NW., Washington, DC 20240, and at the General Services Administration and contractor facilities who provide EKiP program support services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Members of the public who:

(a) Purchase the ''America the Beautiful—The National Parks and Federal Recreational Lands Pass'' (hereinafter, ''Pass'') via the Internet, mail, or a telephone call-center,

(b) Register online to receive information about the Pass program and stewardship opportunities,

(c) Are awarded a Pass as a result of reaching the necessary threshold of hours volunteered at Federal recreation lands, or

(d) Participate in the EKiP program or are awarded a Pass as a result of participation in Pass program promotions, educational programs, or initiatives to encourage individuals to visit Federal parks, lands, and waters, including volunteers, educators, students, and special groups;

(2) Representatives and employees of businesses and organizations who are third party vendors of the Pass; and

(3) Employees of DOI, Department of Agriculture, Forest Service, and Department of Defense, Army Corps of Engineers, or other Federal agency partners who serve as ordering contacts for the Pass for sale or distribution.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Name of individual or organization and contact information, including home address, telephone number, and email address.

(2) Category of Pass(es) being purchased or awarded such as Annual Pass, Access Pass, Senior Pass, and Volunteer Pass.

(3) Information required for proof of identity and eligibility for a Pass or to meet a requirement for Pass program initiatives, such as age, date of birth, disability status, citizenship, photo identification, passport, driver license or state issued identification, and other criteria such as employment or membership status.

(4) Information about special groups participating in Pass program activities or initiatives (such as schools, educators, or organizations) who provide information necessary to request or receive Passes. Information may include name of individual, name of organization, email address, address, other contact information, zip code, or specific Federal park or lands, and may be used to establish eligibility, and develop metrics to analyze success of promotional outreach activities and increase program participation.

(5) Financial information necessary to process Pass purchases, including credit card number, account holder, type of credit card (*e.g.,* Visa or Mastercard), expiration date, and credit card security code.

(6) Date that Pass(es) were purchased or awarded.

(7) Other information necessary to manage the Pass and EKiP programs, such as name, address, contact method, other preferences, and information contained in correspondence or requests to receive further information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Lands Recreation Enhancement Act of 2004 (REA), 16 U.S.C. 6804 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of this system are: (1) To process financial transactions to complete sales of Passes; (2) to fulfill Passes to individuals, Federal recreation sites, and third party vendors of the Pass; (3) for those who ''opt-in'' or register, to send updates, reminders (including remarketing the Pass when an individual's Pass is about to expire), and additional information on the Pass program and stewardship opportunities from the REA participating agencies and Congressionally Authorized Foundations (the National Fish and Wildlife Foundation, the National Forest Foundation, the Corps Foundation, and the National Park Foundation); and (4) for other necessary actions to manage the Pass and EKiP programs within the intent of the authorizing legislation.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, disclosures outside DOI may be made as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible for which the records are collected or maintained.

(4) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(6) To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant, or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(7) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(8) To state, territorial, and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(9) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(10) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(11) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(12) To the Department of the Treasury to recover debts owed to the United States.

(13) To the news media and the public, with the approval of the Public Affairs Officer in consultation with Counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(14) To an expert, consultant, contractor (including employees of the contractor) of DOI that performs, on DOI's behalf, services requiring access to these records.

(15) To the Department of Agriculture's Forest Service and the Department of Defense's Army Corps of Engineers as necessary to implement the Pass program.

(16) To the Congressionally Authorized Foundations (the National Fish and Wildlife Foundation, the National Forest Foundation, the Corps Foundation, and the National Park Foundation) about those individuals or entities who ''opt-in'' or register to receive communications.

(17) To a debt collection agency for the purpose of collecting outstanding debts owed to the Department for fees associated with processing FOIA/PA requests.

(18) To disclose debtor information to the Internal Revenue Service, or to another Federal agency or its contractor solely to aggregate information for the Internal Revenue Service to collect debts owed to the Federal government through the offset of tax refunds.

(19) To other Federal agencies for the purpose of collecting debts owed to the Federal government by administrative or salary offset.

(20) To Federal, state, tribal, territorial or local government, educational, and other organizations, entities or individuals for the purpose of verifying eligibility to receive a Pass, prevent duplication, fraud and abuse, or as otherwise required by law.

(21) To the General Services Administration, U.S. Department of Education, U.S. Army Corps of Engineers, U.S. Forest Service, National Oceanic and Atmospheric Administration, and other Federal agencies in partnership with DOI to promote educational or outreach activities to encourage individuals to visit Federal parks, lands, and waters, for the purpose of developing metrics to analyze success of promotional outreach activities and identify challenges for special groups and localities, and to prevent fraud and abuse.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1996 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in paper form are stored in file folders in file cabinets. Electronic records are maintained in computer servers, computer hard drives, electronic databases, email, and electronic media such as removable drives, compact disc, magnetic disk, diskette, and computer tapes.

RETRIEVABILITY:

Information from the Pass System will be retrievable by (1) name of individual or organization, (2) address, (3) credit card information (for Pass purchasers only), and (4) other unique identifiers such as an email address or a phone number.

SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security rules and policies. During normal hours of operation, paper records are maintained in locked filed cabinets in secured rooms under the control of authorized personnel that are locked during non-business hours. Computers and storage media are encrypted in accordance with DOI security policy. Electronic records are stored in servers located in secured Federal agency and contractor facilities with physical, technical and administrative levels of security to prevent unauthorized access to information. Security controls include encryption, firewalls, two-factor authentication, audit logs, intrusion detection systems, and network system security monitoring. Access to records in this system is limited to DOI personnel and other authorized parties who have a need to know the information for the performance of their official duties, and is based on least privileges or access level needed to perform job duties. Electronic records are safeguarded by permissions set to ''Authenticated Users'' which require valid username and password, and user access is monitored to protect against unauthorized access or use. Database tables are kept on separate file servers away from general file storage and other local area network usage, and the database itself will be stored in a password-protected, client-server database. Electronic transmissions of records containing sensitive data will be encrypted and password-protected. Personnel authorized to access the system must complete security, privacy, and records management training and sign the DOI Rules of Behavior. A Privacy Impact Assessment was conducted to ensure that adequate controls are implemented to protect data as required by the Privacy Act, E-Government Act of 2002, the Federal Information Security Modernization Act of 2014, Office of Management and Budget policy, National Institute of Standards and Technology guidelines and standards, and DOI privacy and security policies.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the National Park Service (NPS) Records Schedules and Departmental Records Schedules that have been approved by the National Archives and Records Administration (NARA). Commercial Visitor Services (Item 5) C. Routine Financial and Contract/Lease Records ((N1–79–08–4)) have a temporary disposition and are destroyed seven years after closure. Interpretation and Education (Item 6), Retention plan C, Routine and Supporting Documentation have a temporary disposition and are destroyed three years after closure (N1–79–08–5). General administrative records, including routine correspondence, administrative copy files, budget files, and duplicate copies, are maintained under Departmental Records Schedule 1—Administrative Records (DAA–0048–2013–0001). The disposition of these records may vary based on the subject matter, function, and the needs of the agency. Temporary records are cut off when superseded or obsolete, and destroyed after the required retention period for the specific record type. In some cases, records may be maintained under DOI bureau and office records retention schedules and disposed of in accordance with the applicable retention schedules. Approved disposition methods for temporary records include shredding or pulping paper records, and erasing or degaussing electronic records in accordance with 384 Departmental Manual 1 and NARA guidelines.

SYSTEM MANAGER AND ADDRESS:

1. America the Beautiful—The National Parks and Federal Recreational Lands Pass Program Manager, National Park Service, Org. Code 2608, 1201 Eye St. NW., Washington, DC 20005.

2. Every Kid in a Park Program Manager, Office of the Secretary, Department of the Interior, 1849 C St. NW., Mail Stop 7254 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself in the Pass System should send a signed, written inquiry to the appropriate System Manager identified above. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY'' and the request must include the individual's full name and address. A request for notification must meet the requirements of 43 CFR 2.235.

RECORD ACCESS PROCEDURES:

An individual requesting records on himself or herself in the Pass System should send a signed, written inquiry to the appropriate System Manager identified above. The request must include the individual's full name and address and should describe the records sought as specifically as possible. The request envelope and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the appropriate System Manager identified above. The request must include the individual's full name and address, as well as an explanation of what information they believe should be changed, and why. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

RECORD SOURCE CATEGORIES:

Information in the Pass System comes primarily from individual members of the public, persons, parties, or organizations purchasing or receiving Passes or registering to receive additional information from DOI about the Pass or EKiP programs, and related activities. Individuals may provide information using online or electronic forms, through mail, or over the telephone if using a telephone call-in center. Information may also be obtained from correspondence with individuals interested in programs related to Pass and EKiP program activities, and from DOI bureau and office program records related to these program activities. Information may also be obtained from DOI partner agencies, and other Federal, state, local or tribal entities; DOI employees, contractors, and volunteers; and any persons who correspond or communicate with DOI during the course of program management activities for ''The 'America the Beautiful—The National Parks and Federal Recreational Lands Pass' System''.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015–26446 Filed 10–16–15; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES962000 L14200000.BJ000015X]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Michigan.

SUMMARY: The Bureau of Land Management (BLM) will officially file the plat of survey of the lands described below in the BLM-Eastern States Office, Washington, DC at least 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Eastern States Office, 20 M Street SE., Washington, DC, 20003. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Michigan Meridian, Michigan
T. 3 S., R. 16 W.

The plat of survey represents the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, a portion of the adjusted record meanders of the Paw Paw River, the subdivision of sections 7, 8, 18, and 19, the survey of the boundaries of land held in trust by the United States for the Pokagon Band of Potawatomi Indians in sections 7, 8, 18 and 19, and the informative traverse of portions of the present day meanders of the Paw Paw River, Township 3 South, Range 16 West, of the Michigan Meridian, in the State of Michigan, and was accepted August 31, 2015.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: October 7, 2015.

Dominica VanKoten,

Chief Cadastral Surveyor.

[FR Doc. 2015–26445 Filed 10–16–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–19480; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before September 26, 2015, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by November 3, 2015.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before September 26, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

CALIFORNIA

Calaveras County

Calaveritas Creek Bridge, Calaveritas Rd. at Calaveritas Cr., Calaveritas, 15000767

MAINE

Kennebec County

Foster Farm Barn, 538 Augusta Rd., Belgrade, 15000768

Penobscot County

Gordon Fox Ranch, 680 W. Broadway, Lincoln, 15000769

York County

Goodwin, Edmund E., House, 503 Main St., Sanford, 15000770

St. Andrews Parish,

73, 77 Bacon & 39, 41 Sullivan Sts., Biddeford, 15000771

MISSOURI

Jackson County

Commerce Trust Company Historic District, Bounded by E. 9th, Walnut, E. 10th & Main Sts., Kansas City, 15000772

St. Louis Independent City

Home of the Friendless, The, 4431 S. Broadway, St. Louis (Independent City), 15000773

NEW JERSEY

Hunterdon County

Raven Rock Historic District, Quarry Rd., Delaware Township, 15000774

NEW YORK

Monroe County

Congregation Ahavas Achim Anshi Austria, 692 Joseph Ave., Rochester, 15000775

Nassau County

Franklin Square National Bank, 925 Hempstead Tpk., Franklin Square, 15000776

Rockland County

First Reformed Church, 361 Ferdon Ave., Piermont, 15000777

OREGON

Linn County

Cyrus, Henry and Mary, Barn, (Barns of Linn County, Oregon MPS) 37964 Balm Dr., Lebanon, 15000778

Multnomah County

Washington High School, 1300 SE. Stark St., Portland, 15000779

A request to remove has been received for the following resources:

COLORADO

Kit Carson County

Winegar Building, 494–498 Fourteenth St., Burlington, 86001123

MAINE

Androscoggin County

Bergin Block, 330 Lisbon St., Lewiston, 86002278

Authority: 60.13 of 36 CFR part 60

Dated: October 1, 2015.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2015–26418 Filed 10–16–15; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–19410; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Wisconsin Historical Society, Museum Division, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wisconsin Historical Society, Museum Division, has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by November 18, 2015.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Society, Museum Division, 816 State Street, Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Wisconsin Historical Society, Madison, WI. The human remains were removed from Poor Man's Farrah site in Grant County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society, Museum Division, professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; and the Menominee Indian Tribe of Wisconsin.

History and Description of the Remains

In 1980, human remains representing, at minimum, 11 individuals (1983.73.1, 1983.73.5, 1983.73.8, 1983.73.10, 1983.73.11, 1983.73.15, 1983.73.19, and 1983.73.27) were removed from Poor Man's Farrah (47–GT–0366) in Grant County, WI. The human remains were excavated from one linear mound and three conical mounds by archeologists from the Wisconsin Historical Society for a highway expansion and bridge construction project. The human remains were determined to represent seven adults, one subadult, and three infants. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society, Museum Division, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the location and context of the burial, skeletal analysis, and Wisconsin Historical Society records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 11 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and the Winnebago Tribe of Nebraska.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and the Winnebago Tribe of Nebraska (hereafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, Museum Division, 816 State Street, Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org,* by November 18, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society, Museum Division, is responsible for notifying The Aboriginal Land Tribes that this notice has been published.

Dated: September 23, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–26497 Filed 10–16–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02600000, 15XR0680A1, RX191242012000000]

Notice of Intent To Prepare an Extraordinary Operation and Maintenance Environmental Impact Statement for the Truckee Canal, Lahontan Basin Area Office, Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation, Lahontan Basin Area Office, the lead Federal agency, intends to prepare an Extraordinary Operation and Maintenance (XM) Environmental Impact Statement (EIS) for the Truckee Canal (Canal). The XM EIS will evaluate opportunities to reduce the risk to public safety from a Canal breach. Multiple federal, state, and local government agencies, tribal entities, and quasi- or non-governmental entities will be invited to participate as cooperating agencies for the XM EIS.

DATES: Submit written comments on the scope of the draft XM EIS by November 30, 2015.

Three public scoping meetings will be held on the following dates and times:

- Tuesday, October 27, 2015, 5:30 to 7:30 p.m., Wadsworth, Nevada.
- Wednesday, October 28, 2015, 5:30 to 7:30 p.m., Fallon, Nevada.
- Thursday, October 29, 2015, 5:30 to 7:30 p.m. in Fernley, Nevada.

ADDRESSES: Send written comments on the scope of the draft XM EIS to Ms. Roberta Tassey, Lahontan Basin Area Office, Bureau of Reclamation, 705 N. Plaza Street, Room 320, Carson City, Nevada 89701; or by email to *TruckeeEIS@empsi.com.*

Scoping meetings will be held at the following locations:

- Wadsworth—Wadsworth Community Building, Eighth Street, Wadsworth, Nevada.
- Fallon—Churchill County Administrative Complex, Commission Chambers Room no. 15, 155 N. Taylor Street, Fallon, Nevada.
- Fernley—Fernley City Council Chambers, 595 Silverlace Boulevard, Fernley, Nevada.

FOR FURTHER INFORMATION CONTACT: For further information and/or to be added to the mailing list, please contact Ms. Roberta Tassey at *rtassey@usbr.gov.* Additional information may be obtained through the Truckee Canal XM EIS link on the Lahontan Basin Area Office Web page *http://www.usbr.gov/mp/lbao/index.html.*

Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This **Federal Register** notice provides the public with information regarding the Bureau of Reclamation's (Reclamation) intent to prepare an EIS pursuant to the National Environmental Policy Act of 1969, as amended.

Background. Nine Federal agencies, three Nevada state agencies, 13 local governments, four tribal entities, and seven quasi- or non-governmental entities will be invited to participate as cooperating agencies for the XM EIS. Other entities will be considered as necessary during the XM EIS process.

The Canal is part of the Newlands Project (Project), which was constructed in 1903 as one of the Reclamation's first projects. In January 2008, a portion of the Canal embankment near the City of Fernley, Nevada, breached. The Canal's operations are now limited due to safety concerns.

Portions of the Project were listed on the National Register of Historic Places on March 25, 1981. In addition, the Canal and other associated structures have been determined eligible for listing on the National Register of Historic Places for contributing to the history of the Project.

Scoping meetings will be held in Carson City, Fallon, and Fernley; Nevada. Additional information regarding specific dates and times for the upcoming meetings and identification of relevant comment periods will be provided in a future notice, local news media, and through direct contact with interested parties.

Purpose and Need for Action. The purpose is to improve public safety by reducing the risk of a Canal breach. Reclamation needs to take action to evaluate alternatives that will enable the Canal operator—the Truckee Carson Irrigation District (TCID)—to safely operate the Canal and deliver Project water in compliance with operating criteria and procedures for the Project. Additional restrictions on Canal operations may be necessary without taking actions or initiating risk-reducing repairs.

Proposed Federal Action. Reclamation or TCID are proposing to complete structural improvements of the Canal facilities; and/or implement a long-term tolerable stage level restriction. This may be achieved using a variety of options including, but not limited to the following structural improvements to the canal embankment, which could include sheet pile walls and improvements to the earthen embankment.

- Lining portions of the Canal
- Installing detention and/or retention ponds
- Installing automated check structures to regulate flow through the Canal
- Installing passive overflow and/or wasteway structures
- Reducing the Canal stage-levels with no structural improvements

Public Disclosure. Before including your address, phone number, email address, or other personal identifying information in your comment, please be advised that your entire comment-including your personal identifying information-may be made publicly available at any time. While you may request that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 8, 2015.

Jason Phillips,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2015–26195 Filed 10–16–15; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

[15XD0120AF.DT21200000.DST000000. T7AC00.241A]

Proposed Renewal of Information Collection: OMB Control Number 1035–0003, Application To Withdraw Tribal Funds From Trust Status

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Special Trustee for American Indians, Department of the Interior, announces the proposed renewal of a public information collection required by The American Indian Trust Fund Management Reform Act of 1994, ''Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200,'' OMB Control No. 1035–0003, and that it is seeking comments on its provisions. After public review, the Office of the Special Trustee for American Indians will submit the information collection to Office of Management and Budget for renewal.

DATES: Consideration will be given to all comments received by *December 18, 2015.*

ADDRESSES: Send your written comments to the Office of the Special Trustee, Office of External Affairs, Attn: Roberson D. Becenti, 4400 Masthead St. NE., Room 259A, Albuquerque, New Mexico 87109. You may also email comments to *roberson_becenti@ost.doi.gov.* Individuals providing comments should reference OMB control number 1035–0003, ''Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200.''

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, any explanatory information and related forms, see the contact information provided in the **ADDRESSES** section above.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice is for renewal of information collection.

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies an information collection activity that the Office of the Special Trustee for American Indians is submitting to OMB for renewal.

Public Law 103–412, The American Indian Trust Fund Management Reform Act of 1994, allows Indian tribes on a voluntary basis to take their funds out of trust status within the Department of the Interior (and the Federal Government) in order to manage such funds on their own. 25 CFR part 1200, subpart B, Sec. 1200.13, ''How does a tribe apply to withdraw funds?'' describes the requirements for application for withdrawal. The Act covers all tribal trust funds including judgment funds as well as some settlements funds, but excludes funds held in Individual Indian Money accounts. Both the Act and the regulations state that upon withdrawal of the funds, the Department of the Interior (and the Federal Government) have no further liability for such funds. Accompanying their application for withdrawal of trust funds, tribes are required to submit a Management Plan for managing the funds being withdrawn, to protect the funds once they are out of trust status.

This information collection allows the Office of the Special Trustee to collect the tribes' applications for withdrawal of funds held in trust by the Department of the Interior. If this information were not collected, the Office of the Special Trustee would not be able to comply with the American Indian Trust Fund Management Reform Act of 1994, and tribes would not be able to withdraw funds held for them in trust by the Department of the Interior.

II. Data

(1) Title: Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200.

OMB Control Number: 1035–0003.

Current Expiration Date: January 31, 2016.

Type of Review: Information Collection Renewal.

Affected Entities: Tribal Governments.

Estimated annual number of respondents: One respondent on average, every three years.

Frequency of responses: Once per tribe per trust fund withdrawal application.

(2) Annual reporting and recordkeeping burden:

Total annual reporting per response: 750 hours.

Total number of estimated responses: 1.

Total annual reporting: 750 hours.

(3) Description of the need and use of the information: The statutorily required information is needed to provide a vehicle for tribes to withdraw funds from accounts held in trust for them by the United States Government.

III. Request for Comments

The Departments invite comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden of the collection of information and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

''Burden'' means the total time, effort, and financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, and to complete and review the collection of information; and to transmit or otherwise disclose the information.

It is our policy to make all comments available to the public for review. Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comments(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us in your comment to withhold PII from public view, we cannot guarantee that we will be able to do so. If you wish to view any comments received, you may do so by scheduling an appointment with the Office of the Special Trustee for American Indians by using the contact information in the **ADDRESSES** section above. A valid picture identification is required for entry into the Department of the Interior.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: October 8, 2015.

David Beeksma,

Director, Office of External Affairs, Office of the Special Trustee for American Indians.

[FR Doc. 2015–26448 Filed 10–16–15; 8:45 am]

BILLING CODE 43134–63–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: November 5–6, 2015.

Time: 8:45 a.m. to 5:00 p.m.

ADDRESSES: University of Utah, S.J. Quinney College of Law, Flynn Faculty Workshop, 332 S. 1400 E., Salt Lake City, Utah 84112.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: October 1, 2015.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2015–26416 Filed 10–16–15; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0052]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Applicant Information Form (1–783)

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** at 80 *FR* 50324, on August 19, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 18, 2015.

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 Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (facsimile: 304–625–5093). 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 20503 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:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Applicant Information Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1–783.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. This collection is necessary for individuals to request a copy of their personal identification record to review it or to obtain a change, correction, or an update to the record.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Annually, the FBI receives 309,345 identification requests, therefore there are 309,345 respondents. The form requires 5 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 25,779 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: October 14, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–26481 Filed 10–16–15; 8:45 am]

BILLING CODE 4410–02–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. to 3:45 p.m., Friday, November 6, 2015.

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting of the Board of Trustees will be open to the public.

MATTERS TO BE CONSIDERED: (1) Call to Order & Chair's Remarks; (2) Executive Director's Remarks; (3) Consent Agenda Approval (Minutes of the October 16, 2014, and April 16, 2015, Board of Trustees Meetings; Board Reports submitted for the Education Programs, U.S. Institute for Environmental Conflict Resolution, Udall Center for Studies in Public Policy-Native Nations Institute-Udall Archives & their Workplan, and Communications; and resolutions regarding Allocation of Funds to the Udall Center for Studies in Public Policy and Transfer of Funds to the Native Nations Institute for Leadership, Management, and Policy); (4) Financial & Internal Controls Update; (5) Native Nations Institute Discussion; (6) Parks in Focus Partnership with Western National Parks Association; (7) Native American Alaska Native Sector Discussion; (8) Udall Scholarship & Internship Recruitment Discussion; (9) Appropriations Update; and (10) Chair's Closing Remarks.

CONTACT PERSON FOR MORE INFORMATION: Philip J. Lemanski, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: October 14, 2015.

Philip J. Lemanski,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2015–26602 Filed 10–15–15; 4:15 pm]

BILLING CODE 6820–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–093)]

NASA Advisory Council; Technology, Innovation and Engineering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology, Innovation and Engineering (TI&E) Committee of the NASA Advisory Council (NAC).

DATES: Tuesday, November 10, 2015, 8 a.m. to 5 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room MIC 7A, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Space Technology Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4710, or *g.m.green@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and online via WebEx. Any interested person may call the USA toll-free conference number 1–844–467–6272, passcode 102421, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number is 998 765 931, and the password is ''Technology15%''.

The agenda for the meeting includes the following topics:

—Space Technology Mission Directorate Update
—Briefing and Discussion on Technology Risk/Challenges Matrix for Humans to Mars
—Office of the Chief Technologist Update
—Briefing on Agency Technical Capability Assessment Outcomes

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Arizona, Idaho, Louisiana, Maine, Minnesota, New Hampshire, and New York. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ms. Anyah Dembling via email at *anyah.dembling@nasa.gov* or by telephone at (202) 358–5195. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation no less than three working days prior to the meeting to Ms. Anyah Dembling.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–26480 Filed 10–16–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The Members of the National Council on Disability (NCD) will hold a quarterly meeting on Monday, November 2, 2015, 9:00 a.m.–4:30 p.m. (Eastern Daylight Time), and on Tuesday, November 3, 2015, 8:30 a.m.–11:45 a.m. (Eastern Daylight Time) in Concord, New Hampshire.

PLACE: This meeting will occur at the Capitol Center for the Arts, Governors Hall, 44 South Main Street, Concord, New Hampshire 03301. Interested parties are welcome to join in person or by phone in a listening-only capacity (other than the period allotted for public comment noted below) using the following call-in number: 888–510–1785; Conference ID: 4579660; Conference Title: NCD Meeting; Host Name: Clyde Terry.

MATTERS TO BE CONSIDERED: The Council will hear policy presentations on the topics of mental health services in higher education, the Help America Vote Act, Medicaid managed care and the direct care workforce, and emerging technology in employment and education. The Council will also release its ''Self-Driving Cars: Mapping Access to a Technology Revolution'' report; review and vote on a report on monitoring and enforcing the Affordable Care Act; receive reports from its standing committees; and receive public comment during three town halls, on the topics of mental health services in higher education, challenges of the direct care workforce, and emerging technology.

AGENDA: The times provided below are approximations for when each agenda

item is anticipated to be discussed (all times Eastern):

Monday, November 2

9:00–9:15 a.m.—Call to Order, Welcome and Introductions
9:15–9:30 a.m.—Chair and Executive Director Reports
9:30–10:15 a.m.—Mental Health Services in Higher Education Panel
10:15–10:45 a.m.—Town Hall to Receive Comments on Mental Health Services in Higher Education
10:45–11:00 a.m.—Break
11:00–11:30 a.m.—Release of ''Self-Driving Cars: Mapping Access to a Technology Revolution'' Report
11:30 a.m.–12:30 p.m.—Help America Vote Act Compliance Panel
12:30 p.m.—Adjourn for lunch
2:00–2:45 p.m.—Elementary and Secondary Education Act—Statewide Impact of Federal Policy Panel
2:45–3:00 p.m.—Break
3:00–4:00 p.m.—Medicaid Managed Care and Challenges for the Direct Care Workforce Panel
4:00–4:30 p.m.—Town Hall to Receive Comments on Direct Care Workforce Challenges
4:30 p.m.—Adjourn

Tuesday, November 3

8:30–9:30 a.m.—Emerging Technology in Employment and Education Panel
9:30–10:00 a.m.—Town Hall to Receive Comments on Emerging Technology
10:00–10:15 a.m.—Break
10:15–11:00 a.m.—Council Discussion on Emerging Technology Focus Area
11:00–11:45 a.m.—NCD Business Meeting
11:45 a.m.—Adjournment

PUBLIC COMMENT: To better facilitate NCD's public comment, any individual interested in providing public comment is asked to register his or her intent to provide comment in advance by sending an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. Full-length written public comments may also be sent to that email address. All emails to register for public comment at the quarterly meeting must be received by Friday, October 30, 2015. Priority will be given to those individuals who are in-person to provide their comments during the town hall portions of the agenda. Those commenters on the phone will be called on according to the list of those registered via email. Due to time constraints, NCD asks all commenters to limit their comments to three minutes. Comments received at the November quarterly meeting will be limited to those regarding mental health services in higher education; challenges to the direct care workforce; and emerging technology, each during its respective slot of time for the themed town hall.

CONTACT PERSON: Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: A CART streamtext link has been arranged for this teleconference meeting. The web link to access CART on Monday, November 2, 2015 is: *http://www.streamtext.net/text.aspx?event=110215ncd900am;* and on Tuesday, November 3, 2015 is: *http://www.streamtext.net/text.aspx?event=110315ncd830am.*

Those who plan to attend the meeting in-person and require accommodations should notify NCD as soon as possible to allow time to make arrangements. To help reduce exposure to fragrances for those with multiple chemical sensitivities, NCD requests that all those attending the meeting in person refrain from wearing scented personal care products such as perfumes, hairsprays, and deodorants.

Dated: October 15, 2015.

Rebecca Cokley,

Executive Director.

[FR Doc. 2015–26599 Filed 10–15–15; 4:15 pm]

BILLING CODE 8421–03–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31866; 812–14553]

Columbia Trust, et al.; Notice of Application

October 13, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Columbia Trust (the ''Trust''), Columbia Management Investment Advisers, LLC (the ''Adviser'') and Columbia Management Investment Distributors, Inc. (the ''Distributor'').

SUMMARY: *Summary of Application:* Applicants request an order (''Order'') that permits: (a) Actively managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at the next-determined net asset value plus or minus a market-determined premium or discount that may vary during the trading day; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to create and redeem Shares in kind in a master-feeder structure. The Order would incorporate by reference terms and conditions of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

DATES: *Filing Dates:* The application was filed on September 28, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 9, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Columbia Trust, Columbia Management Investment Advisers, LLC, and Columbia Management Investment

[1] Eaton Vance Management, *et al.,* Investment Company Act Rel. Nos. 31333 (Nov. 6, 2014) (notice) and 31361 (Dec. 2, 2014) (order).

Distributors, Inc., 225 Franklin Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Dalia Osman Blass, Assistant Chief Counsel, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants

1. The Trust will be registered as an open-end management investment company under the Act and is a business trust organized under the laws of Massachusetts. Applicants seek relief with respect to a Fund (as defined below, and the Fund, the ''Initial Fund''). The portfolio positions of the Fund will consist of securities and other assets selected and managed by its Adviser or Subadviser (as defined below) to pursue the Fund's investment objective.

2. The Adviser, a Minnesota limited liability company, will be the investment adviser to the Initial Fund. An Adviser (as defined below) will serve as investment adviser to the Fund. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser and the Trust may retain one or more Subadvisers (each a ''Subadviser'') to manage the portfolio of the Fund. Any Subadviser will be registered, or not subject to registration, under the Advisers Act.

3. The Distributor is a Delaware corporation and a broker-dealer registered under the Securities Exchange Act of 1934 and will act as the principal underwriter of Shares of the Fund. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser (included in the term ''Distributor''). Any Distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act. The requested Order would permit applicants to offer exchange-traded managed funds. Because the relief requested is the same as the relief granted by the Commission under the Reference Order and because the Adviser has entered into, or anticipates entering into, a licensing agreement with Eaton Vance Management, or an affiliate thereof in order to offer exchange-traded managed funds,[2] the Order would incorporate by reference the terms and conditions of the Reference Order.

5. Applicants request that the Order apply to the Initial Fund and to any other existing or future open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (any such entity included in the term ''Adviser''); and (b) operates as an exchange-traded managed fund as described in the Reference Order; and (c) complies with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein (each such company or series and Initial Fund, a ''Fund'').[3]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

7. Applicants submit that for the reasons stated in the Reference Order: (1) With respect to the relief requested pursuant to section 6(c) of the Act, the relief is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; (2) with respect to the relief request pursuant to section 17(b) of the Act, the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of each registered investment company concerned and consistent with the general purposes of the Act; and (3) with respect to the relief requested pursuant to section 12(d)(1)(J) of the Act, the relief is consistent with the public interest and the protection of investors.

By the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–26422 Filed 10–16–15; 8:45 am]

BILLING CODE 8011–01–P

[2] Eaton Vance Management has obtained patents with respect to certain aspects of the Funds' method of operation as exchange-traded managed funds.

[3] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76130; File No. SR–BATS–2015–85]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

October 13, 2015.

Pursuant to the provisions of 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 October 2, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to the Exchange's options platform (''BATS Options'') effective immediately, in order to modify certain standard pricing and to amend the thresholds related to meeting certain pricing tiers, the applicability of certain pricing tiers and the fees and rebates associated with certain pricing tiers, as described below.

Standard Pricing

The Exchange proposes to modify certain standard pricing applicable to BATS Options, including: (i) The rebate to add liquidity in non-Penny Pilot Securities[6] applicable to Firm,[7] Broker Dealer (''BD'')[8] and Joint Back Office (''JBO'')[9] orders, which yield fee code NF; (ii) the fee for Customer[10] orders that remove liquidity in Penny Pilot Securities, which yield fee code PC; and (iii) the fee for non-Customer orders that remove liquidity in Penny Pilot Securities, which yield fee code PP. The proposed changes are set forth below.

- The Exchange currently provides a rebate of $0.40 per contract for Firm, BD and JBO orders that add liquidity in non-Penny Pilot Securities, which yield fee code NF. The Exchange proposes to reduce this rebate to $0.36 per contract.
- The Exchange currently charges a fee of $0.45 per contract for Customer orders that remove liquidity in Penny Pilot Securities, which yield fee code PC. The Exchange proposes to increase this fee to $0.46 per contract.
- The Exchange currently charges a fee of $0.49 per contract or non-Customer orders that remove liquidity in Penny Pilot Securities, which yield fee code PP. The Exchange proposes to increase this fee to $0.50 per contract.

Each of the changes to standard pricing described above is proposed in order to increase revenue generated by the Exchange or to decrease the rebates paid by the Exchange in order to contribute to the overall profitability of the Exchange. The Exchange believes that these changes represent relatively modest increases to fees charged and adjustments to the rebates that are necessary to fund the continued growth of the Exchange.

Non-Customer Penny Pilot Add Volume Tier Rebates and Thresholds

The Exchange currently offers enhanced rebates under both the Firm, Broker Dealer, and Joint Back Office Penny Pilot Add Volume Tiers (which apply to fee code PF) and the Market Maker and Non-BATS Market Maker Penny Pilot Add Volume Tiers (which apply to fee code PM) to Members with trading activity on BATS Options that meets certain thresholds. More specifically, in Tier 3 of each of these sets of tiers, BATS Options offers an enhanced rebate of $0.47 per contract to orders that yield fee code PF and PM where: (i) The Member has an ADAV[11] in Firm, BD and JBO orders in Penny Pilot Securities (yielding Fee Code PF) equal to or greater than 0.25% of average TCV;[12] and (ii) the Member has an ADV[13] equal to or greater than 1.50% of average TCV. The Exchange proposes to reduce the rebate offered in Tier 3 of each of these sets of tiers to $0.46 per contract. The Exchange has proposed this change for reasons consistent with the reason for the changes to Standard Pricing described above, including the generation of additional revenue by the Exchange in order to contribute to the overall profitability of the Exchange and to fund the continued growth of the Exchange.

The Exchange also proposes to modify the criteria necessary to qualify for Tier 2 of the Market Maker and Non-BATS Market Maker Penny Pilot Add Volume Tiers, which applies to fee code PM and provides a rebate of $0.42 per contract. Currently, in order to qualify for such Tier, a Member of BATS Options must: (i) Have an ADAV equal to or greater than 1.00% of average TCV; and (ii) have an ADV equal to or greater than 2.00% of average TCV. The Exchange proposes to modify the first prong of this requirement such that a Member must have an ADAV in Market Maker[14] and/or Non-BATS Market Maker[15] orders equal to or greater than 1.00% of average TCV. The Exchange is proposing to require a Member's ADAV necessary to qualify for Tier 2 to be Market Maker and/or Non-BATS Market Maker orders in order to incentivize the entry of such orders to the Exchange.

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] ''Penny Pilot Securities'' are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

[7] ''Firm'' applies to any transaction identified by a Member for clearing in the Firm range at the Options Clearing Corporation (''OCC''), excluding any Joint Back office transaction.

[8] ''Broker Dealer'' applies to any order for the account of a broker dealer, including a foreign broker dealer, that clears in the Customer range at the OCC.

[9] ''Joint Back Office'' applies to any transaction identified by a Member for clearing in the Firm Range at the OCC that is identified with an origin code as Joint Back Office.

[10] ''Customer'' applies to any transaction identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a ''Professional'' as defined in Exchange Rule 16.1.

[11] ''ADAV'' means average daily added volume calculated as the number of contracts per day.

[12] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

[13] ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day.

[14] ''Market Maker'' applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC.

[15] ''Non-BATS Market Maker'' applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is not registered with the Exchange as a Market Maker, but is registered as a market maker on another options exchange.

Non-Customer Penny Pilot Take Volume Tiers

The Exchange currently offers a total of five Non-Customer Penny Pilot Take Volume Tiers that provide discounted fees for Non-Customer orders in Penny Pilot Securities that remove liquidity from BATS Options under fee code PP. The Exchange proposes various updates to the existing tiers as well as to add an additional tier, as set forth below.

- The Exchange currently charges $0.48 per contract for Members that qualify for Non-Customer Volume Tier 1, which requires that a Member has an ADV equal to or greater than 1.00% of average TCV. The Exchange proposes increasing this fee to $0.49 per contract.
- The Exchange currently charges $0.47 per contract for Members that qualify for Non-Customer Volume Tier 2, which requires that a Member has an ADV equal to or greater than 1.25% of average TCV. The Exchange proposes to increase this fee to $0.48 per contract. The Exchange also proposes to increase the ADV threshold required to reach Non-Customer Volume Tier 2 from 1.25% to 1.50% of average TCV.
- The Exchange currently charges $0.45 per contract for Members that qualify for Non-Customer Volume Tier 3, which requires that a Member: (i) Has an ADAV equal to or greater than 1.00% of average TCV, and (ii) has an ADV equal to or greater than 2.00% of average TCV. The Exchange proposes to increase this fee to $0.47 per contract. The Exchange also proposes to eliminate the first prong of the criteria, which contains an ADAV component, such that a Member would simply be required to reach an ADV equal to or greater than 2.00% of average TCV.
- The Exchange proposes to add a new tier, Non-Customer Take Volume Tier 4, which would charge $0.45 per share for any Member with an ADAV in Customer orders equal to or greater than 0.80% of average TCV. The Exchange notes that this is similar to but easier to attain than current Non-Customer Take Volume Tier 4, which results in a fee of $0.43 per contract for any Member with an ADAV in Customer orders equal to or greater than 2.00% of average TCV. Because the new tier is easier to attain, the Exchange has proposed a higher fee. In connection with this change, the Exchange proposes to rename current Non-Customer Take Volume Tier 4 as Non-Customer Take Volume Tier 5.

The majority of the changes set forth above represent modest increases in rates or higher criteria to obtain such rates and are proposed for reasons consistent with the reason for the changes to Standard Pricing described above, including the generation of additional revenue by the Exchange in order to contribute to the overall profitability of the Exchange and to fund the continued growth of the Exchange. The Exchange notes that the addition of the new Non-Customer Take Volume Tier 4 is intended to incentivize the entry of additional Customer orders to the Exchange.

NBBO Setter Tiers

The Exchange's NBBO Setter Program is a program intended to incentivize aggressive quoting on BATS Options by providing an additional rebate upon execution for all orders that add liquidity that set either the NBB or NBO, subject to certain volume requirements. The Exchange currently operates three NBBO Setter Tiers that provide an additional rebate of either $0.02 per contract or $0.04 per contract to orders from qualifying Members that submit orders that yield PA, PF, PM, NA, NF and NM.

The Exchange is proposing to add a new tier, Tier 4, which would provide an additional rebate of $0.05 per contract to orders yielding fee code PF or PM that establish a new NBBO and are submitted by a Member that has an ADAV in non-Customer orders equal to or greater than 1.00% of average TCV and has an ADV in non-Customer orders equal to or greater than 1.80% of average TCV. The Exchange proposes to limit the applicability of Tier 4 to orders yielding fee code PF and PM, which represent added liquidity in Penny Pilot Securities for Market Maker orders, Non-BATS Market Maker orders, Firm orders, BD orders and JBO orders. Thus, contrary to other NBBO Setter Tiers, Tier 4 would not apply to Professional Customer orders or to orders in non-Penny Pilot Securities. The Exchange believes that this new tier will incentivize additional entry of orders that set a new NBBO, thereby contributing to the availability of aggressively priced liquidity on the Exchange and the price discovery process.

QIP Tiers

Pursuant to the Quoting Incentive Program (''QIP'') the Exchange currently provides an additional rebate per contract for an order that adds liquidity to the BATS Options order book in options classes in which a Member is a Market Maker registered on BATS Options pursuant to Rule 22.2. A Market Maker must be registered with BATS Options in an average of 20% or more of the associated options series in a class in order to qualify for QIP rebates for that class. The Exchange currently offers two tiers, Tier 1 and Tier 2, which provide an additional rebate of $0.02 per contract or $0.04 per contract, respectively, for Members that satisfy applicable QIP criteria. The Exchange does not propose to modify the criteria necessary to qualify for QIP tiers or the rebates provided thereunder, however the Exchange does propose to limit the applicability of such tiers to fee codes PM and NM, which apply to added liquidity for Market Maker and Non-BATS Market Maker orders. Thus, QIP rebates would no longer be provided to orders yielding fee codes NA or PA, which apply to added liquidity in Professional Customer orders, or to fee codes NF or PF, which apply to added liquidity in Firm, BD and JBO orders. Because QIP rebates are no longer applicable, the Exchange also proposes to eliminate references to footnote 5 for each of these fee codes on the Fee Codes and Associated Fees chart.

Firm, Broker Dealer and Joint Back Office Non-Penny Pilot Add Volume Tiers

The Exchange is also proposing to modify its Firm, BD and JBO Non-Penny Pilot Add Volume Tiers, under which there are three tiers offering enhanced rebates for Firm, BD and JBO orders that add liquidity in non-Penny Pilot Securities. Specifically, the tiers provide the following rebates under the following conditions for Firm, BD and JBO orders that add volume in non-Penny Pilot Securities: Tier 1 provides a $0.50 rebate per contract to a Member that has an ADV equal to or greater than 0.05% of average TCV; Tier 2 provides a $0.60 rebate per contract to a Member that has an ADV equal to or greater than 0.15% of average TCV; and Tier 3 provides a $0.65 rebate per contract to Member that has an ADV equal to or greater than 0.25% of average TCV. The Exchange proposes the following changes to these tiers.

- The Exchange proposes to reduce the rebate provided under Tier 1 from $0.50 per contract to $0.45 per contract and to increase the requirement such that a Member needs to have an ADV equal to or greater than 0.15% of average TCV (rather than 0.05% as currently required).
- The Exchange proposes to eliminate Tier 2 in its entirety.
- The Exchange proposes to rename current Tier 3 as Tier 2.

Other Changes

The Exchange also proposes to amend the Standard Rates table, which summarizes the range of fees at the beginning of the fee schedule, in order to reflect the changes proposed above.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule effective immediately.

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 of the Act.[16] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

Volume-based rebates and fees such as the ones currently maintained on BATS Options have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

As explained above, the Exchange is proposing various slight increases to fees as well as decreases in rebates in order to contribute to the overall profitability of the Exchange. The Exchange believes that these changes represent relatively modest increases to fees charged and adjustments to the rebates that are necessary to fund the continued growth of the Exchange. For the same reason, the Exchange believes that the modest increases to qualification thresholds for various pricing tiers is reasonable, fair and equitable and non-discriminatory, specifically because such increases will either incentivize participants to further contribute to market quality to the Exchange or the Exchange will be providing fewer or lower enhanced rebates to participants. The Exchange also believes that the proposed fees and rebates remain consistent with pricing previously offered by the Exchange as well as competitors of the Exchange and do not represent a significant departure from the Exchange's general pricing structure.

The Exchange believes that its proposed new Non-Customer Penny Pilot Take Volume Tier 4 is reasonable, fair and equitable, and non-discriminatory in that it is aimed to attract additional liquidity to the Exchange and is consistent with other existing pricing tiers on the Exchange. The Exchange also believes that it is reasonable, fair and equitable, and non-discriminatory to limit the applicability of QIP rebates to Market Maker orders and Non-BATS Market Maker orders because QIP is a program aimed to incentivize active market making on the Exchange. Similarly, the Exchange believes it is reasonable, fair and equitable, and non-discriminatory to modify the Market Maker and Non-BATS Market Maker Penny Pilot Add Tier 2 to require that qualifying ADAV results from Market Maker and Non-BATS Market Maker orders because the tier is intended to incentivize the entry of market orders and the enhanced rebates are provided to such orders (specifically, those yielding fee code PM, which are Market Maker or Non-BATS Market Maker orders in Penny Pilot Securities).

The Exchange believes that new proposed NBBO Setter Tier 4 is reasonable, fair and equitable, and non-discriminatory because it will help to further incentivize the entry of aggressively priced liquidity to the Exchange. The Exchange believes it is reasonable, fair and equitable, and non-discriminatory to limit the new NBBO Setter Tier, Tier 4, to orders yielding fee codes applicable to Penny Pilot Securities (thus excluding non-Penny Pilot Securities) and to orders on behalf of participants that are most likely to actively engage in providing liquidity on the Exchange (thus excluding Customers and Professional Customers).

The Exchange believes that the pricing continues to be reasonable, fair and equitable, and also consistent with or better than other options exchanges that operate similar market models.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of the proposed changes to increase fees or decrease rebates burden competition, but instead, that they enhance competition as they are intended to increase the profitability, and thus, competitiveness of BATS Options by allowing the Exchange to create additional pricing incentives and to maintain and improve the infrastructure of the Exchange. Also, the Exchange believes that the increase to certain thresholds necessary to meet tiers offered by the Exchange contributes to rather than burdens competition, as such changes are intended to incentivize participants to increase their participation on the Exchange. Similarly, the introduction of new tiers is intended to provide incentives to Members to encourage them to enter orders to BATS Options, and thus is again intended to enhance competition. Finally, the Exchange does not believe that its proposal to limit the applicability of certain incentives to certain fee codes unnecessarily burdens competition, as each change is intended to more narrowly reward participation by those that are actually the target of the incentive and that are participating on the Exchange accordingly (*i.e.,* limiting rebates to Market Maker and Non-BATS Market Maker incentives when the incentive is based on market making activity).

As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem routing fee levels to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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) [18] of the Act and subparagraph (f)(2) of Rule 19b–4 [19] 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

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

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) [20] 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 No. SR–BATS–2015–85 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 No. SR–BATS–2015–85. 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 No. SR–BATS–2015–85, and should be submitted on or before November 9, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–26426 Filed 10–16–15; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(2)(B).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76131; File No. SR–NASDAQ–2015–113]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Chapter XV, Entitled ''Options Pricing,'' at Section 2 Governing Pricing for NASDAQ Members

October 13, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2015, 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 modify Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend certain Penny Pilot Options [3] rebates currently applicable to NOM Market Makers.[4]

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on October 1, 2015.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR–NASDAQ–2013–082) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2013); 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR–NASDAQ–2013–154) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2014); 79 FR 31151 (May 23, 2014), 79 FR 31151 (May 30, 2014) (SR–NASDAQ–2014–056) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2014); 73686 (December 2, 2014), 79 FR 71477 (November 25, 2014) (SR–NASDAQ–2014–115) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2015) and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR–NASDAQ–2015–063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted.) *See also* NOM Rules, Chapter VI, Section 5.

[4] The term ''NOM Market Maker'' means a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange proposes to amend the NOM Market Maker Penny Pilot Options Rebates to Add Liquidity to add the iShares Russell 2000 ETF ''IWM'' to Tiers 3 and 4 of the NOM Market Maker Penny Pilot Options Rebates to Add Liquidity. The Exchange believes that additional rebate opportunities offered by the addition of IWM to Tiers 3 and 4 of the NOM Market Maker Penny Pilot Options Rebates to Add Liquidity will attract additional order flow to NOM to the benefit of all market participants.

NOM Market Maker Rebates To Add Liquidity

Today, the Exchange pays NOM Market Maker Penny Pilot Options Rebates to Add Liquidity based on various criteria in six tiers with rebates which range from $0.20 to $0.42 per contract as noted below.

Monthly volume		Rebate to add liquidity
Tier 1	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month.	$0.20.
Tier 2	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.25% of total industry customer equity and ETF option ADV contracts per day in a month.	$0.25.
Tier 3	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.25% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.	$0.30 or $0.40 in the following symbols AAPL, QQQ, SPY and VXX.
Tier 4	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.60% to 0.90% of total industry customer equity and ETF option ADV contracts per day in a month.	$0.32 or $0.40 in the following symbols AAPL, QQQ,VXX and SPY.
Tier 5	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options.	$0.40.
Tier 6	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options or Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month or Participants that add Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month.	$0.42.

Today, the Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity pays a $0.30 per contract rebate, except in options overlying Apple, Inc. (''AAPL''), PowerShares QQQ (''QQQ''), VIX ST Futures ETN (''VXX'') and SPDR S&P 500 (''SPY''), which pay a $0.40 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.25% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to add IWM to the list of symbols that are eligible for the Tier 3 rebate of $0.40 per contract. Today, the Exchange pays a Tier 3 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity of $0.30 per contract in IWM.

Today, the Tier 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity pays a $0.32 per contract rebate, except in AAPL, QQQ, VXX and SPY, which pay a $0.40 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of above 0.60% to 0.90% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange proposes to add IWM to the list of symbols that are eligible for the Tier 4 rebate of $0.40 per contract. Today, the Exchange pays a Tier 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity of $0.32 per contract in IWM.

The Exchange believes that paying a higher rebate for IWM transactions will encourage a greater number of transactions in IWM.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls as described in detail below.

NOM Market Maker Penny Pilot Options Rebates To Add Liquidity

The Exchange's proposal to amend the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity Tiers 3 and 4 to increase the IWM rebate from $0.30 to $0.40 per contract in Tier 3 and from $0.32 to $0.40 per contract in Tier 4 is reasonable because the proposal seeks to encourage Participants to transact a greater amount of IWM liquidity in order to receive the higher rebate of $0.40 per contract, provided Participants qualify for the Tier 3 or 4

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

rebate. The Exchange believes that offering NOM Market Makers the ability to obtain higher rebates is reasonable because it will encourage additional order interaction.

The Exchange's proposal to amend the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity Tiers 3 and 4 to increase the IWM rebate from $0.30 to $0.40 per contract in Tier 3 and from $0.32 to $0.40 per contract in Tier 4 is equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the Tier 3 and Tier 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adopt different pricing for IWM, as compared to other options, because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes, in this case actively traded Penny Pilot Options.[7] The Exchange notes that IWM is one of the most actively traded options in the U.S. The Exchange believes that this pricing will incentivize members to transact options on IWM on NOM in order to obtain the higher $0.40 per contract rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

The Exchange's proposal to amend the Tier 3 and 4 NOM Market Maker Penny Pilot Options Rebates to Add Liquidity to pay a higher rebate for IWM of $0.40 per contract, similar to AAPL, QQQ, SPY and VXX, does not create an undue burden on intra-market competition because all NOM Market Makers may qualify for the Tier 3 or 4 NOM Market Maker Penny Pilot Options Rebate to Add Liquidity.

The Exchange's proposal addressed herein does not impose an inter-market burden on competition because the Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to impact the rebates present on the Exchange today and substantially influences the proposals set forth above. Other options markets offer similar rebates to incentivize market participants to direct order flow to their markets. The Exchange believes that continuing to offer rebates and increasing those rebates and providing opportunities to earn higher rebates will benefit the marketplace by continuing to reward liquidity providers and thereby offering other market participants an opportunity to interact with this order flow.

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) of the Act[8] and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–113 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–113. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–113, and should be submitted on or before November 9, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–26425 Filed 10–16–15; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* NASDAQ OMX PHLX LLC's Pricing Schedule. *See also* the International Securities Exchange LLC's Fee Schedule. Both of these markets segment pricing by symbol.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76128; File No. SR–OCC–2015–016]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the Options Clearing Corporation's Margin Methodology by Incorporating Variations in Implied Volatility

October 13, 2015

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 2015, The Options Clearing Corporation (''OCC'') 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 OCC.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by The Options Clearing Corporation (''OCC'') would modify OCC's margin methodology by incorporating variations in implied volatility for ''shorter tenor'' options within the System for Theoretical Analysis and Numerical Simulations (''STANS'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC also filed this proposal as an advance notice pursuant to Section 802(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1) under the Act. 15 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1). *See* File No. SR–OCC–2015–804.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would modify OCC's margin methodology by more broadly incorporating variations in implied volatility within STANS. As explained below, OCC believes that expanding the use of variations in implied volatility within STANS for substantially all[4] option contracts available to be cleared by OCC that have a residual tenor[5] of less than three years (''Shorter Tenor Options'') would enhance OCC's ability to ensure that option prices and the margin coverage related to such positions more appropriately reflect possible future market value fluctuations and better protect OCC in the event it must liquidate the portfolio of a suspended Clearing Member.

Implied Volatility in STANS Generally

STANS is OCC's proprietary risk management system that calculates Clearing Members' margin requirements in accordance with OCC's Rules.[6] The STANS methodology uses Monte Carlo simulations to forecast price movement and correlations in determining a Clearing Member's margin requirement. Under STANS, the daily margin calculation for each Clearing Member account is constructed to comply with Commission Rule 17Ad–22(b)(2),[7] ensuring OCC maintains sufficient financial resources to liquidate a defaulting member's positions, without loss, within the liquidation horizon of two business days.

The STANS margin requirement for an account is composed of two primary components:[8] A base component and a stress test component. The base component is obtained from a risk measure of the expected margin shortfall for an account that results under Monte Carlo price movement simulations. For the exposures that are observed regarding the account, the base component is established as the estimated average of potential losses higher than the 99% VaR[9] threshold to help ensure that OCC continuously meets the requirements of Rule 17Ad–22(b)(2).[10] In addition, OCC augments the base component using the stress test component. The stress test component is obtained by considering increases in the expected margin shortfall for an account that would occur due to (i) market movements that are especially large and/or in which certain risk factors would exhibit perfect or zero correlations rather than correlations otherwise estimated using historical data or (ii) extreme and adverse idiosyncratic movements for individual risk factors to which the account is particularly exposed.

Including variations in implied volatility within STANS is intended to ensure that the anticipated cost of liquidating each Shorter Tenor Option position in an account recognizes the possibility that implied volatility could change during the two business day liquidation time horizon in STANS and lead to corresponding changes in the market prices of the options. Generally speaking, the implied volatility of an option is a measure of the expected future volatility of the value of the option's annualized standard deviation of the price of the underlying security, index, or future at exercise, which is reflected in the current option premium in the market. The volatility is

[4] OCC is proposing to exclude: (i) Binary options, (ii) options on energy futures, and (iii) options on U.S. Treasury securities. These relatively new products were introduced as the implied volatility margin methodology changes were in the process of being completed by OCC. Subsequent to the implementation of the revised implied volatility margin methodology discussed in this filing, OCC would plan to modify the margin methodology to accommodate the above new products. In addition, due to *de minimus* open interest in those options, OCC does not believe there is a substantive risk if the products would be excluded from the implied volatility margin methodology modifications at this time.

[5] The ''tenor'' of an option is the amount of time remaining to its expiration.

[6] Pursuant to OCC Rule 601(e)(1), however, OCC uses the Standard Portfolio Analysis of Risk Margin Calculation System (''SPAN'') to calculate initial margin requirements for segregated futures accounts. No changes are proposed to OCC's use of SPAN because the proposed changes do not concern futures. *See* Securities Exchange Act Release No. 72331 (June 5, 2014), 79 FR 33607 (June 11, 2014) (SR–OCC–2014–13).

[7] 17 CFR 240.17Ad–22(b)(2). As a registered clearing agency that performs central counterparty services, OCC is required to ''use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.''

[8] The two primary components referenced relate to the risk calculation and are associated with the 99% two-day expected shortfall (*i.e.,* ES) and the concentration/dependence margin add-on (*i.e.,* Add-on Charge). When computing the ES or Add-on Charges, STANS computes the theoretical value of an option for a given simulated underlying price change using the implied volatility reflected in the prior day closing price. Under the proposed change, STANS would use a modeled implied volatility intended to simulate the estimated change in implied volatilities given the simulated underlying price change in STANS.

[9] The term ''value at risk'' or ''VaR'' refers to a statistical technique that, generally speaking, is used in risk management to measure the potential risk of loss for a given set of assets over a particular time horizon.

[10] 17 CFR 240.17Ad–22(b)(2).

''implied'' from the premium for an option [11] at any given time by calculating the option premium under certain assumptions used in the Black-Scholes options pricing model and then determining what value must be added to the known values for all of the other variables in the Black-Scholes model to equal the premium. In effect, the implied volatility is responsible for that portion of the premium that cannot be explained by the then-current intrinsic value [12] of the option, discounted to reflect its time value. OCC currently incorporates variations in implied volatility as risk factors for certain options with residual tenors of at least three years (''Longer Tenor Options'').[13]

Implied Volatility for Shorter Tenor Options

OCC is proposing certain modifications to STANS to more broadly incorporate variations in implied volatility for Shorter Tenor Options. Consistent with its approach for Longer Tenor Options, OCC would model a volatility surface [14] for Shorter Tenor Options by incorporating into the econometric models underlying STANS certain risk factors regarding a time series of proportional changes in implied volatilities for a range of tenors and absolute deltas. Shorter Tenor Option volatility points would be defined by three different tenors and three different absolute deltas, which produce nine ''pivot points.'' In calculating the implied volatility values for each pivot point, OCC would use the same type of series-level pricing data set to create the nine pivot points that it does to create the larger number of pivot points used for Longer Tenor Options, so that the nine pivot points would be the result of a consolidation of the entire series-level dataset into a smaller and more manageable set of pivot points before modeling the volatility surface.

OCC partnered with an experienced vendor in this area to study implied volatility surfaces and to use back-testing of OCC's margin requirements to build a model that would be appropriately sophisticated and operate conservatively to minimize margin exceedances. The back-testing results support that, over a look-back period from January 2008 to May 2013,[15] using nine pivot points to define the volatility surface would have resulted in a comparable number of instances in which an account containing certain hypothetical positions would have been under-margined compared to using a larger number of pivot points to define the volatility surface. Therefore, although OCC could create a more detailed volatility surface by increasing the number of pivot points, OCC has determined that doing so for Shorter Tenor Options would not be appropriate. Moreover, due to the significantly larger volume of Shorter Tenor Options, OCC also believes that relying on a greater number of pivot points could potentially lead to increases in the time necessary to compute margin requirements that would impair OCC's capacity to make timely calculations.

Under OCC's model for Shorter Tenor Options, the volatility surfaces would be defined using tenors of one month, three months, and one year with absolute deltas, in each case, of 0.25, 0.5, and 0.75. This results in the nine implied volatility pivot points. Given that premiums of deep-in-the-money options (those with absolute deltas closer to 1.0) and deep-out-of-the-money options (those with absolute deltas closer to 0) are insensitive to changes in implied volatility, in each case notwithstanding increases or decreases in implied volatility over the two business day liquidation time horizon, those higher and lower absolute deltas have not been selected as pivot points. OCC believes that it is appropriate to focus on pivot points representing at- and near-the-money options because prices for those options are more sensitive to variations in implied volatility over the liquidation time horizon of two business days. Specifically, for SPX index options, four factors explain 99% variance of implied volatility movements: (i) A parallel shift of the entire surface, (ii) a slope or skewness with respect to Delta, (iii) a slope with respect to time to maturity; and, (iv) a convexity with respect to the time to maturity. The nine correlated pivot points, arranged by delta and tenor, give OCC the flexibility to capture these factors.

In the proposed approach to computing margin for Shorter Tenor Options under STANS, OCC would first use its econometric models to simulate implied volatility changes at the nine pivot points that would correspond to underlying price simulations used by STANS.[16] For each Shorter Tenor Option in the account of a Clearing Member, changes in its implied volatility would then be simulated according to the corresponding pivot point and the price of the option would be computed to determine the amount of profit or loss in the account under the particular STANS price simulation. Additionally, as OCC does today, it would continue to use simulated closing prices for the assets underlying options in the account of a Clearing Member that are scheduled to expire within the liquidation time horizon of two business days to compute the options' intrinsic value [17] and use those values to help calculate the profit or loss in the account.[18]

Effects of the Proposed Change and Implementation

OCC believes that the proposed rule change would enhance OCC's ability to ensure that in determining margin requirements STANS appropriately takes into account normal market conditions that OCC may encounter in the event that, pursuant to OCC Rule 1102, it suspends a defaulted Clearing Member and liquidates its accounts.[19] Accordingly, the change would promote OCC's ability to ensure that margin assets are sufficient to liquidate the accounts of a defaulted Clearing Member without incurring a loss.

OCC estimates that Clearing Member accounts generally would experience increased margin requirements as compared to those calculated for the same options positions in an account today. OCC estimates the proposed

[11] The premium is the price that the holder of an option pays and the writer of an option receives for the rights conveyed by the option.

[12] Generally speaking, the intrinsic value is the difference between the price of the underlying and the exercise price of the option.

[13] *See* Securities Exchange Act Release Nos. 68434 (December 14, 2012), 77 FR 57602 [sic] (December 19, 2012) (SR–OCC–2012–14); 70709 [sic] (October 18, 2013), 78 FR 63267 [sic] (October 23, 2013) [sic] (SR–OCC–2013–16).

[14] The term ''volatility surface'' refers to a three-dimensional graphed surface that represents the implied volatility for possible tenors of the option and the implied volatility of the option over those tenors for the possible levels of ''moneyness'' of the option. The term ''moneyness'' refers to the relationship between the current market price of the underlying interest and the exercise price.

[15] The look-back period was determined based on the availability of relevant data at the time of the back-testing. Relevant data in this case means data obtained from OCC's consultants, Finance Concepts. The back-testing was performed by Finance Concepts using data from their OptionMetrics Ivy source. The Ivy source maintains data from prior to 2008, but it is not clear that data from before the market dislocation in early August 2007 is as relevant to today's options markets.

[16] STANS relies on 10,000 price simulation scenarios that are based generally on a historical data period of 500 business days, which is updated monthly to keep model results from becoming stale.

[17] Generally speaking, the intrinsic value is the difference between the price of the underlying and the exercise price of the option.

[18] For such Shorter Tenor Options that are scheduled to expire on the open of the market rather than the close, OCC would use the relevant opening price for the underlying assets.

[19] Under authority in OCC Rules 1104 and 1106, OCC has authority to promptly liquidate margin assets and options positions of a suspended Clearing Member in the most orderly manner practicable, which might include, but would not be limited to, a private auction.

change would most significantly affect customer accounts and least significantly affect firm accounts, with the effect on Market Maker accounts falling in between.

OCC expects customer accounts to experience the largest margin increases because positions considered under STANS for customer accounts typically consist of more short than long options positions, and therefore reflect a greater magnitude of direction risk than other account types. Positions considered under STANS for customer accounts typically consist of more short than long options positions because, to facilitate Clearing Members' compliance with Commission requirements for the protection of certain customer property under Rule 15c3–3(b),[20] OCC segregates long option positions in the securities customers' account of each Clearing Member and does not assign them any value in determining the expected liquidating value of the account.[21]

While overall OCC expects an increase in aggregate margins by about $1.5 billion (9% of expected shortfall and stress-test add-on), OCC does anticipate a decrease in margins in certain clearing member accounts' requirements. OCC anticipates that such a decrease would occur in accounts with underlying exposure and implied volatility exposure in the same direction, such as concentrated call positions, due to the negative correlation typically observed between these two factors. Over the back-testing period, about 28% of the observations for accounts on the days studied had lower margins under the proposed methodology and the average reduction was about 2.7%. Parallel results will be made available to the membership in the weeks ahead of implementation.

To help Clearing Members prepare for the proposed change, OCC has provided Clearing Members with an Information Memo explaining the proposal, including the planned timeline for its implementation,[22] and discussed with certain other clearinghouses the likely effects of the change on OCC's cross-margin agreements with them. OCC is also publishing an Information Memo to notify Clearing Members of the submission of this filing to the Commission. Subject to all necessary regulatory approvals regarding the proposed change, for a period of at least two months beginning in October 2015, OCC intends to begin making parallel margin calculations with and without the changes in the margin methodology. The commencement of the calculations would be announced by an Information Memo, and OCC would provide the calculations to Clearing Members each business day. OCC believes that Clearing Members will have sufficient time and data to plan for the potential increases in their respective margin requirements. OCC would also provide at least thirty days prior notice to Clearing Members before implementing the change.

2. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (''Act''),[23] requires that the rules of a clearing agency ensure the safeguarding of securities and funds in the custody and control of OCC and protect investors and the public interest. OCC has custody and control of margin deposits it requires members to post to limit credit exposure to members under normal market conditions. In the event of a member default, that member's margin deposits are the first pool of resources OCC would use to cover losses associated with the default. Appropriately robust and accurate margin resources help ensure that OCC does not have to access mutualized clearing fund deposits that are also in OCC's custody and control to cover losses associated with a member's default. By ensuring its margin methodology more accurately and appropriately measures its credit exposure to members under normal market conditions, OCC helps ensure that it is safeguarding of clearing fund resources in the custody and control of OCC.

The proposed rule is also consistent with Rule 17Ad–22(b)(2),[24] which specifically requires that OCC use margin requirements to limit its credit exposures to Clearing Members under normal market conditions and use risk-based models and parameters to set margin requirements, in compliance with Rule 17Ad–22(b)(2). As explained directly above, OCC believes the proposed rule more accurately and appropriately measures OCC's credit exposures in normal market conditions and sets margin requirements commensurate with this more accurate and appropriate measure. Finally, the proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC believes that the proposed rule change would increase margin requirements more significantly with respect to Clearing Member customer accounts than other accounts and would therefore impose a burden on competition.[25] While the proposed rule change to include variations in implied volatility within STANS would be applied uniformly to all Clearing Members for Shorter Tenor Options, the disproportionate effect for customer accounts would result in a larger burden for Clearing Members that engage in more customer clearing than others. Although overall OCC expects an increase in aggregate margins by about $1.5 billion (9% of expected shortfall and stress-test add-on), OCC does anticipate a decrease in margins in certain clearing member accounts' requirements, such as account with underlying exposure and implied volatility exposure in the same direction, such as concentrated call positions, due to the negative correlation typically observed between these two factors. Over the back-testing period, about 28% of the observations for accounts on the days studied had lower margins under the proposed methodology and the average reduction was about 2.7%.

As discussed above, customer accounts experience higher margin requirements than would otherwise result because long option positions in securities customers' accounts of Clearing Members are generally segregated by OCC, pursuant to its own Rules, to facilitate compliance by Clearing Members with Commission Rule 15c3–3(b).[26] However, such an effect is justified because the customer accounts are more directional: allowing offsets for long options positions in securities customers' accounts of Clearing Members in STANS would not

[20] 17 CFR 240.15c3–3(b).

[21] *See* OCC Rule 601(d)(1). Pursuant to OCC Rule 611, however, a Clearing Member, subject to certain conditions, may instruct OCC to release segregated long option positions from segregation. Long positions may be released, for example, if they are part of a spread position. Once released from segregation, OCC receives a lien on each unsegregated long securities option carried in a customers' account and therefore OCC permits the unsegregated long to offset corresponding short option positions in the account.

[22] In addition to the proposal to introduce variations in implied volatility for Shorter Tenor Options, OCC is also contemporaneously proposing an additional change to its margin methodology that would use liquidity charges to account for certain costs associated with hedging in which OCC would engage during a Clearing Member liquidation and the reasonably expected effect that OCC's management of the liquidation would have on related bid-ask spreads in the marketplace. The Information Memo explained both of these proposed changes and their expected effects on margin requirements.

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] 17 CFR 240.17Ad–22(b)(2).

[25] 15 U.S.C. 78q–1(b)(3)(I).

[26] 17 CFR 240.15c3–3(b).

accurately represent the conditions of a Clearing Member liquidation scenario since the positions are not eligible for use in this scenario under Commission rules. For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies and would impose a burden on competition, with respect to more significant margin increases for customer accounts, that is necessary and appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[27]

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–OCC–2015–016 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–OCC–2015–016. 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 OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_15_016.pdf.* 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–OCC–2015–016 and should be submitted on or before November 9, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–26427 Filed 10–16–15; 8:45 am]

BILLING CODE 8011–01–P

[27] OCC also filed this proposal as an advance notice pursuant to Section 802(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b-4(n)(1) under the Act. *See supra* note 3.

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76135; File No. SR–BX–2015–058]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Mini Options

October 13, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 2015, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .08 to Chapter IV, Section 6 (Series of Options Contracts Open for Trading), entitled ''Mini Options Contracts.'' Specifically, the Exchange proposes to replace the name ''Google Inc.'' with ''Alphabet Inc.''

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)(iii).

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 Supplementary Material .08 to Chapter IV, Section 6, regarding Mini Options traded on BX, to replace the name ''Google Inc.'' with ''Alphabet Inc.'' Google Inc. (''Google'') recently announced plans to reorganize and create a new public holding company, which will be called Alphabet Inc. (''Alphabet''). As a result of the holding company reorganization, each share of Class A Common Stock (''GOOGL''), which the Exchange has listed as a Mini Option, will automatically convert into an equivalent corresponding share of Alphabet Inc. stock.[4] The symbol ''GOOGL'' remains unchanged.

The Exchange is proposing to make this change to Supplementary Material .08 to Chapter IV, Section 6 to enable the continued trading of Mini Options on Google's, now Alphabet's Class A shares. The Exchange is proposing to make this change because, on October 5, 2015 Google reorganized and as a result underwent a name change.

The purpose of this change is to ensure that Supplementary Material .08 to Chapter IV, Section 6 reflects the intention and practice of the Exchange to trade Mini Options on only an exhaustive list of underlying securities outlined in Supplementary Material .08. This change is meant to continue the inclusion of Class A shares of Google in the current list of underlying securities that Mini Options can be traded on, while continuing to make clear that class C shares of Google are not part of that list as that class of options has not been approved for Mini Options trading. As a result, the proposed change will help avoid confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] 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)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to change the name Google to Alphabet to reflect the new ownership structure is consistent with the Act because the proposed change is merely updating the current name associated with the stock symbol GOOGL to allow for continued mini option trading on Google's class A shares. The proposed change will allow for continued benefit to investors by providing them with additional investment alternatives.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX 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 change does not impose any burden on intra-market competition because it applies to all members and member organizations uniformly. There is no burden on inter-market competition because the Exchange is merely attempting to continue to permit trading of GOOGL as a Mini Options, as is the case today. As a result, there will be no substantive changes to the Exchange's operations or its rules.

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 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[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to continue to list mini options on the Google Class A shares, now Alphabet's Class A shares, following Google's reorganization. For this reason, the Commission designates the proposed rule change to be operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[4] The Class C Capital Stock (''GOOG'') which is also impacted by the reorganization are not eligible to be listed as Mini Options on the Exchange, only the Class A Common Stock.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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 Commission deems this requirement to have been met.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–058 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2015–058. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–058, and should be submitted on or before November 9, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–26424 Filed 10–16–15; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76136; File No. SR–ICEEU–2015–010]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Credit Default Swap Risk Policies

October 13, 2015.

I. Introduction

On June 25, 2015, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain of its credit default swap (''CDS'') risk policies (the ''Risk Policy Amendments'') in order to enhance its current risk model (SR–ICEEU–2015–010). The proposed rule change was published for comment in the **Federal Register** on July 16, 2015.[3] On July 21, 2015, ICE Clear Europe filed Amendment No. 1 to the proposed rule change solely to reflect the formal approval of the Risk Policy Amendments by the ICE Clear Europe Board.[4] ICE Clear Europe consented to an extension of the time period in which the Commission shall approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change to October 14, 2015. The Commission received no comment letters regarding the proposed change. For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

ICE Clear Europe has proposed amending certain risk policies relating to the CDS product category to incorporate enhancements to the existing CDS risk model. The relevant policies to be modified are the CDS Risk Policy (''CDS Risk Policy'') and the CDS Risk Model Description (''Risk Model Description''). ICE Clear Europe did not propose to make any changes to its Clearing Rules or Procedures in connection with these amendments.

ICE Clear Europe has proposed to, among other matters, (i) modify the credit spread response component of the risk model to devolatilize returns, (ii) enhance the portfolio spread response component of the risk model to limit procyclicality, (iii) establish a new framework for recovery rate sensitivity requirement (''RRSR'') parameters, (iv) modify the CDS Guaranty Fund allocation methodology, (v) modify index liquidity and concentration charges and (vi) revise procedures for intraday margin calls. The Risk Policy Amendments would also include certain other clarifications and conforming changes.

The following is a summary of the principal changes to be made by the Risk Policy Amendments:

Devolatilization of Credit Spread Response. Under the revised Risk Model Description, the credit spread response component of the margin model would be revised to provide that the tail estimation of the relevant fitted returns distribution is based on devolatilized returns. ICE Clear Europe has represented that the use of devolatilized returns in this manner facilitates the comparison of returns for periods with different volatilities.

Procyclicality of Portfolio Spread Response. In order to limit procyclicality of the spread response component of the model, ICE Clear Europe has proposed to modify the CDS Risk Policy and Risk Model Description to use an additional portfolio analysis that features price changes observed during and immediately after the Lehman Brothers default. According to ICE Clear Europe, the analysis considers price scenarios derived from the greatest price decrease and increase during and immediately after the Lehman Brothers default. ICE Clear Europe has designed these scenarios to capture the default of a major participant in the credit market and the market response to the event. ICE Clear Europe has defined the introduced scenarios in price terms to maintain the stress severity during periods of low credit spread levels (high price) when the spread response requirements, computed under the current framework, are expected to be lower. Furthermore, ICE Clear Europe has also incorporated the Lehman default price scenarios into the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–75426 (July 10, 2015), 80 FR 42146 (July 16, 2015) (SR–ICEEU–2015–010).

[4] In its filing on June 25, 2015, ICE Clear Europe represented that the Risk Policy Amendments would be approved by the ICE Clear Europe Board before implementation. ICE Clear Europe subsequently filed Amendment No. 1 to state that the ICE Clear Europe Board approved the Risk Policy Amendments on July 8, 2015. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not alter the substance of the proposed rule change or raise any novel regulatory issues.

calculation of CDS Guaranty Fund requirements.[5]

Recovery Rate Sensitivity Requirements. ICE Clear Europe has proposed to revise the Risk Model Description to incorporate a more sensitive parameter estimation approach for the RRSR computation. The RRSR factor is designed to capture the risk of fluctuations in market expected recovery rates under CDS transactions. Under the current model, the RRSR is determined using fixed minimum and maximum recovery rate stress scenarios based on sector levels. In calculating the RRSR, all instruments belonging to a risk factor (''RF'') or risk sub-factor (''RSF'') are subjected to recovery rate stress scenarios to obtain resulting profit/loss responses, and the worst scenario response is chosen for the estimation of the RRSR. (In addition, these same recovery rate stress scenarios are used in determination of jump-to-default requirements.)

ICE Clear Europe has proposed separating the recovery rate stress levels for these two computations in order to introduce more dynamic and appropriate estimations of the recovery rate stress levels for RRSR purposes. Under the revised framework, the recovery rate levels for RRSR purposes will be determined using a 5-day, 99% confidence interval expected shortfall risk measure assuming a distribution of recovery rate fluctuations. The proposal will also eliminate index RRSR, as index recovery rates are assumed under relevant market convention and are thus not subject to market uncertainty. ICE Clear Europe represents that the dynamic feature of the revised stress level estimations is achieved by analyzing historical time series of recovery rates in order to calibrate a statistical model with a time varying volatility. In ICE Clear Europe's view, the proposed enhancements provide a robust and quantitative driven approach for establishing the recovery rate stress scenarios.

Modifications to Guaranty Fund Methodology. ICE Clear Europe has proposed certain clarifications and enhancements to its CDS Guaranty Fund methodology. The Risk Model Description will be revised to clarify that the CDS Guaranty Fund size is calculated to cover losses associated with the default of the two Clearing Members and their affiliates that create the greatest cumulative uncollateralized loss under extreme but plausible scenarios. Certain other clarifications will be made in the calculation of the various components of the overall CDS Guaranty Fund requirement.

ICE Clear Europe has also proposed to modify the procedure for allocating CDS Guaranty Fund requirements among the CDS Clearing Members. Under the existing model, CDS Guaranty Fund allocations reflect a risk ''silo'' approach, in which a Clearing Member's contribution reflects its uncollateralized exposure for each CDS Guaranty Fund component or ''silo''. Under the current approach, allocations can significantly fluctuate in response to position changes in the portfolios of the Clearing Members that drive the CDS Guaranty Fund size, and in response to the distribution of the total CDS Guaranty Fund size across all ''silos''. ICE Clear Europe has proposed modifying the methodology, so that the allocations are based on the Clearing Members' total unconditional uncollateralized losses in the CDS product category.[6] ICE Clear Europe represents that under the proposed approach, the allocations are independent of the distribution of the uncollateralized losses across the ''silos''. In ICE Clear Europe's view, the new allocation methodology reflects an improved and more stable approach which allows for easier attributions of contributions to individual CDS Clearing Member or client portfolios.

ICE Clear Europe has also proposed revising the CDS Risk Policy's discussion of the initial CDS Guaranty Fund contribution to be consistent with the requirements of the Finance Procedures.

Index Liquidity and Concentration Charges. ICE Clear Europe has proposed to modify the liquidity charge calculation in the margin model as it applies to index CDS positions. (The existing liquidity charge calculation for single-name CDS will remain unchanged.) ICE Clear Europe represents that the revised approach will address calculation of liquidity charges where index CDS is traded under either price or spread terms, and will calculate a separate liquidity charge for positions in each series of the relevant index. ICE Clear Europe also represents that the revised approach limits the reduction in liquidity charge for offsetting positions across different series of the same index family, by applying the greater of the liquidity charge applicable to the long and short positions in the relevant portfolio in the same index family. According to ICE Clear Europe, under the revised methodology, the reduction in liquidity charge is greatest across positions in the ''on-the-run'' (current) index and first (most recent) ''off-the-run'' indices, with a higher reduction during the period immediately following the index roll (when the two indices are treated as effectively the same index) and a lower reduction over time as the liquidity of contracts in the two series diverge.

ICE Clear Europe has proposed to modify the concentration charge calculation for index CDS positions. (Again, the existing approach for single-name CDS will not change.) ICE Clear Europe represents that the revised framework provides for calculation of series-specific concentration charges, based on the direction of the 5-year equivalent notional amount or the net notional amount of positions in the particular series and a series threshold limit (above which the concentration charge is imposed). According to ICE Clear Europe, series threshold limits are expected to be higher for the on-the-run and the first off-the-run index series, and are determined based on a formula comparing the open interest in the series to the on-the-run open interest.

Intraday Margin Calls. ICE Clear Europe has proposed certain amendments to the intra-day risk monitoring and special margin call processes. Under ICE Clear Europe's proposal, intra-day margin calls will be made based on an ''Intraday Risk Limit.'' The Intraday Risk Limit will be set at the Clearing Member level and is calculated based on 40% of the total initial margin requirements (across all account classes), with a minimum amount of EUR 15 million and a maximum of EUR 100 million. Intra-day margin calls will be made on the following basis: (i) Where there has been a 50% erosion of the Intraday Risk Limit, the Risk Department will investigate what is driving the shortfall and monitor the CDS Clearing Member, (ii) where the erosion of the Intraday Risk Limit exceeds 50%, the Risk Department will inform the CDS Clearing Member that its initial margin may cease to be sufficient and that it may be subject to an intraday margin call, and (iii) where there has been a 100% erosion of the Intraday Risk Limit, the Risk Department will issue an intraday margin call to the CDS Clearing Member (and will also contact it by telephone and/or email) for a sum

[5] ICE Clear Europe has represented that this enhancement also addresses a regulatory requirement in Article 30 of the Regulatory Technical Standards implementing the European Market Infrastructure Regulations (''EMIR''). Commission Delegated Regulation (EU) No. 153/2013 of 19 December 2012 Supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to Regulatory Technical Standards on Requirements for Central Counterparties (the ''Regulatory Technical Standards'').

[6] ICE Clear Europe has represented that the existing specific wrong way risk component of the CDS Guaranty Fund calculation is maintained.

sufficient to reduce the level of Intraday Risk Limit erosion back to 0%. The member intraday shortfall is the sum of intraday shortfalls at the account level (*i.e.* house and client accounts), and the account level shortfall represents the unrealized profit and loss from the aggregate change in the Mark-to-Market Margin and Initial Margin.

Governance. ICE Clear Europe has proposed revising the CDS Risk Policy to address in further detail management and governance oversight in a new Management and Governance Oversight section. The new section will provide that the CDS Director of Risk is responsible for ensuring that the CDS Risk Policy remains up-to-date and is reviewed in accordance with certain guidelines. The Risk Working Group (''RWG'') and Trading Advisory Committee (''TAC'') will provide on-going consultation and support with respect to the CDS Risk Policy. The composition of the RWG and the TAC will include both ICE Clear Europe Management and Clearing Member representatives, mainly from risk, trading and compliance areas.

Under ICE Clear Europe's proposal, changes to the CDS Risk Policy will be subject to initial approval by the Director of Risk and may be determined in consultation with the RWG and/or the TAC. Any changes that affect the risk profile of ICE Clear Europe will be subject to Board approval on the advice and support of the CDS Risk Committee and the Board Risk Committee. In addition, the CDS Risk Policy will be subject to at least an annual routine approval by the Board, after consultation with the CDS Risk Committee and the Board Risk Committee. CDS risk model performance testing will be subject to review by the Director of Risk and reported to the CDS Risk Committee and the Board Risk Committee.

Additional Changes. ICE Clear Europe has proposed certain other clarifications and enhancements in the Risk Policy Amendments. Certain clarifications will be made in the CDS Risk Policy with respect to wrong way risk requirements. The policy will also be revised to clarify that the currency specific initial margin requirements must cover at least the specific and general wrong way risk components of the initial margin requirement for the relevant currency. ICE Clear Europe has also revised the CDS Risk Policy to incorporate (without change) from the its existing CDS clearing membership policy the capital-to-margin ratio limit (which requires that certain remedial actions be taken if the margin requirement for a Clearing Member's CDS positions would exceed three times the Clearing Member's capital as set forth on its balance sheet). The description of the Clearing House's Monte Carlo model will be revised to clarify that model parameters used are the same as those used in the credit spread model. Various other defined terms and certain obsolete references will be updated throughout the CDS Risk Policy and Risk Model Description.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [7] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act [8] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 17A of the Act [9] and the rules thereunder applicable to ICE Clear Europe, including the requirements of Rule 17Ad–22.[10] The Commission believes that using devolatilized returns should enhance the credit spread response component of the margin model by enabling comparison of returns for periods with different volatilities. The Commission also believes that the proposed framework for establishing RRSR parameters would use a more robust and quantitative driven approach for establishing the RR stress scenarios, resulting in more dynamic and appropriate estimations of the RR stress levels for RRSR purposes. Additionally, the Commission finds that the incorporation of the Lehman Brothers default price scenarios into the computation of the spread response requirements enhances the anti-procyclical feature of ICE Clear Europe's risk methodology.

The Commission further finds that the proposed modifications to the CDS Guaranty Fund allocation methodology to reflect the Clearing Member's total uncollateralized losses across all Guaranty Fund components regardless of the fluctuation of the Clearing Member's uncollateralized losses with respect to each Guaranty Fund component should result in more stable attributions of GF contributions to individual Clearing Member or portfolios. The Commission also believes that the proposed rule change to establish series-specific index liquidity and concentration charges should generally apply a more conservative approach to these margin components. Additionally, the Commission believes that the proposed rule change to intraday margin calls, in conjunction with ICE Clear Europe's existing risk policies and other proposed changes to the risk methodology, is reasonably designed to allow ICE Clear Europe to collect sufficient margin to meet its requirements and obligations, including under scenarios where it may have to call for margin on an intraday basis. The Commission also finds that the proposed rule change with respect to governance appropriately engages management and Clearing Member representatives in the oversight of the effectiveness ICE Clear Europe's risk management function. The Commission believes that the proposed additional changes are each designed to enhance ICE Clear Europe's risk management functions and more accurately reflect ICE Clear Europe's current practices. The new provisions in the CDS Risk Policy concerning (i) the responsibilities of the CDS Director of Risk to ensure that the CDS Risk Policy remains up to date and is reviewed in accordance with certain guidelines, to approve changes to the CDS Risk Policy, and to review and report to the CDS Risk Committee and the Board Risk Committee concerning CDS risk model performance testing; and (ii) the roles of the CDS Risk Committee and Board Risk Committee in providing advice on and approving, respectively, changes that affect the risk profile of ICE Clear Europe, improve the clarity of ICE Clear Europe's governance arrangements and promote the effectiveness of the clearing agency's risk management procedures, consistent with Rule 17Ad–22(d)(8).

The Commission therefore believes that the proposed rule change, as modified by Amendment No. 1, is designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICE Clear Europe and, in general, to protect investors and the public interest, consistent with Section

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 17 CFR 240.17Ad–22.

17A(b)(3)(F) of the Act[11] and is reasonably designed to meet the margin, financial resource and governance requirements of Rules 17Ad–22(b)(2), (b)(3) and (d)(8).[12]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[13] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ICEEU–2015–010), as modified by Amendment No. 1 thereto be, and hereby is, approved.[15]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–26423 Filed 10–16–15; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14494 Disaster #ZZ–00011]

The Entire United States and U.S. Territories

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loan Program (MREIDL), dated 10/01/2015.

Effective Date: 10/01/2015.

MREIDL Loan Application Deadline Date: 1 year after the essential employee is discharged or released from active duty.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration Processing And Disbursement Center 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of Public Law 106–50, the Veterans entrepreneurship and Small Business Development Act of 1999, and the Military Reservist and Veteran Small Business Reauthorization Act of 2008, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan Program (MREIDL).

Effective 10/01/2015, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict or have received notice of an expected call-up, and those employees are essential to the success of the small business daily operations.

The purpose of the MREIDL program is to provide funds to an eligible small business to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called-up or expects to be called-up to active duty in his or her role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active duty. For information/applications contact 1–800–659–2955 or visit *www.sba.gov.*

Applications for the Military Reservist Economic Injury Disaster Loan Program may be filed at the above address.

The Interest Rate for eligible small businesses is 4.000.

The number assigned is 14494 0.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–26043 Filed 10–16–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Manatee and Hillsborough Counties, Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice of cancellation to advise the public that we are no longer preparing an Environmental Impact Statement (EIS) for the proposed Port Manatee Connector in Manatee and Hillsborough Counties, Florida. This is formal cancellation of the Notice of Intent that was published in the **Federal Register** on March 5, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Kendall, Senior Environmental Specialist, Federal Highway Administration, 3500 Financial Plaza, Suite 400, Tallahassee, Florida 32312; Telephone: (850) 553–2225.

SUPPLEMENTARY INFORMATION: The Notice of Intent to prepare an EIS was to improve access between Port Manatee and Interstate 75 (I–75). The Notice of Intent to prepare an EIS is rescinded.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Cathy Kendall,

Senior Environmental Specialist, Tallahassee, Florida.

[FR Doc. 2015–26443 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2015–0007–N–26]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking an extension of the following currently approved information collection activities. On May 7, 2014, the Secretary of Transportation issued Emergency Order (EO) Docket No. DOT–OST–2014–0067 requiring affected railroad carriers to provide certain information to the State Emergency Response Commissions (SERCs) for each State in which their trains carrying 1 million gallons or more of Bakken crude oil travel. The information collection activities associated with the Secretary's Emergency Order originally received a six-month emergency approval from OMB on May 10, 2014. On July 10, 2015, OMB again approved the information collection activities associated with the Secretary's Emergency Order until March 31, 2016. FRA is now requesting to continue these

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad(22)(b)(2), (b)(3) and (d)(8).

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

information collection activities until the Pipeline and Hazardous Materials Safety Administration (PHMSA) finalizes the Oil Spill Response Proposed Rule that it is currently working on and that will codify the requirements of the Secretary's Emergency Order. The Secretary's EO remains in full force and effect until that happens. FRA also hereby announces that it is seeking renewal of the additional currently approved information collection activities described below for the maximum time period (3 years). Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than December 18, 2015.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Information Clearance Officer, Office of Safety, Regulatory Safety Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Information Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. 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 -_____.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or 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: Mr. Robert Brogan, Information Clearance Officer, Office of Safety, Regulatory Safety Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Information Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 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 for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 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 respondents to comment on the following summaries of proposed information collection activities regarding: (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of three currently approved information collection requests that FRA will submit for clearance by OMB as required under the PRA:

Title: Secretary of Transportation Emergency Order Docket No. DOT–OST–2014–0067.

OMB Control Number: 2130–0604.

Abstract: As noted in the summary above, on May 7, 2014, the Secretary of Transportation issued Emergency Order (EO) Docket No. DOT–OST–2014–0067 requiring affected railroad carriers to provide certain information to the State Emergency Response Commissions (SERCs) for each State in which their trains carrying 1 million gallons or more of Bakken crude oil travel. This EO is available through the Department's public docket system at *www.regulations.gov,* under Docket No. DOT–OST–2014–0067. The EO took effect immediately upon issuance, although affected railroads were permitted 30 days to provide the required information to the SERCs. The EO is the Department's direct and proactive response to a recent series of train accidents involving the transportation of petroleum crude oil, a hazardous material the transportation of which is regulated by the Department. The most recent accident occurred on April 30, 2014, when a train transporting petroleum crude oil derailed in Lynchburg, Virginia and released approximately 30,000 gallons of its contents into the James River. Further, the EO explains that, with the rising demand for rail transportation of petroleum crude oil throughout the United States, the risk of rail incidents has increased commensurate with the increase in the volume of the material shipped and that there have been several significant derailments in both the U.S. and Canada over the last several months causing deaths and property and environmental damage that involved petroleum crude oil. DOT emergency orders are rare and the EO itself describes the most recent accidents and circumstances leading the agency to issue the EO. The collection of information included under this EO is aimed at ensuring that railroads that transport in a single train a large quantity of petroleum crude oil (1 million gallons or more), particularly crude oil from the Bakken shale formation in the Williston Basin, provide certain information to the relevant SERCs in each State in which the railroad operates such trains. Ensuring that railroads provide this information to SERCs is critical to ensuring that local and State emergency responders are aware of the large quantities of crude oil that are being transported through their jurisdictions and are prepared to respond to accidents involving such trains should they occur.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: One-time; on occasion.

Respondent Universe: 47 Railroad Carriers; 50 State Emergency Response Commissions (SERCs).

Reporting Burden:

Emergency order item No.	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
(1) RR Notification to SERCs	47 railroads	120 written notifications	30 hours	3,600
(2) Updated RR Notification to SERCs	47 railroads	25 updated written notifications.	4 hours	100
(3) Notification Copies to FRA	47 railroads	20 notification copies	10 minutes	5
(4) Requests to RRs by SERCs for Information from Local Emergency Response Agencies Regarding the Volume and Frequency of Train Traffic Implicated by this Emergency Order within that Agency's Jurisdiction and RR Responses.	47 railroads	30 informational assistance requests + 30 informational responses.	30 minutes	60
(5) Petitions to the Secretary/FRA Administrator for Relief from This Emergency Order.	47 railroads	4 relief petitions	2 hours	8

Total Estimated Responses: 229.

Total Estimated Annual Burden: 3,773 hours.

Status: Extension of a currently approved information collection.

Title: Ballast Defects and Conditions–Importance of Identification and Repair in Preventing Development of Unsafe Combinations of Track Conditions.

OMB Control Number: 2130–0614.

Abstract: FRA issued Safety Advisory 2015–04 on August 20, 2015, to emphasize the importance of timely repairing ballast defects and conditions on main tracks. FRA published Safety Advisory 2015–04 in the **Federal Register** on August 26, 2015. *See* 80 FR 51868. In the Safety Advisory, FRA noted that ballast defects and ballast conditions that are not repaired in a timely manner can lead to future defects. FRA believes it is important for track inspectors to be aware that ballast defects and conditions can cause track components to deteriorate rapidly and compromise the stability of the track structure, and that inspectors are trained to identify and repair ballast defects and conditions. This safety advisory recommends that track owners and railroads: (1) Assess current engineering instructions on ballast safety and update them to provide specific guidance to track inspectors (designated personnel that are qualified to inspect and repair track) on how to identify and initiate remedial action under 49 CFR 213.233(d) for ballast defects and conditions, as well as on the appropriate remedial action to implement, particularly in areas with one or more additional track conditions; (2) train track inspectors on the updated engineering instructions and this safety advisory to ensure they understand how to identify and initiate remedial action for ballast defects and conditions in a timely manner, and understand the importance of such remedial action in preventing the development of unsafe combinations of track conditions; and (3) ensure that supervisors provide adequate oversight of track inspectors to achieve identification and remediation of ballast defects and other track conditions.

FRA is seeking regular Clearance of this information collection request that was previously approved under Emergency Processing procedures on September 9, 2015.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: One-time; on occasion.

Respondent Universe: 754 Track owners/Railroads.

Reporting Burden:

Safety advisory 2015–04	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
(1) RR Assessment and Update of Engineering Instructions to provide Guidance to Its Track Inspectors on How to Identify and Repair Ballast Defects and Other Ballast Conditions.	754 Railroads	100 assessments + 100 engineering instruction updates.	60 minutes	200
(2) RR Training of Its Track Inspectors on Updated Engineering Instructions and FRA Safety Advisory 2015–04.	754 Railroads	10,000 trained track inspectors/records.	60 minutes	10,000

Form Number(s): N/A.

Respondent Universe: 754 Railroads.

Frequency of Submission: One-time; on occasion.

Total Estimated Annual Responses: 10,200.

Total Estimated Annual Burden: 10,200 hours.

Status: Regular Review.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR part 209, subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Form Number(s): N/A.

Affected Public: Railroad Employees.

Respondent Universe: 40,000 Locomotive Engineers.

Total Responses: 3.

Estimated Total Annual Burden: 5 hours.

Status: Extension of a currently approved collection.

Pursuant to 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.

Issued in Washington, DC on October 13, 2015.

Corey Hill,

Acting Executive Director.

[FR Doc. 2015–26409 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0135; Notice 2]

General Motors, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of Petition.

SUMMARY: General Motors, LLC (GM) has determined that certain model year (MY) 2013–2014 Chevrolet Express, GMC Savana, Chevrolet Silverado HD and GMC Sierra HD compressed natural gas (CNG) multipurpose passenger vehicles (MPVs) and trucks manufactured between May 20, 2012, and September 25, 2013, do not comply with the lettering height requirement in paragraph S5.3 of Federal Motor Vehicle Safety Standard (FMVSS) FMVSS No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles.* GM has filed an appropriate report dated November 25, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

ADDRESSES: For further information on this decision, contact Mr. Ed Chan, Office of Vehicle Safety Compliance, at the National Highway Traffic Safety Administration (NHTSA) by telephone at (202) 493–0335.

SUPPLEMENTARY INFORMATION:

I. *GM's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), GM submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

The agency published a notice of receipt of the petition, with a 30-day public comment period, on March 11, 2014 in the **Federal Register** (79 FR 13735). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2013–0135.''

II. *Vehicles Involved:* Affected are approximately 2,247 MY 2013–2014 Chevrolet Express, GMC Savana, Chevrolet Silverado HD and GMC Sierra HD compressed natural gas (CNG) MPVs and trucks manufactured between May 20, 2012, and September 25, 2013.

III. *Noncompliance:* GM explains that the noncompliance is an error on the vehicle CNG labels. Specifically, the lettering height on the labels is 2.5 mm, instead of the minimum 4.76 mm, as required by paragraph S5.3 of FMVSS No. 303.

IV. *Rule Text:* Paragraph S5.3 of FMVSS No. 303 requires:

S5.3 Each CNG vehicle shall be permanently labeled, near the vehicle refueling connection, with the information specified in S5.3.1 and S5.3.2 of this section. The information shall be visible to a person standing next to the vehicle during refueling, in English, and in letters and numbers that are not less than 4.76 mm (3⁄16 inch) high.

S5.3.1 The statement: ''Service pressure __kPa (__psig).''

S5.3.2 The statement ''See instructions on fuel container for inspection and service life.''

V. *Summary of GM's Analyses:* GM stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

A. The information on the subject CNG labels is correct and entirely legible.

Paragraph S5.4 of FMVSS No. 303 requires that the information required for the label also be included in the owner's manual using ''. . . not less than 10 point type.'' The 2.5 mm lettering height on the subject labels is 10 point type, *i.e.,* the same lettering size as what is specified for the owner's manual content. The 10 point type that is legible for purposes of the owner's manual is also legible on the labels installed at the CNG filler port.

B. The subject CNG label is an ''information'' label, not a ''warning'' label.

The subject label is not a ''warning'' label and does not warn the user of a safety related risk or consequence. Even if the user does not read the label information due to the font size, the user will not miss information about a safety risk.

C. The label font size does not create a risk of misfueling.

Even if the user fails to read the information label due to the reduced font size, there would be no adverse safety consequence. The service pressure of the subject CNG tanks is 3,600 psi. There is no risk of over-pressuring these tanks since CNG filling stations are required to shutoff at 3,600 psi, per ANSI/IAS NGV 4.2–1999 CSA 12.52–M99(R09). Accordingly, there is no risk of a fuel leak.

Even if the shutoff function on a filling station were to malfunction, all CNG tanks on the affected vehicles are equipped with pressure-relief devices designed to deploy at 5,400 psi, which is below the burst pressure of the tank itself.

With regard to under-pressure (under-fill) potential, all affected vehicles are equipped with a CNG fuel gauge in the instrument cluster to inform the driver of the fuel level. While some drivers may estimate the driving range associated with a full fill, most drivers typically rely on fuel gauges, not anticipated range, to determine when to refuel. Some CNG filling stations, primarily in Canada, are designed to shutoff at 3,000 psi, which is below the 3,600 psi service pressure of the affected CNG tanks. However, regardless of whether the CNG tanks on the affected vehicles start out full (3,600 psi) or 83% full (3,000 psi), the driver has ample opportunity to monitor the fuel gauge and refuel prior to the CNG being depleted. Additionally, the owner manual instructs that ''the fuel gauge has been calibrated to display full at approximately 24,800 kPa (3,600 psi) . . .''

Finally, there is no risk that a customer would attempt to fuel the CNG tanks from a conventional gasoline pump. The fueling nozzle and filling port for CNG are completely distinct from the corresponding nozzle and port used for gasoline, and the distinctions are obvious. In the extraordinary event that a user attempted to connect a conventional gasoline nozzle to the CNG fueling valve, it would be immediately apparent that the mismatched gasoline nozzle does not attach to or work with the CNG valve. GM also asserts that owners and operators of CNG vehicles (the large majority being fleet purchasers) are well aware that their vehicles use a non-conventional fuel,

and are attuned to the unique characteristics associated with CNG use, such as service pressure, and tank inspection and replacement provisions. These aspects of the CNG fuel system are likely known to owners when or even before they purchase the CNG vehicle, and in any event are easily obtained for the subject vehicles from the labels at the fueling port, from the vehicle owner's manuals, and/or from the labels on the CNG tanks themselves. As mentioned above, the information is provided in the owner's manual.

In addition, GM stated its belief that NHTSA has previously granted petitions for labeling related inconsequential noncompliances that GM believes can be applied to a decision on its petition.

GM informed NHTSA that it is not aware of any crashes, injuries or customer complaints associated with this condition.

GM also informed NHTSA that it has corrected the noncompliance for all future production.

In summation, GM believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Decision

NHTSA Analysis: NHTSA added the subject vehicle label requirements to FMVSS No. 303 to aid in assuring that CNG containers are not overfilled.[1] The overfilling of a CNG tank can affect the integrity of the storage tank as well as other system components. Pressurized CNG fuel dispensing and storage methods are significantly different from those for more traditional diesel and gasoline fuels which are stored as liquid at atmospheric pressure. Significant stored mechanical energy exists within a pressurized CNG tank that is not present in traditional liquid fuel (fuel with a boiling point above 0 °C) storage tanks. Should a CNG tank be weakened by repeated overfilling, the stored mechanical energy could be explosively released.

The lettering height required for the CNG vehicle label is greater than that required for similar information in the owner's manual and the alternative one page document (4.76 mm versus 2.5 mm).[2] NHTSA believes that the larger lettering size is important for the vehicle label in order to make it easier to read for a wide range of conditions, both environmental and operator related. The label is required to be located near the vehicle refueling connection in addition to the owner's manual for the following reasons:

1. Not all vehicle operators will have read or have ready access to the vehicle's owner's manual, especially when vehicles have been acquired on the secondary market.

2. Immediately prior to or during vehicle refueling is the most opportune time to provide a person refueling the vehicle with information that may reduce accidental overfilling, and the vehicle refueling connection label is more likely to be read than the owner's manual during vehicle refueling.

3. Vehicle refueling connection label readability and conspicuity are important to help to ensure that the information is actually read and understood by the person refueling the vehicle, the person ultimately responsible for the safe refueling of the vehicle.

NHTSA is currently investigating several incidents where over-pressurization of CNG tanks mounted on vehicles other than the subject vehicles may have contributed to explosions. A lack of understanding related to the rated service pressure and actual working pressure of the fuel containers are factors that NHTSA believes may have contributed to these explosions. This further reinforces NHTSA's belief that label information at the vehicle's filling location must be easy to read.

NHTSA has previously granted inconsequential noncompliance petitions for labeling issues including discrepancies in lettering height, missing information, incorrect information, and misplaced or obscured information. We believe this label is different because of the frequency of filling the fuel tank. Filling the fuel tank can occur on a daily basis whereas labels for other purposes, *e.g.,* a tire label, are likely to be accessed by operators much less frequently. It is important that the operator be able to read the label to verify an overfill situation does not occur. We also believe the routine nature of fuel filling makes it less likely the operator would check the owner's manual, assuming the owner's manual is available, if the fueling label cannot be read. The labeling provides important safety information that is intended to prevent a potential explosion. Therefore, NHTSA believes that the required size of the information on the subject nonconforming CNG label is consequential to motor vehicle safety.

NHTSA Decision: In consideration of the foregoing, NHTSA has decided that GM has not met its burden of persuasion that its FMVSS No. 303 noncompliance is inconsequential. Accordingly, GM's petition is hereby denied and GM is obligated to provide notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Frank S. Borris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2015–26400 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–59–P

[1] See 59 FR 65307 and 60 FR 57944.

[2] 49 CFR 571.303 S5.2

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Delayed Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application
M—Modification request

R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on October 5, 2015.

Donald Burger

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
	Modification to Special Permits		
15744–M	Praxair Distribution, Inc., Danbury, CT	4	10–31–2015
14437–M	Columbiana Boiler Company (CBCo) LLC, Columbiana, OH	4	10–31–2015
14808–M	Amtrol-Alfa Metalomecanica, S.A., West Warwick, RI	4	12–05–2015
16142–M	Nantong CIMC Tank Equipment Co. Ltd., Jiangsu, Province	4	11–20–2015
	New Special Permit Applications		
15767–N	Union Pacific, Railroad Company, Omaha, NE	4	11–20–2015
16001–N	VELTEK ASSOCIATES, INC., Malvern, PA	3	11–20–2015
16220–N	Americase, Waxahache, TX	4	11–20–2015
16249–N	Optimized Energy Solutions, LLC, Durango, CO	3	11–15–2015
16320–N	Digital Wave Corporation, Centennial, CO	3	10–15–2015
16337–N	Volkswagen Group of America (VWGoA), Herndon, VA	4	10–31–2015
16366–N	Department of Defense, Scott AFB, IL	4	10–31–2015
16395–N	Chandler Instruments Company LLC, Broken Arrow, OK	4	10–31–2015
16396–N	Eniware LLC, Washington, DC	4	10–15–2015
16356–N	United Launch Alliance, LLC, Centennial, CO	4	11–20–2015
16371–N	Volkswagen Group of America (VWGoA), Herndon, VA	4	11–30–2015
16416–N	INO_X India Limited, Gujarat, India	4	10–31–2105
16430–N	Eniware LLC, Washington, DC	4	12–10–2015
16414–N	Gardner Cryogenics Department of Air Products and Chemicals Inc., Allentown, PA	4	10–30–2015
	Party to Special Permits Application		
16279–P	Twin Enterprise International LLC, Chandler, AZ	4	10–31–2015
	Renewal Special Permits Applications		
11860–R	GATX Corporation, Chicago, IL	4	10–31–2015
8009–R	NK Co., Ltd., Busan City, KR	4	10–30–2015

[FR Doc. 2015–26259 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Actions on Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (October to October 2014). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on October 5, 2015.

Don Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
	MODIFICATION SPECIAL PERMIT GRANTED		
15071–M	Orbital ATK, Inc., Dulles, VA	49 CFR 173.62(c)	To modify the special permit to authorize cargo aircraft only.
15097–M	U.S. Consumer Product Safety Commission, Denver, CO.	49 CFR 173.56	To modify the special permit to authorize transportation for testing purposes of unapproved explosives as Division 1.4G explosives.
14149–M	Digital Wave Corporation, Centennial, CO.	49 CFR 172.23(a), 172.301(c), and 180.205.	To modify the special permit to authorize changes in ownership of affected sites and, the addition of new sites on the special permit.
14206–M	Digital Wave Corporation, Centennial, CO.	49 CFR 172.203(a), 172.301(c), and 180.205.	To modify the special permit by removing the requirement to check gain control accuracy every six months with calibrated equipment.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
16429–M	Construction Helicopters, Inc. dba CHI Aviation, Howell, MI.	49 CFR 172.101 Hazardous Materials Table Column (9B), Subpart C of Part 172, 172.301(c), 175.30.	To modify the special permit to remove the provision ''training or qualification of a new crew member will not take place during the execution of this special permit.''
11924–M	Packgen, Auburn, ME	49 CFR 173.12(b)(2)(i)	To modify the special permit to allow specific IBCs to be used as outer packaging for lab pack applications.
	NEW SPECIAL PERMIT GRANTED		
16212–N	Entegris, Inc., Billerica, MA	49 CFR 176.83(b)	To authorize the transportation in commerce of certain dual hazard gases without meeting segregation requirements when transported by vessel. (mode 3).
16514–N	Best Buy Co., Inc., Richfield, MA.	49 CFR 172.301(c), 173.185(c)(1)(iii), 173.185(c)(3)(i).	To authorize the transportation in commerce of packages containing lithium cells and batteries without the markings required in 88 173.185(c)(1)(iii) and 173.185(c)(3)(i) when contained in overpacks and transported via motor vehicle between distribution centers and retail stores that hold party status to this special permit; persons who receive these overpacks and do not offer overpacks under the terms of this special permit do not need party status. (mode 1).
16518–N	Midwest Helicopter Airways, Inc., Willowbrook, IL.	49 CFR 172.200, 172.301(c), 175.33, Part 178.	To authorize the transportation in commerce in the U.S. of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft. Such transportation is in support of operations when the use of cranes or other lifting devices is impracticable or unavailable or when aircraft is the only means of transportation, without being subject to certain hazard communication requirements, quantity limitations, packaging and loading and storage requirements. (mode 4).
16536–N	FIBA Technologies, Inc., Littleton, MA.	49 CFR 172.203(a), 178.37(k)(2)(i), 178.45(j)(1).	To authorize the DOT 3AA, 3AAX and DOT 3T specification cylinders using an alternative tensile test specimen for batch acceptance. (modes 1, 2, 3, 4).
16504–N	iDrink Products, Inc., Ann Arbor, MI.	49 CFR 171.2(k), 172.202(a)(5)(iii)(B), Subpart H of Part 172.	To authorize the transportation in commerce of certain used DOT Specification 3AL cylinders and containers that contain carbon dioxide, but not necessarily in an amount qualifying as hazardous material. (modes 1, 2).
	EMERGENCY SPECIAL PERMIT GRANTED		
16538–N	Veolia ES Technical Solutions, L.L.C., Flanders, NJ.	49 CFR 173.224(c)(3)	To authorize the one-way transportation in commerce of 100 grams of dimethyl 1,1'- azobis (1-cyclohexanecarboxylate) by highway for disposal. (mode 1).
16566–N	Sunset Helicopters Inc., Reno, NV.	49 CFR Table § 175.75, § 175.220(b)(1).	To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft in remote areas of the U.S. only. Such transportation occurs when aircraft is the only means of transportation, without being subject to certain hazard communication requirements, quantity limitations, packaging and loading and storage requirements. (mode 4).
16569–N	The Boeing Company, St. Charles, MO.	49 CFR 172.101 Column (9B), § 172.204(c)(3); § 173.27(b)(2) and (3).	To authorize the transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4).
16555–N	Advance Research Chemicals, Inc., Catoosa, OK.	49 CFR 173.227(b)(2)(iii)	To authorize the transportation in commerce of a Division 6.1, Packing Group I, Hazard Zone B material poisonous by inhalation in specially designed UN 1A1 stainless steel drums without the cap seal specified in § 173.227(b)(2)(iii). (mode 1).
	NEW SPECIAL PERMIT WITHDRAWN		
16511–N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(f), 173.301(g).	To authorize the transportation in commerce of hydrogen chloride, anhydrous in certain DOT specification cylinders without pressure relief devices. (modes 1, 3).
16554–N	Apple, Inc., Cupertino, CA	49 CFR Subparts C through H of Part 172, 173.185(f).	To authorize the transportation in commerce of recalled lithium ion batteries contained in equipment in retail packaging by motor vehicle. (mode 1).
16558–N	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.185(c)(1)(iv), 173.185(c)(4).	To authorize the transportation in commerce of certain lithium metal batteries contained in equipment in non-UN performance oriented packaging. (modes 1, 4).

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
EMERGENCY SPECIAL PERMIT WITHDRAWN			
16570–N	iDrink Products, Inc., Ann Arbor, MI.	49 CFR 173.306(a)(1)	To authorize the transportation in commerce of Specification DOT 3AL cylinders greater than 4 fluid ounces containing compressed carbon dioxide as a limited quantity. (modes 1, 2).
DENIED			
8009–M	Request by FIBA Technologies, Inc., Littleton, MA, September 30, 2015. To modify the special permit to remove the special permit number and restamp the letters ''CNG'' on 3AAX Cylinders that are test ring heat treated in a continuous furnace and add rail freight and cargo vessel as additional modes of transportation.		
16520–N	Request by Southern Helicopters, Inc., Sunshine, LA, September 18, 2015. To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft in remote areas of the U.S. only. Such transportation occurs when aircraft is the only means of transportation, without being subject to certain hazard communication requirements, quantity limitations, packaging and loading and storage requirements.		

[FR Doc. 2015–26258 Filed 10–16–15; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 18, 2015.

ADDRESSES: Send comments to Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 5, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
NEW SPECIAL PERMITS				
16571–N	.....	Chevron USA Inc., San Ramon, CA.	49 CFR 172.101, Hazardous Materials Table Column (9A).	To authorize the transportation in commerce of certain hazardous materials which exceed the authorized quantity limitations or are forbidden aboard passenger-carrying aircraft. (mode 5).
16574–N	.....	Veolia ES Technical Solutions, L.L.C., Lombard, IL.	49 CFR 173.21(b), 173.51, 173.54(a), 173.56(b).	To authorize the one-time transportation in commerce of certain unapproved fireworks from the Aberdeen Proving Ground military facility located in Aberdeen, MD to Veolia ES Technical Solutions, L.L.C.'s disposal facility located in Sauget, IL for final disposal. (mode 1).
16575–N	.....	FIBA Technologies, Inc., Littleton, MA.	49 CFR 172.203(a), 178.35(c)(3)(v), 178.70(e)(1).	To authorize the manufacture, mark, sale and use of certain specifica- tion DOT 3AA, 3AAX, and 3T cylinders and UN ISO 11120 tubes that were witnessed during manufacture with real-time video feeds by an Independent Inspection Agency for certain tests. (modes 1, 2, 3, 4).

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
16578–N	.....	Schlumberger Technology Corporation, Sugar Land, TX.	49 CFR 173.201(c), 173.202(c), 173.203(c), 173.301(f), 173.302a, 173.304a.	To authorize the manufacture, mark, sale and use of non-DOT specification cylinders without pressure relief devices for the transportation in commerce of certain hazardous materials. (modes 1, 2, 4).
16584–N	.....	Visuray LLC, Houston, TX.	49 CFR 171.180	To authorize the transportation in commerce of sulfur hexafluoride in a non-DOT specification cylinder. (modes 1, 2, 4, 5).
16587–N	.....	Mobis Parts America, LLC, Fountain Valley, CA.	49 CFR 172.102(c)(2), Special Provision A54, ICAO TI Special Provision A99.	To authorize the transportation in commerce of lithium ion batteries exceeding a net weight of 35 kg when transported aboard cargo aircraft. (mode 4).

[FR Doc. 2015–26257 Filed 10–16–15; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Application for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before November 3, 2015.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, October 5, 2015.

Don Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
Modification Special Permits				
6530–M	.....	Linde Gas, North America, LLC, New Providence, NJ.	49 CFR 173.302(c)	To modify the special permit to authorize Deuterium and Deuterium gas mixtures to be transported in certain cylinders filled to 110% of the cylinder marked service pressure.
12187–M	.....	ITW Sexton, Decatur, AL.	49 CFR 173.304(a); 175.3; 178.65.	To modify the special permit to add Compressed air, n.o.s. and eliminate the restriction on the maximum pressures of the lading of 264 psig at 70 °F and 357 psig at 130 °F.
14778–M	.....	Metalcraft/Sea-Fire Marine, Baltimore, MD.	49 CFR 173.302(f)	To modify the special permit to authorize six Non-DOT Specification cylinders designs similar to a DOT Specification 48W cylinder, manufactured in accordance with EN84–527–EEC or EN13322–1:2003.
16394–M	.....	Cellco Partnership, Basking Ridge, NJ.	49 CFR Subparts C through H of Part 172, 173.185(f).	To modify the special permit to authorize cargo vessel.

[FR Doc. 2015–26251 Filed 10–16–15; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0740]

Agency Information Collection (VA Form 21P–0847) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 18, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0740'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0740.''

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Substitution of Claimant Upon Death of Claimant (VA Form 21P–0847).

OMB Control Number: 2900–0740.

Type of Review: Revision of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services established by law for veterans, service personnel, and their dependents and/or beneficiaries. Information requested by VA Form 21P–0847 is authorized under the authority of 38 U.S.C. 5121A, Payment of Certain Accrued Benefits Upon Death of a Beneficiary.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 40135 on July 13, 2015.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,667 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 20,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–26417 Filed 10–16–15; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 38 U.S.C. App. 2 that the Executive Committee of the VA Voluntary Service (VAVS) National Advisory Committee (NAC) will meet November 3–4, 2015, at the Paralyzed Veterans of America Headquarters, 801 Eighteenth Street NW., 2nd Floor, Carlton Training Center, Washington, DC. The sessions will begin at 8:30 a.m. each day and end at 4:30 p.m. on November 3, and at Noon on November 4, 2015. The meeting is open to the public.

The Committee, comprised of 55 national voluntary organizations, advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The Executive Committee consists of 20 representatives from the NAC member organizations.

On November 3, agenda topics will include: NAC goals and objectives; review of minutes from the March 2014, NAC annual meeting; VAVS update on the Voluntary Service program's activities; Veterans Health Administration Update, Parke Board update; evaluations of the 2015 NAC annual meeting; review of membership criteria and process; and plans for 2016 NAC annual meeting (to include workshops and plenary sessions).

On November 4, agenda topics will include: Subcommittee reports; review of standard operating procedures; review of Fiscal Year 2014 organization data; 2017 NAC annual meeting plans; and any new business.

No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review to Mrs. Sabrina C. Clark, Designated Federal Officer, Voluntary Service Office (10B2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or email at *Sabrina.Clark@VA.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mrs. Clark at (202) 461–7300.

Dated: October 14, 2015.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2015–26447 Filed 10–16–15; 8:45 am]
BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, et al.
Hazardous Waste Export-Import Revisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 267, 271 and 273

[EPA–HQ–RCRA–2015–0147; FRL–9926–94–OSWER]

RIN 2050–AG77

Hazardous Waste Export-Import Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend our existing regulations in regards to the export and import of hazardous wastes from and into the United States. EPA is proposing these changes to: Provide greater protection to human health and the environment by making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development (OECD); enable electronic submittal of all export and import-related documents (*e.g.,* export notices, export annual reports); and enable electronic validation of consent in the Automated Export System (AES) for export shipments subject to RCRA export consent requirements prior to exit.

DATES: Comments must be received on or before December 18, 2015. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before November 18, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2015–0147, to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Laura Coughlan, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (703) 308–0005; email: *coughlan.laura@epa.gov*.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. General Information

A. List of Acronyms Used in This Proposed Rule

Acronym	Meaning
ACE	Automated Commercial Environment.
AES	Automated Export System.
AOC	Acknowledgment of Consent (issued by EPA).
CBI	Confidential Business Information.
CBP	United States Customs and Border Protection.
CDX	Central Data Exchange.
CEC	Commission for Environmental Cooperation.
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act.
CFR	Code of Federal Regulations.
CROMERR	Cross-Media Electronic Reporting Regulation.
CRT	Cathode Ray Tube.
CY	Calendar Year.
EPA	United States Environmental Protection Agency.
FR	Federal Register.
FTR	U.S. Census Bureau's Foreign Trade Regulations.
HSWA	Hazardous and Solid Waste Amendments.
ICR	Information Collection Request.
ITDS	International Trade Data System.
ITN	Internal Transaction Number (issued by AES).
LAB	Lead-Acid Battery.
NAICS	North American Industrial Classification System.
NCEDE	Notice and Consent Electronic Data Exchange.
NTTAA	National Technology Transfer and Advancement Act.
NAFTA	North American Free Trade Agreement.
OECD	Organization for Economic Cooperation and Development.

Acronym	Meaning
OMB	Office of Management and Budget.
OSWER	Office of Solid Waste and Emergency Response.
RCRA	Resource Conservation and Recovery Act.
RFA	Regulatory Flexibility Act.
SIC	Standard Industrial Classification.
SLAB	Spent Lead-Acid Battery.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
TRI	Toxics Release Inventory.
UMRA	Unfunded Mandates Reform Act.

B. What are the statutory authorities for this proposed rule?

The authority to propose this rule is found in sections 1002, 2002(a), 3001–3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 *et. seq.*, 6912, 6921–6924, and 6938.

C. Does this proposed rule apply to me?

The revisions to export and import requirements in this proposed rule generally affect four (4) groups: (1) All persons who export or import (or arrange for the export or import) hazardous waste for recycling or disposal, including those hazardous wastes subject to the alternate management standards for (a) universal waste for recycling or disposal, (b) spent lead-acid batteries (SLABs) being shipped for reclamation, (c) industrial ethyl alcohol being shipped for reclamation, (d) hazardous waste samples of more than 25 kilograms being shipped for waste characterization or treatability studies, and (e) hazardous recyclable materials being shipped for precious metal recovery; (2) all recycling and disposal facilities who receive imports of such hazardous wastes for recycling or disposal; (3) all persons who export or arrange for the export of conditionally excluded cathode ray tubes being shipped for recycling; and (4) all persons who transport any export and import shipments described above. Potentially affected entities may include, but are not limited to:

NAICS code	NAICS description
211	Oil and Gas Extraction.
212	Mining (except Oil and Gas).
213	Support Activities for Mining.
311	Food Manufacturing.
324	Petroleum and Coal Products Manufacturing.
325	Chemical Manufacturing.
326	Plastics and Rubber Products Manufacturing.
327	Nonmetallic Mineral Product Manufacturing.
331	Primary Metal Manufacturing.
332	Fabricated Metal Product Manufacturing.
333	Machinery Manufacturing.
334	Computer and Electronic Product Manufacturing.
335	Electrical Equipment, Appliance, and Component Manufacturing.
336	Transportation Equipment Manufacturing.
339	Miscellaneous Manufacturing.
423	Merchant Wholesalers, Durable Goods.
424	Merchant Wholesalers, Nondurable Goods.
441	Motor Vehicle and Parts Dealers.
482	Rail transportation.
483	Water transportation.
484	Truck transportation.
488	Support Activities for Transportation.
531	Real Estate.
541	Professional, Scientific, and Technical Services.
561	Administrative and Support Services.
562	Waste Management and Remediation Services.
721	Accommodation.
924	Administration of Environmental Quality Programs.

The lists of potentially affected entities in the above tables may not be exhaustive. The Agency's aim is to provide a guide for readers regarding those entities that potentially could be affected by this action. However, this action may affect other entities not listed in these tables. If you have questions regarding the applicability of this proposed rule to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

D. What is the purpose of this proposed rule?

EPA is proposing certain amendments to the current RCRA regulations governing imports and exports of hazardous waste and certain other materials in part 262 in order improve protection of public health and the environment by achieving greater consistency in both procedures and documentation. Specifically, the proposed revisions of the existing regulations will consolidate and streamline some of the requirements and enhance the documentation of the movement and disposition of hazardous wastes and other materials, improving the Agency's ability to monitor compliance with applicable legal requirements; will enable regulated parties and the government to benefit from the electronic submission of data; and will consolidate the notification process with foreign governments for efficiency under a unified regulation, consistent with the requirements of the Organization for Economic Cooperation and Development Council Decision (OECD) controlling transboundary movements of hazardous waste. The proposed rule is one of the Agency's priority actions under its plan for periodic retrospective reviews of existing regulations, as called for by Executive Order 13563. Finally, certain other revisions to the regulations are needed in order to fulfill the direction set forth in Executive Order 13659 concerning the electronic management of international trade data by the U.S. Government as part of the International Trade Data System (ITDS).

EPA's determination that some revisions to the import/export regulations are needed is bolstered by the 2013 Commission for Environmental Cooperation (CEC) report and its recommendations. The CEC report found that U.S. net exports of spent lead acid batteries (SLABs) to Mexico for recycling had increased by an estimated 449–525 percent, and that there were significant discrepancies between summary data on export shipments reported to the EPA annually and individual export shipment data collected under U.S. Census Bureau (Census) authority. Based on its findings, the CEC report recommended that the U.S. require the use of manifests for each international shipment of SLABs, require exporters to obtain a certificate of recovery from foreign recycling facilities, explore establishing an electronic export annual report, and better share import and export data between environmental and border agencies. For a more complete discussion of the report and EPA's related analysis, see Section VII.

EPA is particularly interested in input on this proposed action from persons who import and export hazardous waste, including those persons importing or exporting hazardous wastes managed under the special management standards in 40 CFR part 266 (*e.g.,* spent lead acid batteries) and 40 CFR part 273 (*e.g.,* universal waste batteries, universal waste mercury lamps).

E. Incorporation by Reference (IBR)

This action is proposing to update the IBR source material in § 260.11(g)(1) for the OECD amber and green waste lists, and their associated waste codes, which

are used to identify a waste. The OECD waste lists, entitled ''List of Wastes Subject to the Green Control Procedures'' and ''List of Wastes Subject to Amber Control Procedures,'' are set forth in Appendix 3 and Appendix 4, respectively, of the OECD Decision. The waste lists from the OECD Decision have been consolidated and incorporated in Annex B and C of the 2009 ''Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations.'' Section 260.11(g)(1) currently references material from an old 1992 OECD Council Decision, C(92)39/FINAL. We are proposing to update that reference to the most current listing, which is the 2009 ''Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations.'' Sections 262.82(a), 262.83(b)(1)(xi), 262.83(d)(2)(vi), 262.83(g)(4)(iii), 262.84(b)(1)(xi), and 262.84(d)(2)(vi) will reference the IBR material in the proposed § 260.11(g)(1). EPA does not believe this proposed change will impact the regulated community, since the regulated community was already using the most current listings from the OECD as this IBR material is currently in the regulations under Section 262.89(d), for which this action proposes to redirect the citations to 260.11(g)(1). The material is available for inspection at: The U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA–HQ–RCRA–2015–0147) and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France. The material is also available online (for free) at *http://www.oecd.org/env/waste/42262259.pdf*. To contact the EPA Docket Center Public Reading Room, call (202) 566–1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

II. Background

A. RCRA General Hazardous Waste Export and Import Requirements

EPA's general hazardous waste export and import regulations were originally promulgated in 1986 and are currently found in 40 CFR part 262 subparts E and F. 40 CFR part 262 subpart E established export requirements for manifested hazardous waste. These requirements include submitting an export notice to EPA, receiving EPA's Acknowledgement of Consent (AOC) letter documenting consent by the country of import and any countries of transit, RCRA manifest related requirements for export shipments, submittal of export annual reports summarizing export shipments made in the previous calendar year, and recordkeeping. 40 CFR part 262 Subpart F established manifest related requirements for hazardous waste import shipments. Conforming requirements related to the AOC letter and the RCRA manifest were added to Parts 263 (*i.e.,* for transporters), 264 and 265 (*i.e.,* for treatment, storage, and disposal facilities). While some limited changes have been made since 1986, the requirements related to individual shipment tracking remain solely based on RCRA manifest requirements.

B. RCRA OECD Regulations

1. What is the OECD?

The OECD is an international organization established in 1960 to assist Member countries in achieving sustainable economic growth, employment, and an increased standard of living, while simultaneously ensuring the protection of human health and the environment. OECD Member countries are concerned with a host of international socio-economic and political issues, including environmental issues. To address these issues, the OECD Council may negotiate Council Decisions, which, except as otherwise provided, are international agreements that create legally-binding commitments on the United States and other OECD member countries under the terms Article 5 of the Convention on the Organisation for Economic Co-operation and Development (OECD Convention). A series of Council decisions, collectively referred to here as the ''Amended 2001 OECD Decision,'' addresses the transboundary movement of wastes, which is the subject of this proposed rule. Of the thirty-four Member countries of the OECD, all but Chile participate in the Amended 2001 OECD Decision. These participating Member countries are as follows: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The OECD country Web site for each Member country may be found at *http://www.oecd.org/infobycountry/*.

2. What OECD Decisions formed the basis for the existing regulations in 40 CFR part 262, subpart H?

On March 30, 1992, the OECD Council adopted the ''Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery'' (hereinafter referred to as the 1992 Decision), which applied to the transboundary movements of wastes destined for recovery operations between OECD Member countries. The 1992 Decision provided a framework for OECD Member countries to control the transboundary movement of recoverable wastes in an environmentally sound and economically efficient manner. These revisions were implemented within RCRA in the April 12, 1996 direct final rule (61 FR 16290) that established 40 CFR part 262 subpart H (hereinafter referred to as OECD regulations or Subpart H regulations), and added a section to 40 CFR part 262 subpart E to detail when exporters and importers needed to comply with 40 CFR part 262 subpart H in lieu of complying with 40 CFR part 262 subpart E or F. As with the general RCRA export and import requirements, conforming requirements for exports and imports required to comply with 40 CFR part 262 subpart H were added to 40 CFR parts 263–265.

On June 14, 2001, the OECD Council amended the 1992 Decision by adopting ''Revision of Decision C(92)30/FINAL on the Control of Transboundary Movement of Wastes Destined for Recovery Operations''(hereafter referred to as the 2001 OECD Decision). The goal of the 2001 OECD Decision was to harmonize the procedures and requirements of the OECD with those of the Basel Convention [1] and to eliminate duplicative activities between the two international organizations as much as practical. These changes included significant revisions to the original established framework (such as reducing the levels of control from a three-tiered system to a two-tiered system), while also adding entirely new provisions (for example, the new

[1] The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is a comprehensive global environmental agreement on hazardous and other wastes. The Convention has 181 Member countries, also known as Parties, and aims to protect human health and the environment against the adverse effects that may result from the generation, management, transboundary movements and disposal of hazardous and other wastes. The United States is a signatory, but has not yet ratified the Convention. More information on the Basel Convention may be found at *www.basel.int.*

confirmation of recovery requirement). Subsequent to the 2001 OECD Decision, an addendum, C(2001)107/ADD1 (hereafter referred to as the 2001 OECD Addendum), which consists of revised versions of the notification and movement documents and the instructions to complete them, was adopted by the OECD Council on February 28, 2002. The addendum was incorporated into the 2001 OECD Decision as section C of Appendix 8, and the combined version was issued in May 2002 as C(2001)107/FINAL. On March 30, 2004, the OECD Council adopted C(2004)20 (hereafter referred to as the 2004 OECD Amendment), which updated the OECD waste lists, entitled ''Appendix 3: List of Wastes Subject to the Green Control Procedure'' (hereafter referred to as the Green list) and ''Appendix 4: List of Wastes Subject to the Amber Control Procedure'' (hereafter referred to as the Amber List). To the extent possible, the Green and Amber Lists were revised based on the amendments made to Annexes II, VIII, and IX of the Basel Convention in November 2003. The 2001 OECD Decision was further amended in November 2005 and November 2008. The OECD Council decisions are collectively referred to as the Amended 2001 OECD Decision, and the consolidated text is in the guidance manual for the Amended 2001 OECD Decision, available online at *http://www.oecd.org/environment/waste/42262259.pdf*.

EPA published a final rule in the **Federal Register** entitled, ''Revisions to the Requirements for: Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes'' (75 FR 1236, January 8, 2010) amending 40 CFR part 262 subpart H and making conforming requirements in 40 CFR parts 263–266 and 271 to implement the specific provisions of the Amended 2001 OECD Decision. Under the OECD regulations, all export and import shipments for recycling of RCRA hazardous waste between the U.S. and an OECD member country other than Canada or Mexico are required to be shipped using notice and consent procedures, covered by contracts or equivalent arrangements that require the parties (*e.g.,* exporter, destination facility) to comply with all the applicable requirements in the OECD regulations, accompanied by an international tracking document or movement document from the shipment's starting point in the country of export to the destination facility in the country of import, and recycled within one year of shipment delivery. For example, the contract with the foreign destination facility must specify that it sends copies of the signed movement document back to the exporter and to the competent authorities of the countries of export, import and transit to confirm receipt of the waste shipment. Further, the contract must specify that the foreign destination facility will subsequently send confirmation back to the exporter and to the competent authorities of the countries of export, import and transit that it has completed recycling the shipment.

3. Why did EPA retain the general RCRA export and import requirements along with the OECD regulations?

The OECD regulations apply to shipments of RCRA hazardous waste [2] sent for recovery between the United States and OECD member countries other than Canada and Mexico. Although Canada and Mexico are both OECD member countries, the U.S. has separate bilateral agreements with these countries that cover shipments for disposal in the U.S. and Canada, in addition to shipments for recycling in the U.S., Canada or Mexico. Because the bilateral agreements covered shipments for disposal and some import and export shipments occurred with non-OECD countries, EPA kept hazardous waste shipments with those countries subject to the general RCRA export and import requirements in 40 CFR part 262 Subparts E and F.

In its comments on the proposed revisions to the OECD regulations in 2008, the Basel Action Network (BAN) commented that the U.S. had not yet implemented the 1986 OECD Decision-Recommendation,[3] and should do so immediately. The 1986 OECD Decision-Recommendation stated that OECD member countries should regulate hazardous waste movements with non-OECD countries no differently from movements with OECD member countries. BAN's comment was outside of the scope of the proposed rulemaking, and was noted as such by EPA in the January 8, 2010, final rule and the related response to comments document. EPA, at that time, considered the regulatory requirements in 40 CFR part 262, subpart E to be sufficiently similar to those in 40 CFR part 262, subpart H to comply with the legally binding elements of the 1986 OECD Decision-Recommendation. EPA concluded that this approach was reasonable as EPA had no data indicating that there were significant exports of RCRA hazardous waste that proceeded without consent of any kind.

4. Why is EPA proposing to require that all exports and imports of hazardous waste comply with OECD-based requirements?

While EPA has updated the RCRA OECD regulations and some limited changes have been made to the general RCRA export and import regulations since 1996, EPA has determined that a more complete revision is needed at this time for a number of reasons.

First, the regulations are quite complex. Different procedures apply depending on whether the shipment is destined for recycling or disposal, whether the other country is a member of the OECD, and if so, whether the U.S. has a separate bilateral agreement with the OECD member country. In addition, the applicability of conforming requirements in 40 CFR parts 263, 264, 265, 266 and 273 related to the general RCRA export and import regulations and the OECD regulations are sometimes unclear. The complexity of having two sets of export and import requirements creates confusion for the regulated community and leads to decreased compliance with RCRA requirements. In general, over ninety percent of the quantity of hazardous waste that is shipped between the United States and other countries occurs between the U.S., Canada and Mexico. Canada and Mexico are both OECD countries and under the same obligation to implement the Amended 2001 OECD Decision. Additionally, hazardous waste shipments between the United States and OECD countries other than Canada and Mexico already follow the Amended 2001 OECD Decision. Only 137 of the 54,152 hazardous waste import and export shipments in 2011 were between the United States and non-OECD countries.

Second, the general RCRA regulations in 40 CFR part 262 Subparts E and F do not provide for complete tracking of individual shipment transport and management. As stated previously, under the OECD regulations an international movement document must accompany the shipment from the

[2] This includes import and export shipments of hazardous waste subject to the alternate management standards for universal waste, SLABs being shipped for reclamation, hazardous recyclable materials being shipped for precious metal recovery, industrial ethyl alcohol being shipped for reclamation, and hazardous waste samples of more than 25 kg being shipped for characterization or treatability studies.

[3] ''Decision-Recommendation of the Council on Exports of Hazardous Wastes from the OECD area'', C(86)64/FINAL, issued June 5, 1986.

starting site in the country of export to the destination site in the country of import, and copies of the signed movement document must be sent by the foreign destination facility to the exporter and to the countries of export, import, and transit to confirm receipt of the shipment. Such confirmation reduces the risk of shipments being misdirected to countries or facilities not approved to receive the shipments for disposal or recovery. It also highlights any incidents where the shipments are interrupted or misdirected, as the exporter and competent authorities will not receive the confirmation from the approved destination facility within expected timeframes.

While shipments of RCRA hazardous waste are already required to be accompanied by a RCRA hazardous waste manifest under the general RCRA export and import regulations, the focus of the RCRA manifest is domestic cradle-to-grave tracking. As a result, while it requires listing the foreign generator and U.S. port of entry for imports, and the foreign destination facility and U.S. port of exit for exports, it does not capture all of the information needed to track international shipments moving across two or more countries. For example, the RCRA manifest does not have the capability to capture customs processing in the countries of export, transit and import, and the RCRA manifest requires solely listing RCRA hazardous waste codes and U.S. biennial report management codes rather than requiring listing the applicable domestic and internationally accepted OECD/Basel Convention waste codes and the internationally accepted OECD/Basel Convention disposal/recycling operation codes. Moreover, the RCRA manifest is only required to be initiated for import shipments upon the first act of transportation within the United States or its territories.

Rather than try to further modify the RCRA manifest to capture all the required international items in addition to all the domestic items it already tracks (especially while EPA is in the midst of developing the e-manifest system) EPA is proposing to require the use of an international movement document for all export and import shipments of hazardous waste. This would include universal waste, SLABs being shipped for reclamation, hazardous recyclable materials being shipped for precious metal recovery, industrial ethyl alcohol being shipped for reclamation, and hazardous waste samples of more than 25 kg being shipped for characterization or treatability studies.

Allowing the use of any international movement document, including but not limited to the widely accepted OECD/Basel Convention movement document or the Canadian movement document, will reduce the incremental burden of this requirement and prevent duplicative international tracking requirements. As when using the RCRA manifest, the movement document must list the name, address, telephone, fax numbers, and email of the location from which the export shipment initiates if it is different from that of the exporter. This is currently required in 40 CFR 262.84(b)(2).

As listed above, management (*i.e.,* treatment and disposal, recovery) of each shipment will be required to be completed within one year of shipment delivery, and the destination facility will be required to send confirmation of completing such management back to the exporter and to the competent authorities of the countries of export and import. This requirement should minimize speculative accumulation or abandonment of the waste shipments, and decrease the potential for associated damage to human health and the environment. Destination facilities can easily confirm completing management by signing and dating Block 19 of the OECD/Basel movement document, but may also use another document for this purpose, including but not limited to the Canadian ''Confirmation of Disposal or Recycling'' form.[4]

Taking these factors into consideration along with all the others discussed previously leads EPA to conclude that consolidating the RCRA import-export requirements under a unified regulation wholly consistent with the Amended 2001 OECD Decision is the best approach in this proposed rule. EPA is therefore proposing to make all imports and exports of hazardous waste, whether subject to manifest requirements or not (*e.g.,* universal waste, SLABs being shipped for reclamation, hazardous recyclable materials being shipped for precious metal recovery, industrial ethyl alcohol being shipped for reclamation, and hazardous waste samples of more than 25 kg being shipped for characterization or treatability studies) subject to the RCRA OECD regulations implementing the Amended 2001 OECD Decision. This will ensure that all RCRA hazardous wastes that were previously subject to different export and import requirements will now be subject to more uniform procedures consistent with the 1986 OECD Decision-Recommendation, the Amended 2001 OECD Decision, and the Basel Convention.

Under the proposed revisions, all export and import shipments of RCRA hazardous waste will be required to be shipped using notice and consent procedures, covered by contracts or equivalent arrangements that require the parties (*e.g.,* exporter, destination facility) to comply with all the applicable requirements implementing the OECD procedures, accompanied by an international tracking document or movement document from the shipment's starting point in the country of export to the destination facility in the country of import, and recycled or disposed of within one year of shipment delivery.

5. Why is EPA proposing to change the text of the OECD regulations in 40 CFR part 262 subpart H rather than propose to expand the applicability of the OECD regulations?

EPA is proposing to reorganize the regulations in Subpart H of part 262 and clarify certain portions, such as the contract requirements, to articulate more explicitly EPA's original intent in those regulations and to eliminate any confusion on the part of the regulated community. We are also deleting older import and export requirements that are duplicative of or inconsistent with the OECD-based procedures (in the cases of exports to non-OECD countries), and clarifying certain definitions or requirements that are still needed.

An example of a duplicative regulation is 40 CFR 264.12(a)(1) in which a U.S. treatment, storage and disposal facility must submit the one-time notice to the Regional Administrator four weeks before the anticipated delivery of the first shipment of a hazardous waste from a foreign source. This regulation will be deleted, as it is duplicative with the notice and consent requirements that will now be required. More fundamentally, under the regulations in Subpart H of part 262, notice and consent is always required, so EPA currently receives notice of the U.S. facility's intent to receive the hazardous waste import for recycling for those cases where the OECD member country listed in 40 CFR 262.58(a)(1) does not control the proposed shipments as hazardous waste exports under 40 CFR 262.82(a)(2)(ii)(B). Under the proposed rule, U.S. importers will be required to submit an export notice directly to EPA, requesting consent to the proposed shipments in place of the foreign

[4] Available for free download at *http://www.ec.gc.ca/gdd-mw/8BBB8B31-BFDD-49AA-872D-1C1E8C46CB15/Certificate%20of%20disposal-Recycling-July%202010.pdf.*

exporter, in those instances when any country of export does not control the proposed shipments as hazardous waste exports subject to notice and consent requirements. Maquiladora [5] shipments of hazardous waste from Mexico are a good example of shipments that will be affected by this provision. Mexico considers them to be return shipments to the United States (and thus, not subject to any notice and consent requirements) while the U.S. regulates them as import shipments (and thus subject to notice and consent requirements). As with export notices, these import notices will be able to cover multiple shipments over a 12-month period.

Because under this proposed rule EPA will get notices for all import and export shipments subject to the regulations in Subpart H of part 262, the 264.12(a)(1) notice is no longer necessary. The requirement for the U.S. importer to submit a notice to EPA should only affect U.S. importers who intend to import shipments of hazardous wastes that are not controlled in Mexico or non-OECD countries as exports of hazardous waste. These countries do not currently submit notices to EPA for such exports. Canadian regulations [6] currently require submittal of export notices (including the intended U.S. destination facility) for all proposed exports even in cases when only the country of import regulates the waste as hazardous. Similarly, proposed import shipments for recycling from OECD countries other than Canada and Mexico that are not controlled as exports of hazardous waste by those countries are already subject to the regulations under 40 CFR 262.82(a)(2)(ii)(B) and, in those cases, the U.S. importers are already sending notices to EPA. Based on the RCRA manifests for import shipments from Mexico and non-OECD countries that could not be matched to an EPA consent to a foreign notice, we estimate that U.S. importers will need to submit roughly 28 notices per year due to this change. We ask for comment on the accuracy of this estimate.

Another proposed change is to delete the requirement for an exporter providing a copy of EPA's Acknowledgment of Consent (AOC) letter for the transporter to carry with each shipment in 40 CFR 262.52(c). Instead, under this proposed rule the movement document will list the notification/consent number under which the shipment is covered and include a signed certification statement that all contracts are in place and all necessary consents have been obtained. The information in the movement document will therefore include all the necessary information for the countries of export, transit and import to match the movement documents for the individual shipments with the relevant notification and consent documents. Because RCRA manifests track certain domestic items (*e.g.,* biennial reporting management codes) that are not captured by the OECD movement document, we are not proposing to delete the RCRA manifest requirements for import and export shipments. However, we are proposing to replace the requirement to attach copies of the relevant EPA import consent documentation to RCRA manifests for import shipments in 40 CFR 264.71(a)(3) and 265.71(a)(3), with a requirement that the U.S. importer list the relevant consent number for each waste stream in the RCRA manifest section titled ''Special Handling Instructions and Additional Information''. EPA should have consented in all cases, either to a notice forwarded by the country of export or a notice submitted by the U.S. importer/receiving facility; therefore, requiring the receiving facility to list the consent numbers will provide the needed information to enable EPA to match the RCRA manifest for the import shipment with the relevant consent information. While EPA will continue to send copies of its consent to the listed U.S. destination facility for imports, these facilities will no longer be required to make copies of the documentation and attach a copy to the RCRA manifest for each import shipment.

EPA considered proposing to limit the number of RCRA waste codes that can be listed in an export or import notice or an export annual report for a specific hazardous waste. Currently, the regulations do not limit the number of RCRA hazardous waste codes that can be submitted on a notice of intent to export or import or on an export annual report, which means an exporter can submit an export or import notice or an export annual report listing every RCRA hazardous waste code for each specific hazardous waste. Of the 1,684 export notices received by EPA in calendar year 2013, at least 200 notices were submitted with hundreds of RCRA hazardous waste codes listed for each of the hazardous wastes in the notice. EPA does not believe that all (or close to all) of the RCRA hazardous waste codes could actually apply to a single waste stream. Listing more (or all) hazardous waste codes for a waste stream does not appreciably increase the quality of the waste stream data or prevent the destination facility from rejecting a poorly characterized hazardous waste. This practice does impair EPA's oversight and tracking accuracy of exported hazardous wastes.

The export notices and export annual reports where EPA has observed all (or close to all) of the RCRA waste codes have been listed for each waste stream are associated with proposed or actual hazardous waste export shipments to Canada. Canadian import and export regulations require Canadian importers and exporters to list the applicable RCRA hazardous waste code,[7] but do not explicitly limit the number of waste codes to list per waste stream. As already stated, EPA has concerns over the practice of listing more (or all) hazardous waste codes for a waste stream where the waste codes may not be applicable. EPA asks for feedback from exporters on what waste streams would actually require listing all (or close to all) RCRA hazardous waste codes and why. EPA also seeks to learn what steps those exporters are taking to review their practices in this regard in order to produce a more limited and accurate listing of the RCRA hazardous waste codes that actually pertain to the shipments they propose to make, for the purposes of reducing the burden on their own operations as well as on the operations of the governments involved in the transboundary control process in order for the process to operate more efficiently. Based on the feedback received, EPA may consider limiting the number of RCRA hazardous waste codes listed for a specific hazardous waste, for example, to a maximum of six codes consistent with the current waste code

[5] In general, a maquiladora is a Mexican assembly or manufacturing operation that can be partly or wholly foreign-owned. Maquiladora facilities typically import raw materials and equipment under reduced or zero Mexican duties so long as the facilities comply with special requirements under Mexican law. One such requirement is that hazardous wastes generated during the production process must be returned to the country of origin. U.S.-owned maquiladoras must therefore ship hazardous wastes back to the United States for treatment and disposal or recycling. More information is available at *http://www.bordercenter.org/mexico/mexgenreturn.htm* and *http://www.borderplexalliance.org/regional-data/ciudad-juarez/twin-plant/maquiladora-faq.*

[6] See item (1)(g) in the Canadian definition of hazardous waste and item 2(g) in the Canadian definition of hazardous recyclable material, ''Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations,'' Canada Gazette Part II, Vol. 139, No. 11, June 1, 2005. More information on the Canadian regulations are available at *http://ec.gc.ca/lcpe-cepa/eng/regulations/detailReg.cfm?intReg=84.*

[7] See item 8(j)(v) under Part 1 of the Canadian regulations, ''Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations,'' Canada Gazette Part II, Vol. 139, No. 11, June 1, 2005. More information on the Canadian regulations are available at *http://ec.gc.ca/lcpe-cepa/eng/regulations/detailReg.cfm?intReg=84.*

limit for the RCRA hazardous waste manifest in the instructions for Item 13 in the Appendix to 40 CFR part 262, or may consider requiring the conditional submittal of information justifying the listing of all (or close to all) RCRA hazardous waste codes for a waste stream at the time the export notice, import notice, or export annual report is submitted.

EPA also considered proposing to limit the number of notice amendments that an exporter could submit within the one-year period of consent established by EPA's AOC letter. Under the existing notice requirements in 40 CFR 262.53, exporters are required to submit a notice amendment and obtain an amended consent concerning any changes to information listed in the notice other than changes to the exporter's contact phone number, changes to the means of transportation, or decreases to the planned export quantity. Under existing notice requirements in 40 CFR part 262 subpart H and the proposed revisions, the ports of exit and transporter companies the exporter plans to use during the consent period are required to be listed in the export notice, and exporters will have to submit a notice amendment requesting consent before using any additional ports or transporters not listed in the original notice and EPA AOC letter. Because amendments may be necessary, and even multiple amendments may be unavoidable, EPA decided not to propose limiting the number of amendments that an exporter can submit to request changes to the terms of an issued AOC letter during the one-year consent period. However, it is important to note that EPA must prioritize export documents it receives to help ensure that the system continues to operate efficiently and avoid delays in shipments. Because having consent to ship is most critical, processing by EPA of initial export notices to obtain consent to ship is the highest priority, and processing amendments to add ports or transporters to an issued AOC is a much lower priority. EPA therefore encourages exporters to submit notices that contain all potential ports and transporters reasonably expected to be used, to avoid the need to request amendments to add ports or transporters, particularly because there is no limit to the number of transporters or ports that can be listed in the export notice.

EPA is not proposing to expand the applicability of the revised regulations in subpart H of part 262 beyond those RCRA hazardous wastes already subject to the current export requirements in 40 CFR part 262. Under RCRA Section 3017, EPA's authority to prohibit exports and establish regulatory requirements to implement international waste agreements is limited to waste regulated as hazardous under RCRA. This proposed rule does not affect wastes that are not regulated as RCRA hazardous waste (*i.e.,* not subject to 40 CFR part 262), but that may still be considered amber wastes (*i.e.,* internationally hazardous) under the Amended 2001 OECD Decision, such as municipal solid waste or medical waste. The 1992 OECD Decision and the Amended 2001 OECD Decision both include provisions that make allowances for individual member countries controlling various OECD amber wastes as green (*i.e.,* internationally non-hazardous) wastes. This was discussed in more detail in the April 12, 1996, preamble to the original rule implementing the 1992 OECD Decision (61 FR 16290–16316).

EPA is also not proposing to address requirements for shipments that transit through the United States beyond what is currently required for return of shipments transiting the United States in 40 CFR part 262 subpart H. The OECD Decision (see Chapter II, Section (D)(2)(Case 1)(j)) and the Basel Convention (see Article 4, Section (7)(c)) both require movement documents from the starting point in the country of export to the recycling or disposal facility in the country of import. Shipments that transit the United States may therefore be accompanied by an international movement document while in transit in the United States under requirements established by the country of export and/or the country of import if those countries are OECD countries or party to the Basel Convention. However, the EPA does not require such transits to be accompanied by an international movement document.

Lastly, EPA would like to note that the existing U.S.-Canada bilateral agreement, the U.S.-Mexico bilateral agreement, and the three import-only bilateral agreements between the United States and Malaysia, Costa Rica, and the Philippines remain in place and are not affected by these proposed revisions. While the proposed revisions, if finalized, would change the applicable requirements for hazardous waste shipments with these countries, the additional requirements being proposed are fully consistent with the bilateral agreements.

6. Why is EPA proposing to require electronic submittal of nine major export and import documents?

Currently all import and export submittals to EPA are paper-based. As part of EPA's Next Generation Compliance initiative and electronic reporting policy,[8] EPA is working to convert paper submittals to EPA with electronic submittals that comply with the applicable requirements in EPA's Cross-Media Electronic Reporting Regulation (CROMERR).[9] Under 40 CFR parts 261, 262, 264 through 266, and 273, the following paper documents are required to be submitted to EPA related to imports and exports:

(a) Export notices for hazardous waste (40 CFR 262.53 and 262.83) or CRTs being shipped for recycling (40 CFR 261.39(a)(5));

(b) Import notices for cases where country of export does not control as hazardous waste export and EPA has not received notice from country of export (40 CFR 262.82(a)(2)(ii)(B));

(c) Export annual reports for hazardous waste (40 CFR 262.56 and 262.87(a)) or CRTs being shipped for recycling (40 CFR 261.39(a)(5)(x));

(d) Export exception reports (40 CFR 262.55 and 262.87(b), in lieu of exception reporting required under 40 CFR 262.42);

(e) Export confirmations of receipt (submittal by foreign recycling facility required in 40 CFR 262.54(f), 262. 84(e), and required implicitly by 40 CFR 262.85);

(f) Export confirmations of completing recovery (submittal by foreign recycling facility required implicitly by 40 CFR 262.85);

(g) Import confirmations of receipt (40 CFR 262.60(e), 262.84(e), 264.12(a)(2), 265.12(a)(2), 264.71(a)(3), 265.71(a)(3), 264.71(d), 265.71(d));

(h) Import confirmations of completing recovery (40 CFR 262.83, 264.12(a)(2), 265.12(a)(2));

(i) Import notifications regarding need to make alternate arrangements or need to return waste shipment (40 CFR 262.82(d)(1), 262.85(c)(1));

(j) Import notifications of expected initial import shipment of a specific hazardous waste from a specific foreign source (40 CFR 264.12(a)(1)); and

(k) Transporter notifications regarding need to return shipment transiting U.S. to country of export (40 CFR 262.83(e)(1)).

Not all of the items listed above occur in sufficient numbers to justify

[8] *http://www2.epa.gov/compliance/next-generation-compliance-delivering-benefits-environmental-laws.*

[9] *http://www.epa.gov/cromerr/epa.html.*

converting to electronic submittal. For example, EPA has never received a transporter notification listed in item (k) regarding the need to return a shipment transiting the United States to the country of export, likely because there are so few transboundary shipments that solely transit the United States. Additionally, EPA is proposing to delete the one-time import notification requirement listed in item (j). We are therefore not proposing to require electronic submittal of items (j) and (k). But the remaining nine submittals do occur regularly, and for these nine existing submittals EPA is proposing a mandatory requirement that submittal be made electronically on or after the effective date of the final rule. As part of this proposal, EPA will consider exemptions to this requirement if most regulated entities impacted by this rule are expected to be located in areas with limited broadband access as defined by the Federal Communications Commission (FCC) or there are unique circumstances that make paper submittals more efficient.

EPA's waste import/export database is currently used to process and track all import notices annually transmitted to EPA by foreign governments or U.S. importers (when the country of export does not regulate as hazardous waste export subject to notice and consent requirements), and all export notices submitted annually to EPA by U.S. exporters. EPA received 769 import notices and 1,684 export notices in Calendar Year (CY) 2013. When EPA receives a paper export or import notice, an EPA notice officer must first review it for completeness, and then once it is deemed complete, manually enter the data from the notice into the tracking system. The 718 import notices transmitted by Canada and Mexico in CY2013 were received electronically through the Notice and Consent Electronic Data Exchange (NCEDE) using EPA's Central Data Exchange (CDX),[10] but all other import notices and all export notices must be manually entered by an EPA notice officer. Export notices often are missing required information, and require lengthy communications with the exporter via phone, email or fax to correct missing or invalid entries. Converting to an electronic web-based notice entry will enable automating checks for all required information and the use of drop down lists (*i.e.,* a list of valid entries from which the submitter will be able to choose one or more entries) to reduce invalid entries. Assuming a web-based notice entry process, EPA estimates that the submitter will need to enter the following:

(a) Three initial fields for receiving country, disposal or recovery, and general waste material type, using radio buttons and drop down lists, to determine the required fields for the notice;

(b) Eight required fields on the notice page: First departure date (calendar); last departure date (calendar); technology employed (open text); name of notice signer (open text); signature date (calendar); import, exporter, and receiving facility (drop down list from type ahead feature or open text for facilities not already in the system—open text has roughly nine required fields for each: Company name, address, EPA ID number, zip code, country, city, phone, fax, email);

(c) Six required fields on the transportation page: Mode of transport (drop down list); packaging type (drop down list), shipment frequency (number field); ports of entry (drop down list), ports of exit (drop down list); transporter (drop down list—but allows for manual entry of the nine required fields for transporters not already in the system);

(d) Nine fields (eight required) for each waste stream: Waste material type (drop down list); management method code (drop down list); DOT/UN ID, shipping name, and hazard class (drop down list—one entry selected populates all three); EPA waste codes (drop down list); Basel Convention codes (optional entry, uses drop down list); OECD codes (drop down list); waste description (open text); waste quantity (number); unit of measure for waste quantity (drop down list); and

(e) Three required fields on the transit country page: Transit country (drop down list); port of entry (drop down list); and port of exit (drop down list).

Reduced errors and electronic submittal of notice data will substantially decrease the time needed for EPA to review and process the notices, and the time needed for the U.S. submitter to correct the notice deficiencies, which will make the notice process more efficient for the U.S. exporter and U.S. importer submitting notices to EPA. Additionally, U.S. exporters and importers submitting notices electronically will be able to duplicate previous notices when seeking to renew consent to export with a minimum of changes, and then simply edit the fields which would change. EPA estimates that as many as 60 percent of submitted export notices would benefit from the duplication feature, which would reduce the required data entry down to editing roughly 2 to 14 fields. Additional benefits to the U.S. submitter will be the elimination of mailing or courier fees needed to submit the notices, the elimination of the risk of losing the submittal in the mail, and the ability for the U.S. submitter to log in and obtain information on the status of all submitted notices without needing to request the information from EPA via phone or email. Lastly, electronic export notices will enable the transmittal of all EPA reference data needed to validate consent for each shipment under ITDS (see Section II.C. for more information on ITDS). EPA requests comment on this potential notice entry process, and further requests comment on how many exporters currently use an automated system to generate notices and the estimated burden reduction if EPA developed an option to submit notices electronically using a system-to-system based approach using XML through EPA's CDX.

Export annual reports must be submitted to EPA by March 1 of each year and detail all export shipments made under consent during the previous calendar year. Currently, exporters must generate these reports and submit them in paper form. In order to conduct any meaningful analysis of the quantity and types of waste exported, EPA must review the export annual reports submitted each year for completeness and manually enter the data from the export annual reports. EPA received 378 export annual reports concerning shipments made in CY2011. Converting to electronic submittal of the data will again reduce EPA's review time and manual entry time, and will reduce the time needed for U.S. exporters to correct any export annual report deficiencies. An additional benefit to converting to electronic submittal of the export annual report would be that the tracking system could build a draft report listing the required information regarding all wastes under consent that were approved to ship during the previous calendar year. The exporter could then simply enter the total quantities for each waste using the same reporting units of measurement listed in the notice. The tracking system could potentially also build a draft report listing the total quantities exported for each waste based on the data EPA will receive from the AES on successfully validated export shipments that were cleared for departure during the previous calendar year. The exporter would still need to review the draft report, and either edit it to reflect any returns or corrections needed, or electronically confirm that the generated draft report was accurate

[10] *http://www.epa.gov/cdx/about/index.htm.*

and complete. Either approach would also require the exporter to enter a description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated in an open text field, and a description of the changes in volume and toxicity of the waste actually achieved during the year (in comparison to previous years to the extent such information is available for years prior to 1984) in an open text field, consistent with the biennial reporting requirements in 40 CFR 262.41(a)(6) and (7), and required for export annual reports in 40 CFR 262.56(a)(5) and 262.87(a)(5). The electronic process should save the exporter considerable time by creating the draft report for the exporter, and should additionally eliminate the cost of sending the report via U.S. mail or courier service and the risk of losing the report in the mail. With respect to EPA, electronic reporting will reduce the time currently needed to review and manually enter the export annual report data. EPA asks for feedback from exporters on the hours and costs they currently incur to prepare paper export annual reports.

Export exception reports occur less frequently, but the roughly 20 reports submitted to EPA each year must still be matched to the relevant consent and filed by EPA. Converting this submittal to electronic assuming a web-based entry would require entry of the following data fields: (i) Manifest tracking number, (ii) EPA consent number, (iii) check box for one of the three exception report types (see 40 CFR 262.87(b)(1) through (3)), and (iv) an open text field for the exporter to describe the situation. Electronic submittal should save EPA the time needed to match the exception report to the relevant consent and file the paper report, and for the exporter would again save at a minimum the costs of mailing the exception report to EPA, and eliminate the risk of losing the exception report in the mail. EPA asks for comment on the accuracy of the estimated number of exception reports submitted annually, and the expected benefits.

Under the Amended 2001 OECD Decision and the current contract provisions of subpart H in 40 CFR 262.85, the exporter is required to have contract terms with all other parties involved in the transaction to ensure that the OECD procedures are carried out. With respect to export shipments, the contract should therefore require the foreign facility to submit copies of export confirmations of receipt and confirmations of completing recycling to EPA and the U.S. exporter. The foreign facility is supposed to submit the confirmation of receipt within three days of shipment delivery, and submit the confirmation of completing recycling as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following shipment delivery. Based on export annual reports on 2011 export shipments, 2,466 export shipments were subject to part 262 subpart H requirements, and 48,752 export shipments were subject to part 262 subpart E requirements. Under this proposal, EPA expects to receive one confirmation of receipt and one confirmation of completing disposal or recycling for each of the 48,752 shipments that would now be subject to the OECD regulations. Converting submittals to electronic, and assuming a web-based approach, foreign facilities would simply enter the EPA consent number and then upload a PDF copy of the confirmation of receipt or confirmation of completing recycling/disposal. Given that the likelihood that the facility would wish to submit multiple confirmations at a single time, the planned design would include the option to upload multiple confirmations of receipt and multiple confirmations of completing recycling/disposal in one action. Benefits to electronic submittal for EPA would be the reduced time needed to match incoming paper confirmations with the relevant consents and file the paper documents. Benefits to the foreign facility would be more timely submittals to EPA, elimination of the costs for mailing the confirmations to EPA, and elimination of the risk of losing the exception report in the international mail. Importantly, exporters would be able to view all submitted confirmations submitted under their consents, improving their oversight of the foreign facility's compliance with the terms of the contract or equivalent arrangements. EPA asks for comment on the planned approach and expected benefits, and on foreign facilities submitting these confirmations system-to-system using XML through EPA's CDX.

U.S. importers/recycling facilities are similarly required to submit confirmations of receipt and completing recycling to EPA under the current OECD regulations. Based on the RCRA manifests submitted to EPA for import shipments received in CY2011, 62 import shipments were subject to part 262 subpart H requirements, and 2,872 import shipments were subject to part 262 subpart F requirements. Under this proposal, U.S. importers/receiving facilities for all hazardous waste import shipments would become subject to these requirements, resulting in the submittal of confirmations of receipt and completing recycling or disposal for an additional 2,872 shipments. Converting these submittals to electronic would use the same data entry-upload approach as for the export confirmations. Expected benefits to EPA of electronic submittal would be the reduced time needed to match the incoming paper confirmations with the relevant consent and file the documents. Expected benefits to the importer/receiving facility would be more timely submittals to EPA, elimination of the costs for mailing the confirmations to EPA via U.S. mail or courier service, and elimination of the risk of losing the exception report in the mail. EPA asks for comment on the accuracy of the estimated increase in confirmations, the expected benefits, and the possibility of the facilities submitting these confirmations system-to-system using XML through EPA's CDX.

U.S. importers/recycling facilities are required under current subpart H regulations to notify EPA in writing of the need to make alternate arrangements to manage a given shipment of waste or to return the shipment to the country of export when it cannot be managed per the terms of the notice and consent. Based on the three notifications submitted to EPA between 2011 and 2013 concerning the need to make alternate arrangements for a shipment, and the lack of such notifications concerning the need to return a shipment to the country of export, EPA estimates that one such notification will be made each year. Converting this submittal to electronic means would, assuming a web-based approach, require the entry of the following data fields: (i) Manifest tracking number, (ii) EPA consent number, (iii) check box for one of the two notification types (*i.e.,* need for return or alternate arrangements), and (iv) an open text field for the importer/receiving facility to describe the situation. Electronic submittal should enable sharing of the notification with the relevant EPA regional office import-export personnel, and would enable forwarding to the relevant state agency contacts. Expected benefits for the importer/receiving facility would again be eliminating the costs of mailing the import notification to EPA, and eliminating the risk of losing the notification in the mail. EPA asks for comment on the accuracy of the estimated number of notifications submitted annually, and the expected benefits.

Electronic submittal would require that all submitters register within EPA's CDX system. Doing so would then register them for any subsequent electronic submittal under any EPA program office's e-reporting requirement. The registration is done for the individual submitting the electronic documents, so any change in the employee submitting the information would require CDX registration for the new submitting employee. But any employee already registered in CDX to submit other program office's e-reporting (*e.g.,* Toxics Release Inventory (TRI) e-reporting) would not need to re-register to submit RCRA export and import documents electronically. When contact information for U.S. RCRA exporters and importers was compared with contact information for current CDX registrants, 84 out of the total 423 current exporters and importers appeared to be already registered in CDX. All others would need to become registered within CDX, which can be done via a fully online registration and identity verification process, or via a paper process if/when the online process is unable to verify identity (according to the Office of Environmental Information, roughly 80% of U.S. submitters successfully registered via the online process). In order to be able to submit confirmations electronically per their contract requirements with the U.S. exporter, foreign submitters might also need to register in CDX, probably using the paper process. EPA asks for comment on the number of exporter and importer submitters that are currently registered in CDX due to e-reporting for another EPA program office (*e.g.,* TRI e-reporting, Chemical Data Reporting under Section 8(a) of the Toxic Substances Control Act).

EPA is proposing to require electronic submittal of the nine major import and export documents on or after the effective date of the final rule. This assumes that the necessary system changes will be able to be completed in 2015 and tested by volunteer companies before the issuance of the final rule. Electronic submittals established in the final rule will be compliant with CROMERR to the extent that it applies. Other EPA e-reporting rulemakings, such as the July 30, 2013, proposed rule concerning e-reporting under the National Pollutant Discharge Elimination System (NPDES) [11] proposed a two-year transition period, and EPA requests comment on the need for any transition period, and the appropriate length of such a transition period.

EPA estimates that all exporters and almost all importers have broadband Internet access, given that exporters or U.S. authorized agents currently file data electronically into the AES, and many exporters and importers currently file electronic data under another EPA program such as TRI. But in case there are RCRA exporters or importers that do not have broadband Internet access, or have other unique circumstances that would prevent them from being able to submit RCRA import and export data electronically, or would experience an unreasonable burden or economic impact to their company if required to submit the data electronically after the transition period, EPA is proposing to allow these companies to request a temporary waiver from the electronic reporting requirements being proposed.

Similar to the process established by the Securities and Exchange Commission (SEC) [17 CFR 232.202(a)] to its (rare) granting of continued hardship exemptions for electronic filing, EPA could grant temporary waivers from e-reporting for each exporter or importer that meets criteria demonstrating that such electronic reporting of RCRA export or import information would pose an unreasonable burden or expense to the exporter or importer. The SEC process requires the submission of a written request made at least ten business days before the required due date of the submission. As identified in 17 CFR 232.202(b), this written request shall include, but not be limited to: (i) The reason(s) that the necessary hardware and software are not available without unreasonable burden and expense; (ii) the burden and expense associated with using alternative means to make the electronic submission or posting, as applicable; and/or (iii) the reasons for not submitting the document, group of documents or Interactive Data File electronically, or not posting the Interactive Data File, as well as the justification for the requested time period. Under the SEC process, the temporary exemption is not deemed granted until the SEC notifies the applicant. Although the SEC has successfully required electronic reporting from various sized companies for the majority of its reports since 1993, it is still possible that a small number of RCRA exporters or importers might claim that they either do not have computers on-site, do not have computer-savvy individuals available, or are a considerable distance away from a location where they could get computer access. EPA is therefore considering the possible use of temporary waivers from electronic reporting of RCRA import and export information for such entities, although technological advances and computer access are such that there may be few valid instances of such situations. EPA may consider establishing a similar procedure for such temporary waivers if the criteria for such temporary waivers are broadened, in response to comments, beyond that in the proposed rule.

In addition to these possible temporary ''continued hardship'' waivers for RCRA exporters and importers from electronic reporting, EPA also recognizes that there may be a need for incident-specific one-time waivers or other adjustments for situations that are beyond the control of the reporting facility (*e.g.,* tornados, floods, EPA or state data system disruptions). In 17 CFR 232.201, the possibility of a temporary hardship exemption from electronic reporting to the SEC is described. In the SEC regulations, under this temporary hardship exemption, the electronic filer may instead file a written copy of the report or, preferably, be granted the use of a one-time change to the filing due date rather than rely upon a temporary hardship exemption where the situation is beyond the control of the filer. EPA proposes to utilize one-time changes to due dates rather than waivers from electronic reporting in these types of emergency situations.

EPA requests comment on the need for such temporary waivers or exemptions, as well as which criteria should apply for the granting of such temporary exemptions. For comparison, while EPA's August 13, 2010 proposed rule (75 FR 49656) regarding Toxic Substance Control Act (TSCA) Inventory Update Reporting Modifications requested comment on whether there were any circumstances in which a company may not have Internet access to report the required data electronically, the August 16, 2011 final rule (76 FR 50815) required electronic reporting with no exceptions or process for requesting a waiver from electronic reporting.

7. Why is EPA proposing to require that recognized traders obtain EPA ID Numbers before arranging for import or export?

Recognized traders are those persons that only arrange for the import or export of RCRA waste subject to notice and consent requirements and do not otherwise physically generate, transport, store, treat or dispose of the waste. As

[11] *http://www2.epa.gov/compliance/proposed-national-pollutant-discharge-elimination-system-npdes-electronic-reporting-rule.*

such, a recognized trader is not required or even typically able to obtain EPA ID numbers under current RCRA regulations, even though he or she is subject to existing RCRA export and import requirements and plays a central role in the transboundary movement of the waste. EPA is proposing to require that such persons notify EPA of their hazardous waste activity as recognized traders and obtain EPA ID numbers to better track recognized trader activities and their compliance with the hazardous waste import and export process.

EPA ID numbers are issued by authorized state agencies and EPA Regional Offices, and provide a consistent, reliable way for state agencies and EPA to track companies or individuals based on their site (or business) address and activities declared in EPA's Notification of Regulated Waste Activity (EPA Form 8700–12). Matching company names and addresses in an electronic system is difficult due to the multiple ways a given company's name or address can be entered (*e.g.,* ''INC'' vs. ''Inc.'') or address (*e.g.,* ''123 Main ST'' vs ''123 Main Street''). EPA proposes to require that all such persons, known as ''recognized traders'' under the Amended 2001 OECD Decision, obtain an EPA ID number before arranging for the export or import of hazardous waste. Exporters and importers that otherwise physically handle (*e.g.,* generate, transport, recycle) hazardous wastes should already have an EPA ID number issued by their authorized state agency or EPA Regional Office. We have estimated that roughly one percent of all exporters and importers are recognized traders as defined under the Amended 2001 OECD Decision, and that four of the current exporters and importers will need to request an EPA ID number using EPA Form 8700–12 under this proposed change; EPA requests comment on the accuracy of this estimate.

EPA Form 8700–12 and its associated instructions and information collection request (ICR) [12] will have to be revised to enable recognized traders to request an EPA ID number based solely on arranging for export or import.

C. RCRA Hazardous Waste Export Integration With ITDS

1. What is ITDS and how does it impact RCRA hazardous waste imports and exports?

In 2006, U.S. Customs and Border Protection (CBP) began automating processes for the import and export of goods to improve the control of what enters and leaves the US, as well as to become much more efficient. Launched under the Security and Accountability for Every Port Act of 2006 (SAFE Port Act, Pub. L. 109–347) and the 2007 Import Safety Executive Order 13439, the multi-agency program called the International Trade Data System (ITDS) [13] assists the 48 Federal agencies with import/export responsibilities in their efforts to integrate import and export cargo processing with CBP's Automated Commercial Environment (ACE) for imports, and the Automated Export System [14] (AES) for exports.

Under ITDS, agencies with existing paper-based import and export clearance procedures at the port of exit or entry are working with CBP to enable electronic filing and processing of the export or import shipments based on one set of submitted data that can then be checked against all relevant U.S. agency requirements.

While RCRA regulates hazardous waste imports, there is no analogous provision in RCRA explicitly prohibiting import of hazardous waste absent consent that would enable EPA to stop entry of possible hazardous waste shipments at the port unless there is an imminent and substantial risk of damage to human health and the environment. As a result, EPA does not currently have paper-based entry procedures for hazardous waste import shipments. Because there are no entry procedures to automate, EPA's import-related ITDS work does not include automating entry procedures for hazardous waste import shipments. However, EPA does have clear authority under RCRA Section 3017 to stop export shipments of RCRA waste subject to notice and consent requirements at the port and we are working with CBP to establish automated checks in the Automated Export System (AES) against EPA consent-based reference data for all shipments declared by the exporter to be subject to RCRA notice and consent requirements.

On February 19, 2014, the White House issued Executive Order 13659 titled ''Streamlining the Export/Import Process for America's Businesses''. Under Executive Order 13659, participating agencies must have all requirements in place and in effect to utilize the ITDS and supporting systems like the ACE and the AES for receiving documentation required for the release of imported cargo and the clearance of cargo for export no later than December 31, 2016.

2. How is EPA proposing to integrate RCRA hazardous waste export requirements with ITDS?

First, EPA proposes to require that exporters or U.S. authorized agents additionally file key export consent data into the Automated Export System (AES) to validate EPA's consent covering each export shipment before each shipment exits the country. (The term ''EPA's consent,'' in the context of these proposed requirements for exporters to validate key data in the AES, means EPA's AOC letter.) Second, EPA proposes to require that exporters submit electronic export notices into EPA's waste import/export database to enable transmittal of all reference data needed for validation from EPA to AES (for more information on electronic export notices, see Section II.B.6).

As discussed previously, the CEC recommended that the U.S. border and environmental agencies coordinate more closely on export shipments. Part of the difficulty in sharing data with U.S. Customs and Border Protection (CBP) has been that CBP has typically based any export filing errors or flags on information linked to the Commodity classification number, while EPA's authority to prohibit export absent consent under Section 3017 of RCRA is based on RCRA waste type (*e.g.,* RCRA hazardous waste codes) and intended management. In addition to the differing basis for prohibiting or flagging export shipments, rail cars, truckloads, or shipping containers of hazardous waste do not typically look like containers of hazardous waste needing EPA's consent from the outside. Absent some obvious hazard (*e.g.,* fire, leaking contents), CBP has not had an express basis to check shipments for EPA consent. Under current RCRA transporter regulations in 40 CFR 263.20(g), the transporter carrying a RCRA manifested hazardous waste export shipment to the port of exit must sign and date the RCRA manifest to indicate the date the shipment is leaving the country, keep one copy, send one copy back to the generator, and give one copy to the CBP official at the ''. . . point of departure from the United States.'' But this requirement has not enabled meaningful checks for EPA consent at the border.

Per the Census Bureau's Foreign Trade Regulations (FTR) in 15 CFR part 30, all exporters (or their authorized filers) that ship goods subject to an export license, defined in FTR section

[12] *http://www.epa.gov/osw/inforesources/data/form8700/8700–12.pdf.*

[13] *http://www.itds.gov/xp/itds/home.html.*

[14] On April 5, 2014, the Automated Export System (AES) was re-engineered under the umbrella of the Automated Commercial Environment (ACE) trade processing system, but is still referred to as AES.

30.1,[15] are currently required to file Electronic Export Information (EEI) in the AES for each export shipment regardless of value or country of ultimate destination. EPA's AOC letter meets the FTR definition of an export license,[16] so all exporters shipping waste subject to RCRA notice and consent conditions (*i.e.,* cathode ray tubes being shipped for recycling) or requirements (*e.g.,* RCRA manifested hazardous waste, SLABs being shipped for recovery of lead) are already required to file export data in the AES. The AES has over 100 elements [17] that potentially apply to an export shipment. In place of the transporter requirement in 40 CFR 263.20(g)(4), EPA is proposing to require exporters or U.S. authorized agent to file the following EPA data in the AES:

(a) EPA license code (to declare shipment is subject to RCRA export notice and consent requirements).

(b) Commodity classification code (10 digit, numeric description of the commodity).

(c) EPA consent number (specific to waste).

(d) Country of ultimate destination.

(e) Date of export.

(f) RCRA hazardous waste manifest tracking number (if required; universal waste, CRTs being shipped for recycling, industrial ethyl alcohol being shipped for reclamation, and SLABs being shipped for recovery of lead are exempt from RCRA manifest requirements under existing RCRA regulations).

(g) Quantity of waste in shipment and units for reported quantity (units established by commodity classification number).

(h) EPA net quantity and units for reported quantity (if required, must be reported in kilograms if solid waste, and in liters if liquid waste; only required if commodity classification number does not require quantity to be reported in weight or volume units).

Of the items listed above, only the ''EPA license code'', ''EPA consent number'', ''RCRA hazardous waste manifest tracking number'', ''EPA net quantity'', and ''EPA net quantity units of measurement'' are not already required to be filed in the AES under the FTR. Of these five items, one item is only required if the waste is subject to RCRA manifesting requirements and the remaining two items are only required in cases where the commodity classification number-based quantity reporting does not require that the quantity of the commodity in the shipment be reported in weight or volumetric units (*e.g.,* kg or L). Because an EPA license, or an EPA consent number, is required, AES will require the five additional items to be filed, and will validate the import country code and expected date of shipment departure against EPA-supplied reference data for the entered EPA consent number. If the consent number is not in the correct format, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing to correct it. If the import country does not match the country of import for the consent number, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. If the expected date of shipment departure does not fall within the start date and end date for the consent number, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. If a RCRA manifest is required for the consent number and the filer does not enter a correctly formatted RCRA manifest number (*i.e.,* nine digits followed by three letters), AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. Lastly, if the EPA net shipping quantity is required to be entered based on the commodity classification number entered and the filer does not enter that quantity, the AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. AES will not issue an Internal Transaction Number (ITN) to indicate successful completion until the filing passes all validations. The exporter and transporter will be in violation of the FTR if the shipment is exported without a valid ITN. When the shipment is validated and the ITN issued, the shipment will be cleared to leave the port of exit. The AES will transmit the EPA data listed above to EPA's hazardous waste import/export database, so that EPA will get shipment data for each consent number and will be able to track total quantity exported against the approved total quantity for that waste stream level consent number. In addition, EPA will be able to use the shipment data from AES to build draft export annual reports that are required in Section 3017 of the statute (for more information on electronic export annual reports, see Section II.B.6). Exporters with valid consents will be able to efficiently validate their EPA consent with CBP as part of their regular AES filing, and any typographical errors should be able to be quickly corrected and the entry resubmitted. Exporters with expiring or expired consent numbers, or exporters that have already met or exceeded their approved total export quantity for the consent number, will need to submit an export notice or export notice amendment to EPA to renew their consent under a new consent number or increase their approved total export quantity for the current consent number. EPA plans to modify its AOC letter to include guidance on how to enter the EPA-only items in the AES once the regulations are effective to reduce inadvertent AES filing errors. CBP and EPA have already made changes to the AES that reflect this validation, changes that were reflected in the AES instructions updated on October 3, 2014.[18] However, these changes will remain optional until the AES changes have been fully tested, and EPA's proposed regulations become final and are effective. Two SLAB exporters are working with EPA and CBP to pilot test the validation process.

EPA considered attempting to validate exporter names and addresses, but ultimately decided against doing so because of the previously discussed problem of trying to match highly variable text fields for exporter name and address from EPA export notice data with data filed in AES. EPA also considered validating against the commodity classification number expected for the waste stream linked to the consent number, but decided against it due to the difficulty in uniquely mapping the one waste to one commodity classification number in all cases. As discussed in Section VII, the commodity classification numbers may not contain sufficient detail to match with the RCRA waste codes and intended management. If commenters know of ways to reliably match commodity classification numbers with the combination of EPA waste type and intended management, please provide

[15] Export license. A controlling agency's document authorizing export of particular goods in specific quantities or values to a particular destination. Issuing agencies include, but are not limited to, the U.S. Department of State; the U.S. Department of Commerce's Bureau of Industry and Security; the Bureau of Alcohol, Tobacco, and Firearms; and the Drug Enforcement Administration permit to export.

[16] Per email dated April 11, 2014 from Joe Cortez, chief of regulations outreach and education branch in the Foreign Trade Division of the U.S. Census Bureau, EPA's AOC letter meets the regulatory definition of an export license in 15 CFR 30.1.

[17] *https://www.census.gov/foreign-trade/aes/documentlibrary/aesparticipantsdata.html.*

[18] *http://www.cbp.gov/trade/aes/aestir/introduction-and-guidelines.*

this information, and EPA may consider this in the final rule.

Requiring electronic export notices and filing the additional items in the AES will ensure that export shipments of declared RCRA wastes subject to RCRA notice and consent requirements only depart the country when going to the approved country within the approved window of export, with a minimum of additional burden to the exporter. It should therefore further reduce illegal exports of hazardous waste and the potential risk to human health and the environment that may result. It will also ensure compliance with Executive Order 13659 that requires implementation of all ITDS requirements by December 31, 2016.

D. RCRA Hazardous Waste Export and Import Regulations and Executive Order 13563 for the Retrospective Review of Existing Regulations

On January 18, 2011, President Obama issued Executive Order 13563, which directed all federal agencies to perform periodic retrospective reviews of existing regulations to determine whether any should be modified, streamlined, expanded, or repealed.[19] EPA made its preliminary plan available for public review and comment during the spring of 2011 and released the final version of the plan in August 2011.[20] Though EPA and its partners have made great progress in protecting the environment, the Agency is committed to continual improvement. EPA has a long history of thoughtfully examining its existing regulations to make sure they are effectively and efficiently meeting the needs of the American people. Both statutory and judicial obligations have compelled some of our reviews. Others arise from independent EPA decisions to improve upon existing regulations. Just as EPA intends to apply the principles and directives of Executive Order 13563 to the priority actions listed in the plan, we intend to likewise apply the Executive Order's principles and directives to the regulatory reviews that appear in the Regulatory Agenda. This proposed rule is one of the priority actions included in EPA's July 2015 progress report to OMB.[21]

[19] For a copy of Executive Order 13563, please see: *http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.*

[20] U.S. EPA. Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations. *http://www.epa.gov/regdarrt/retrospective/documents/eparetroreviewplan-aug2011.pdf.*

[21] *https://www.whitehouse.gov/sites/default/files/omb/inforeg/regreform/retroplans/july-2015/epa-retrospective-review.pdf.*

III. Summary of This Proposed Rule

A. Changes to Section 260.10

In order to require that anyone acting as an exporter or importer, who does not otherwise physically handle hazardous waste, obtain an EPA ID number prior to arranging for export or import, it is necessary to add a definition that EPA Form 8700–12 can then reference. EPA is therefore proposing to define such persons as recognized traders, specifically as ''a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to U.S. and foreign facilities or by acting under arrangements with a U.S. waste facility to arrange for the export or import of the wastes.'' EPA believes that this definition is consistent with the Amended 2001 OECD Decision's recognized trader definition of ''a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes.'' EPA had originally considered establishing a definition for ''brokers,'' but decided to use ''recognized trader'' to minimize confusion as there are brokers who make manifest-related arrangements for wholly domestic shipments of hazardous waste.

EPA requests comment on these changes and what definitions would be clearest to U.S. stakeholders.

B. Changes to Section 260.11(g)(1)

EPA is proposing to replace the obsolete reference to the 1992 OECD Decision waste lists with the correct reference to the Amended 2001 OECD Decision waste lists. This is a necessary technical correction.

C. Changes to Sections 261.4(d) and 261.4(e)

EPA is proposing to add an additional condition for samples being exported to a foreign laboratory or imported from a foreign source that the exporter or importer wishes to manage under the waste characterization exclusion of § 261.4(d) or the treatability study exclusion of § 261.4(e). Specifically, EPA is proposing to require that any such samples being exported or imported be limited to a maximum quantity of 25 kilograms in addition to the other conditions already required. This change is being proposed to match the 25 kg limit for samples being excluded from the export and import requirements currently in § 262.82(g) of the OECD regulations, and is thus a clarification and not a new requirement for sample export and import shipments currently subject to 40 CFR part 262 subpart H. It will be a new requirement for sample export and import shipments being exchanged with Canada, Mexico, and any non-OECD country under RCRA regulations. While Canada currently reflects the 25 kg sample exclusion in its exclusion to the definition for hazardous waste recyclables in Section 2(2)(d) of the Canadian regulations [22] when being shipped between Canada and a country that is party to the Amended 2001 OECD Decision ''. . . for the purpose of conducting measurements, tests or research with respect to the recycling of that material,'' it is unclear to what extent the Canadian limits have impacted U.S. exporters and importers of such samples. EPA requests comments on the number of such samples that were exchanged with Canada, Mexico, or a non-OECD country for such testing in the last three years, and how many were over 25 kg and thus would be required to comply with the OECD regulations for exports or imports.

D. Changes to Section 261.6(a)

EPA is proposing to revise the text in § 261.6(a)(3)(i) concerning imports and exports of industrial ethyl alcohol being shipped for reclamation to reflect the proposed removal of regulations in 40 CFR part 262 subpart E, and the proposal to require all export and import shipments of RCRA hazardous waste and recyclable materials currently subject to export and import requirements to comply with regulations in 40 CFR part 262 subpart H. This is a conforming amendment.

Similarly, EPA is proposing conforming changes to the text in § 261.6(a)(5) concerning the applicability of 40 CFR part 262 subpart H requirements to all exports and imports of hazardous wastes being shipped for recycling.

E. Changes to Section 261.39(a)(5)

EPA is proposing changes to § 261.39(a)(5)(ii), (vi) and (xi) to reflect that export notifications, export renotifications and export annual reports concerning CRTs being shipped for recycling being submitted to EPA

[22] ''Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations (SOR/2005–149),'' issued in Canada Gazette on June 5, 2005, available online at *http://ec.gc.ca/lcpe-cepa/eng/regulations/detailReg.cfm?intReg=84.*

must be submitted electronically using EPA's hazardous waste import/export database on or after the effective date of the final rule. This proposed requirement assumes that the system changes can be completed in 2015 and tested by volunteer companies before issuance of the final rule. EPA requests comments on whether any transition period for electronic submittal into EPA's system is needed, an appropriate length for a transition period if one is needed, and whether any exporter would need a waiver from electronic filing requirements due to lack of broadband access or other unique circumstances that would make electronic filing an undue financial burden.

Additionally, EPA is proposing to add the requirement in § 261.39(a)(5)(v) that exporters or U.S. authorized agents must file EPA-required information into the AES prior to departure in accordance with the deadlines specified in 15 CFR 30.4 (*e.g.,* for truck shipments, no less than one hour prior to the arrival of the truck at the U.S. border to go foreign) and provide the ITN documenting the successful filing to the outgoing transporter. The same U.S. authorized agents that currently file in the AES are intended to be allowed to continue such filings, but the RCRA exporter is ultimately responsible for ensuring that such filing occurs and that the ITN is provided to the outgoing transporter. AES system changes were made and posted in October 2014 and testing should be completed in 2015. Exporters or U.S. authorized agents using the AES will need to modify their filing software to incorporate the filing changes that will remain optional until EPA's final regulations become effective, but should be able to do so in the months between issuance of the final rule and the effective date of December 31, 2016 required to comply with Executive Order 13659. EPA is therefore proposing to require filing of EPA-specific information into the AES from the effective date of the final rule without any transition period. EPA requests comment on whether exporters currently file shipment data into the AES prior to departure, whether they or their U.S. authorized agents use the AES or AESDirect to file their shipment data, and whether a transition period would still be appropriate.

F. Changes to Section 262.10(d)

EPA is proposing conforming amendments to § 262.10(d) concerning the applicability of 40 CFR part 262 subpart H requirements to all exports and imports of hazardous wastes.

Additionally, EPA is proposing to add the requirement that all such importers and exporters comply with the EPA ID number requirements in § 262.12. Currently importers and exporters who also generate, transport, treat, store or dispose of hazardous wastes are already required to obtain an EPA ID number because they generate, transport, treat, store or dispose of hazardous wastes. All importers, even those who do not also generate, transport, treat, store or dispose of hazardous wastes, are required to obtain EPA ID numbers because § 262.10(e) explicitly requires all importers to comply with the generator requirements. But it is unclear how many recognized traders arranging for import actually obtain an EPA ID number from the authorized state or EPA Regional office where their place of business is located. Moreover, recognized traders arranging for export that do not otherwise generate, transport, treat, store or dispose of hazardous wastes have no way to obtain an EPA ID number, as EPA Form 8700–12 does not cover such persons. This requirement will therefore impact such persons. EPA requests comment on how many persons arranging for import or export of hazardous wastes, including those wastes under the management standards of 40 CFR parts 266 and 273, do not currently have EPA ID numbers issued by their authorized state or EPA Regional office.

G. Changes to Section 262.12

EPA is proposing to add new paragraph (d) to § 262.12 to require that recognized traders arranging for export and import obtain an EPA ID number from their authorized state or EPA Regional office before arranging for export or import. As discussed above, it is unclear how many persons will be affected by this requirement. EPA has assumed 1% of all current exporters and importers are recognized traders, and requests comment on the number of recognized traders that do not currently have EPA ID numbers. EPA further requests comment on how best to include such recognized traders in EPA Form 8700–12 and its associated instructions, and how or whether to reflect the recognized trader role in the EPA ID number itself (*e.g.,* disposal facility numbers typically have a ''D'' in the EPA ID number).

H. Changes to Section 262.41(b)

EPA is proposing conforming amendments to § 262.41(b) replacing the current citation to export annual report requirements in § 262.56 with the new location for export annual report requirements in § 262.83(g).

I. Changes to 40 CFR Part 262 Subpart E

EPA is proposing to remove 40 CFR part 262 subpart E and reserve for future use. The export requirements that are currently in 40 CFR part 262 subpart E that are still needed but not already covered under the current 40 CFR part 262 subpart H regulations are proposed to be moved to, and integrated in, the new 40 CFR part 262 subpart H regulations. For example, the definition in § 262.51 for EPA's AOC letter has been revised to more accurately reflect that the letter documents the consent of the importing country and any transit countries and moved to § 262.81 definitions. While the text of the Amended OECD 2001 Decision and the OECD regulations established in 1996 and amended in 2010 included exporters potentially receiving responses directly back from the countries of import and transit, in practice the notice and consent process under both 40 CFR part 262 subpart E and 40 CFR part 262 subpart H is solely a government to government process and all country responses are sent to EPA, which then documents those consents in the EPA AOC letter to the exporter. To more accurately reflect the actual process currently followed for both 40 CFR part 262 subparts E and H, Sections 262.53(e) and (f) detailing how EPA will forward complete notifications in conjunction with the Department of State as appropriate, address any claims of confidentiality made concerning any of the information listed in the notification, send the AOC letter to the exporter, and similarly send any country's objection or withdrawal of previous consent have been moved to § 262.83(b)(5) and (6). The text was modified slightly to reflect that the Amended 2001 OECD Decision requires that the country of import and the countries of transit all consent to the notification before shipment occurs. The older 40 CFR part 262 subpart E procedures technically allowed for issuance of the AOC letter based solely on the country of import's consent (see Section III.B.1 51 FR 28664 issued August 8, 1986). These changes reflect the actual process that currently takes place and should have no impact on exporters.

In addition, the list of OECD member countries that are party to the Amended 2001 OECD Decision in § 262.58(a)(1) has been moved to a new definition for ''OECD Member countries'' in § 262.81. The implicit requirement in § 262.52(c) that the exporter obtain an EPA AOC letter prior to shipment has been made explicit and moved to § 262.83(a)(3).

Renotification requirements originally listed in § 262.53(c) have been modified and moved to § 262.83(b)(4) to reflect that OECD notification procedures under the Amended 2001 OECD Decision do not exempt any changes to the original notification from needing consent to the changes. Under 40 CFR part 262 subpart E, changes to the exporter's phone number, decreases to the maximum requested export quantity and changes to the means of transport for the shipment were exempted from requiring renotification so long as nothing else in the notification changed. It is unclear how many such changes would be impacted by this requirement (*i.e.,* would be required to renotify and obtain consent to the renotification before shipping). EPA assumed zero additional renotifications due to this change and requests comment on the number of such exempted changes under 40 CFR part 262 subpart E that have occurred in the last three years and would be subject to renotification requirements under the proposed revisions.

Currently, § 262.84(c) requires exporters to comply with § 262.54(a), (b), (c), (e) and (i) of the 40 CFR part 262 subpart E manifest requirements. Section § 262.54 has been moved to § 262.83(c) with some modifications to reflect that (1) the requirement to attach a copy of the EPA AOC letter has been replaced with the requirement to list the consent number specified in the EPA AOC letter for each waste listed on the RCRA manifest; (2) in cases where the exporter must instruct the transporter to return the waste to a facility in the United States and modify the manifest, such instructions must be made via email, fax or mail so that a written record of the instructions exist; and (3) the exporter needs to supply an extra copy of the RCRA manifest to the transporter only for cases where the exporter has chosen to use paper manifests rather than use the e-manifest system, as the requirement for the transporter to give a copy of the paper RCRA manifest to the CBP officer at the port of exit is being replaced with a requirement for the exporter to electronically file EPA-specific data in the AES to validate consent data prior to exit. The extra copy of the paper manifest is needed so that the transporter can send a copy of the manifest to the e-Manifest system using the allowable methods listed in 40 CFR 264.71(a)(2)(v), thus ensuring that the data from the paper manifest is captured in the e-manifest system.

The exception reporting, annual reporting and recordkeeping sections of 40 CFR part 262 subpart E are duplicative of current 40 CFR part 262 subpart H requirements, and so did not additionally need to be moved to the new 40 CFR part 262 subpart H requirements.

EPA requests comments on these proposed changes.

J. Changes to 40 CFR Part 262 Subpart F

EPA is proposing to remove 40 CFR part 262 subpart F and reserve for future use. The import RCRA manifest requirements in 40 CFR part 262 subpart F are required under the current 40 CFR part 262 subpart H requirements, and are therefore proposed to be moved to § 262.84(c) in the new 40 CFR part 262 subpart H requirements, with the added requirement for the importer to note that the shipment is an import and the shipment's point of entry (*i.e.,* port of entry and state) into the United States. While this requirement was not listed in 40 CFR part 262 subpart F, this is an existing requirement listed in the manifest instructions in the Appendix to Part 262 for item 16 of the RCRA manifest, and therefore should not result in any new burden. It has been added to the manifest requirements for import shipments in the new 40 CFR part 262 subpart H for clarity.

EPA requests comments on these proposed changes.

K. Changes to 40 CFR Part 262 Subpart H

In general, EPA has reorganized and clarified exporter, importer, transporter and receiving facility requirements under 40 CFR part 262 subpart H. EPA's intent was to more accurately reflect the current procedures, expand applicability to all exports and imports of RCRA hazardous waste, and clearly spell out existing requirements for exports and imports. When the OECD procedures were originally incorporated into RCRA in 1996 and then updated in 2008, EPA largely used the text from the OECD Decision in the 40 CFR part 262 subpart H regulations. While this ensured that OECD procedures required under the 1992 OECD Decision and the Amended 2001 OECD Decision were fully reflected in the 40 CFR part 262 subpart H regulations, the resulting regulatory text made very generic references to country of export and country of import, without always clearly spelling out U.S. exporter and U.S. importer obligations and procedures. For example, under the current § 262.82(a)(2)(ii)(B), U.S. importers are required to assume the duties of the foreign exporter if the proposed waste shipment is RCRA hazardous waste but the country of export does not control the shipment as an export of hazardous waste. But the current 40 CFR part 262 subpart H requirements do not explicitly spell out what the U.S. importer would be required to comply with in such cases. Renotifications are not explicitly prohibited but neither are they explicitly allowed in the current 40 CFR part 262 subpart H, unlike the current 40 CFR part 262 subpart E. In practice, such renotifications have been done for exports subject to 40 CFR part 262 subpart H. EPA's intent in these changes and the others previously discussed is to clarify existing responsibilities for exports and imports, and not to increase requirements beyond that which is currently required in 40 CFR part 262 subpart H.

In the new 40 CFR part 262 subpart H, retitled to reflect covering all transboundary shipments of hazardous waste for recovery or disposal, the sections for general applicability, definitions, and general conditions not specific to exports or imports remain in § 262.80, § 262.81, and § 262.82 respectively. But EPA proposes to amend § 262.83 from covering generic notification and consent to covering exports of hazardous waste, and to amend § 262.84 from covering generic movement document requirements to covering imports of hazardous waste. Within the new § 262.83 are subsections for (a) general export requirements, (b) notification requirements, including renotifications and notifications for re-export to a third country, (c) RCRA manifest instructions for export shipments, (d) OECD movement document requirements for export shipments, (e) the exporter's duty to return or re-export (to a third country) export shipments of waste that cannot be managed in accordance with the terms of the contract or consent and cannot be managed at an alternate facility in the country of import, (f) contract requirements, (g) annual reporting requirements, (h) exception reporting requirements, and (i) recordkeeping requirements. Within the new § 262.84 are subsections for (a) general import requirements, (b) notification requirements that apply only when the country of export does not control the proposed shipment as an export of hazardous waste, (c) RCRA manifest instructions for import shipments, (d) OECD movement document requirements for import shipments, (e) duty to return or re-export (to a third country) import shipments of waste that cannot be managed in accordance with the terms of the contract or consent and cannot be

managed at an alternate facility in the United States, (f) contract requirements, (g) requirements for U.S. recycling or disposal facilities to issue confirmations of recovery or disposal for each import shipment, and (h) recordkeeping requirements for import shipments. Sections 262.85, 262.86, 262.87 and 262.88 are reserved for future use. Section 262.89 is amended from covering the OECD waste lists and the incorporation by reference of the OECD waste lists to also being reserved for future use. The incorporation by reference of the OECD waste lists will be covered under § 260.11(g).

Under the revised definitions section, the older 40 CFR part 262 subpart H ''exporter'' definition has been broken into [U.S.] ''exporter'' and ''foreign exporter''. Similarly, the ''importer'' definition has been split into [U.S.] importer and foreign importer, as has receiving facility. As under the current 40 CFR part 262 subpart H, exporters must be domiciled in the United States. To reflect that Canadian regulations uses wording for several recovery and disposal operation codes that differ from the description used in the OECD recovery and disposal codes, the list of operation codes included in the definitions for recovery and disposal codes have been revised to reflect that such Canada-only codes will start with a ''RC'' or a ''DC''.

For export and import notifications, the use of (1) the ISO standard 3166 country name 2-digit code and (2) OECD/Basel competent authority code are required to be listed for the relevant country of import or export and their respective competent authorities. Use of these codes is widely accepted internationally and the ISO standard 3166 country name 2-digit code is consistent with the country codes required in the AES.

In cases where shipments cannot be delivered to the foreign receiving facility for any reason, the exporter is currently required to submit an exception report to EPA. Under the proposed revisions, the exporter is now required to submit the exception report to EPA within 30 days of the transporter missing the 45-day deadline to confirm the departure of the shipment from the United States or the foreign receiving facility missing the 90-day deadline to confirm receipt of the shipment, and required to submit the exception report to EPA within 30 days of being notified of the need to return the shipment, or one day prior to the initiation of the return shipment, whichever is sooner. EPA requests comments on whether the 30-day period is sufficient to ascertain what has happened to the export shipment.

EPA requests comments on the reorganization and text changes, and whether additional revisions are needed to further clarify requirements for exports and imports while still ensuring compliance with procedures equivalent to those required for shipments currently subject to 40 CFR part 262 subpart H.

As with the proposed changes to part 261 sections, EPA is proposing changes to export and import requirements in 40 CFR part 262 subpart H to reflect that export notifications, export renotifications, export annual reports, export exception reports, export confirmations of receipt, export certifications of recovery or disposal, import notifications, import confirmations of receipt, and import certifications of recovery or disposal being submitted to EPA must be submitted electronically using EPA's hazardous waste import/export database on or after the effective date of the final rule. EPA requests comments on whether any transition period for electronic submittal into EPA's system is needed, an appropriate length for a transition period if one is needed, and whether any exporter would need a waiver from electronic filing requirements due to lack of broadband access or other unique circumstances that would make electronic filing an undue financial burden.

Additionally, EPA is similarly proposing to add the requirement in § 262.83(a)(6) that exporters or U.S. authorized agents must file EPA-required information into the AES prior to departure in accordance with the deadlines specified in 15 CFR 30.4 (*e.g.,* for truck shipments, no less than one hour prior to the arrival of the truck at the U.S. border to go foreign) and provide the ITN documenting the successful filing to the outgoing transporter. The same U.S. authorized agents that currently file in AES are intended to be allowed to continue such filings, but the RCRA exporter is ultimately responsible for ensuring that such filing occurs and that the ITN is provided to the outgoing transporter. AES system changes were made and posted in October 2014 and testing should be completed in 2015. Exporters or U.S. authorized agents using the AES will need to modify their filing software to incorporate the filing changes that will remain optional until EPA's final regulations become effective, but should be able to do so in the months between issuance of the final rule and the effective date of December 31, 2016 required to comply with Executive Order 13659. EPA is therefore proposing to require filing of EPA-specific information into the AES from the effective date of the final rule without any transition period. EPA requests comment on whether exporters currently file shipment data in the AES prior to departure, whether they or their U.S. authorized filing agents use the AES or AESDirect to file their shipment data, and whether a transition period would still be appropriate.

L. Changes to the Appendix to Part 262

EPA is proposing conforming amendments to revise the instructions for Item 16 of the RCRA manifest instructions to reflect that transporters carrying export shipments will no longer be required to deliver a signed and dated copy of the RCRA manifest to CBP at the port of exit. This requirement is being replaced with the exporter requirement to file EPA consent-specific information as part of their Electronic Export Information filing in the AES so that the consent can be validated within the AES prior to departure.

M. Conforming Changes to Parts 263 Through 267, 271, and 273

1. Conforming Changes to Standards Applicable to Transporters of Hazardous Waste in Part 263

EPA proposes to delete the last paragraph in the note to § 263.10(a). The last paragraph was included as part of the note in the original 1980 RCRA rulemaking to ease compliance, but was not removed or revised during the 1986 regulation amendments to reflect additional requirements in part 263, such as the export provisions in § 263.20(a). Additionally, the last paragraph cites obsolete regulatory sections in U.S Department of Transportation regulations. EPA consulted with U.S. Department of Transportation (DOT), and DOT approves deleting the last paragraph in the note.[23] EPA does not anticipate any change in burden due to this change, and requests comment on this change.

Additionally, EPA proposes conforming amendments to § 263.10(d) to reflect the expanded and clarified applicability of 40 CFR part 262 subpart H requirements and the new 40 CFR part 262 subpart H sections for OECD movement document requirements for export and import shipments. EPA also proposes conforming amendments to § 263.20(a)(2), (c), (e)(2), (f)(2), and (g) to reflect that transporters will only be

[23] April 22, 2014 email from Dirk DerKinderen of U.S. Department of Transportation to Bryan Groce of EPA's Office of Resource Conservation and Recovery.

required to carry the OECD movement document and RCRA manifest for export and import shipments, will not be required to carry the EPA AOC letter with export shipments, and will not be required to give a copy of the RCRA manifest to CBP at the port of exit prior to departure. Transporters carrying a paper RCRA manifest for an export shipment will however be required to send a copy of the paper manifest to the e-manifest system using the allowable methods listed in 40 CFR 264.71(a)(2)(v) to ensure that data from export shipments using paper RCRA manifests are captured in the e-manifest system.

EPA requests comments on these changes and whether any additional clarification is needed.

2. Conforming Changes to Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities in Part 264

EPA proposes conforming amendments to § 264.12 to reflect the expanded and clarified applicability of 40 CFR part 262 subpart H requirements, and the importer requirements in § 262.84. Additionally, EPA proposes deleting the requirement in § 264.12(a)(1) as it will be duplicative of notifications submitted by either the foreign exporter or the U.S. importer in cases where the country of export does not control the shipment as a hazardous waste export as this requirement would now, in this rule, apply to hazardous waste imports and exports with all foreign countries (including Canada and Mexico), and not just with OECD countries.

Under the manifest requirements in § 264.71, EPA proposes conforming amendments to reflect the expanded applicability of 40 CFR part 262 subpart H, and further proposes replacing the current requirement (to attach a copy of the relevant EPA documentation of consent to the RCRA manifest) with the new requirement (to list the consent number for each waste from the relevant EPA documentation of consent in Item 14 of the RCRA manifest followed by the relevant list number for the waste from block 9b in parentheses) before submitting the manifest within thirty (30) days of shipment delivery to confirm receipt. This conforming amendment should enable compliance even when using the e-manifest system in the future, as the consent numbers could be typed into the text field for Item 14. Facilities using the e-manifest system to submit the RCRA manifest to confirm receipt would not need to send a separate copy to EPA's International Compliance Assurance Division. As under current 40 CFR part 262 subpart H procedures, facilities would need to submit copies of the signed movement document to confirm tracking from the shipment initiation in the country of export to the arrival at the U.S. facility, using the allowable submittal methods listed in 40 CFR part 262 subpart H.

EPA requests comments on these changes and whether any additional clarification is needed.

3. Conforming Changes to Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities in Part 265

EPA similarly proposes conforming amendments to § 265.12 to reflect the expanded and clarified applicability of 40 CFR part 262 subpart H requirements, and the importer requirements in § 262.84. Additionally, EPA proposes deleting the requirement in § 265.12(a)(1) as it is duplicative of notifications submitted by either the foreign exporter or the U.S. importer in cases where the country of export does not control the shipment as a hazardous waste export under 40 CFR part 262 subpart H (which will now apply to hazardous waste imports and exports with all foreign countries (including Canada and Mexico), and not with OECD countries only).

Under the manifest requirements in § 265.71, EPA proposes conforming amendments to reflect the expanded applicability of 40 CFR part 262 subpart H, and further proposes replacing the current requirement (to attach a copy of the relevant EPA documentation of consent to the RCRA manifest) with the new requirement (to list the consent number for each waste from the relevant EPA documentation of consent in Item 14 of the RCRA manifest followed by the relevant list number for the waste from block 9b in parentheses) before submitting the manifest within thirty (30) days of shipment delivery to confirm receipt. This conforming amendment should enable compliance even when using the e-manifest system in the future, as the consent numbers could be typed into the text field for Item 14. Facilities using the e-manifest system to submit the RCRA manifest to confirm receipt would not need to send a separate copy to EPA's International Compliance Assurance Division. As under current 40 CFR part 262 subpart H procedures, facilities would need to submit copies of the signed movement document to confirm tracking from the shipment initiation in the country of export to the arrival at the U.S. facility, using the allowable submittal methods listed in 40 CFR part 262 subpart H.

EPA requests comments on these changes and whether any additional clarification is needed.

4. Conforming Changes to the Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities in Part 266

EPA proposes conforming amendments to § 266.70, § 266.80(a) to reflect the expanded and clarified applicability of 40 CFR part 262 subpart A EPA ID number requirements and 40 CFR part 262 subpart H requirements to exports and imports of precious metal bearing hazardous waste and spent lead-acid batteries. With respect to spent lead-acid batteries, RCRA manifesting will continue to not be required, but the movement document requirements will apply to import and export shipments. Canadian requirements and current 40 CFR part 262 subpart H requirements already impose the movement document requirements upon U.S. recycling facilities, so this change should only result in additional burden for import shipments of spent lead-acid batteries from Mexico and non-OECD countries. SLAB exporters and importers will be required obtain EPA ID numbers, but this should impact only those SLAB exporters and importers who do not otherwise generate, transport, treat, store or dispose of hazardous wastes.

EPA requests comments on these changes, the number of shipments under 40 CFR part 266 subparts F and G impacted by these changes, and whether any additional clarification is needed.

5. Conforming Changes to the Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit in Part 267

EPA proposes conforming amendments to the manifest requirements in § 267.71 to reflect the expanded applicability of 40 CFR part 262 subpart H, and further proposes requiring the facility to list the consent number for each waste from the relevant EPA documentation of consent in Item 14 of the RCRA manifest (followed by the relevant list number for the waste from block 9b in parentheses) before submitting the RCRA manifest to confirm receipt. This conforming amendment should enable compliance even when using the e-manifest system in the future, as the consent numbers could be typed into the text field for Item 14. Facilities using the e-manifest system to submit the RCRA manifest to confirm receipt would not need to send a separate copy to EPA's International

Compliance Assurance Division. As under current 40 CFR part 262 subpart H procedures, facilities would need to submit copies of the signed movement document to confirm tracking from the shipment initiation in the country of export to the arrival at the U.S. facility, using the allowable submittal methods listed in 40 CFR part 262 subpart H.

EPA requests comments on these changes and whether any additional clarification is needed.

6. Conforming Changes to the Requirements for Authorization of State Hazardous Waste Programs in Part 271

EPA proposes conforming amendments to § 271.1, § 271.10 and § 271.11 to reflect the proposed changes to 40 CFR part 262 subparts E, F, and H, and the transfer of required export and import responsibilities to the new 40 CFR part 262 subpart H. For a more detailed discussion on EPA's expected impact to State authorization as a result of the proposed changes, please see the Authorized State discussion in Section V.B of this action.

EPA requests comments on the impact of these changes, and whether any additional clarification is needed.

7. Conforming Changes to the Standards for Universal Waste Management in Part 273

EPA proposes conforming amendments to § 273.20, § 273.40, § 273.56, and § 273.70 to reflect the proposed expanded and clarified applicability of 40 CFR part 262 subpart H requirements to small and large quantity handlers exporting universal waste, transporters and receiving facilities. Additionally, EPA proposes to revise § 273.39 and § 273.62 to explicitly allow large quantity handlers and destination facilities to use the movement document to comply with the record requirements for individual universal waste shipment tracking.

EPA requests comments on the impact of these changes, the number of universal waste shipments affected by these changes, and whether any additional clarification is needed.

IV. Costs and Benefits of the Proposed Rule

A. Introduction

The Agency's economic assessment conducted in support of this proposed action evaluates costs, cost savings, benefits, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. To conduct this analysis, we developed and implemented a methodology for examining impacts, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts.

B. Analytical Scope

This economic analysis assesses the costs and cost savings of the proposed rule. It estimates the unit costs for each provision of the rule and applies these values to the number of affected entities, and it employs a ''model entity'' approach to estimate the cost and cost savings associated with the proposed rule, applying average costs by entity type (*i.e.,* exporter, importer, transporter, or recognized trader) and foreign trade partner. The costs (and cost savings) of the proposed rule are estimated over a twenty-year time horizon and using a seven percent discount rate.

The analysis conducted for this proposal is a simple cost assessment. We do not attempt to estimate the social costs and benefits associated with this action. This is consistent with Executive Order 12866, which requires a full Regulatory Impact Analysis only for actions having an estimated impact on society of greater than $100 million per year.

C. Cost Impacts

Industry will incur costs to familiarize itself with the requirements of the rule and comply with each of the provisions described in the summary of the proposed rule and changes. The most significant costs to industry under the proposed rule are associated with the movement document and the confirmation of recovery/disposal requirements. As a result of the rule, the annualized costs to industry are estimated to be about $1.5 million with roughly $450,000 in annualized cost savings, or $1.0 million in annualized net costs, using a 7 percent discount rate.

EPA will also incur costs review and maintain records of movement documents and confirmations of recovery or disposal, issue EPA ID numbers to recognized traders, and develop and maintain enhancements to WIETS to facilitate electronic submittal of export and import-related documents. The one-time, initial WIETS development costs will be between approximately $230,000 and $380,000. After the electronic system is fully operational (*i.e.,* after the first year), the proposed rule will result in Agency costs of between approximately $760,000 and $880,000. EPA will also experience Agency cost savings including the burden reduction associated with no longer responding to exporter inquiries via telephone and avoided manual data entry of export notices and annual reports in WIETS. These cost savings will be approximately $230,000 each year. Thus, the proposed rule will result in annualized Agency costs of between $770,000 and $890,000 and cost savings of $230,000, or between $530,000 and $660,000 in annualized net costs, using a 7 percent discount rate.

D. Benefits

In addition to the $450k in savings to the industry and $230k to the Agency, there are a number of qualitative benefits associated with the rule. Due to data availability, EPA could not quantify all the benefits, such as human health benefits from increased compliance with the rule. In addition, the rule will:

- Enhance EPA tracking of exporter, importer, and recognized trader activities;
- Reduce risks associated with recovery and disposal of hazardous wastes;
- Improve the ability to acquire information regarding the quantities of hazardous waste shipments exported from the United States and the destination facilities to which the shipments are exported;
- Increase regulatory efficiency;
- Achieve full consistency with export and import requirements for OECD countries for all exports and imports with Canada, Mexico and non-OECD countries; and
- Time savings for industry and EPA related to electronic submittal.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that State. The federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that

State, since only the State was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized State until the State adopted the federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Because of the federal government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This approach of having Federal, rather than State, administering of the import/export functions promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries.

Although States do not receive authorization to administer the Federal government's export functions in 40 CFR part 262 subpart E, import functions in 40 CFR part 262 subpart F, import/export functions in 40 CFR part 262 subpart H, or the import/export relation functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt the provisions in this rule to maintain their equivalency with the Federal program (see 40 CFR 271.10(e) which will also be amended in this rule).

This rule contains many amendments to 40 CFR part 262 subpart H, both for clarity and organization, and replaces the regulations that are currently in 40 CFR part 262 subparts E and F with the more stringent 40 CFR part 262 subpart H regulations. The rule also contains conforming import and export-related amendments to 40 CFR parts 260, 261, 262, 263, 264, 265, 266, 267, 271 and 273, almost all of which are more stringent.

The States that have already adopted 40 CFR part 262 subparts E, F and H, 40 CFR part 263, 40 CFR part 264, 40 CFR part 265, and any other import/export related regulations must adopt the provisions listed above.

When a State adopts the import/export provisions in this rule (if final), they must not replace Federal or international references or terms with State references or terms.

The provisions of this rule, if final, would take effect in all States on the effective date of the rule, since these import and export requirements will be administered by the Federal government as a foreign policy matter, and will not be administered by States.

Finally, EPA would make conforming amendments to 40 CFR 271.10(e) of EPA's state authorization regulations to remove the references to 40 CFR part 262 subparts E and F, and to replace them with a reference to 40 CFR part 262 subpart H. As currently written, state programs are required to provide ''requirements respecting international shipments which are equivalent to those at 40 CFR part 262 subparts E and F, except that . . .'' This current language would no longer be accurate since this rule, if final, would eliminate 40 CFR part 262 subparts E and F and replace them with 40 CFR part 262 subpart H, along with any other import/export related regulations.

VI. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review, because it may raise novel legal or policy issues [3(f)(4)] arising out of legal mandates, although it is not economically significant. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis, titled ''Economic Assessment: EPA's 2014 RCRA Proposed Rule Hazardous Waste Export-Import Revisions,'' is available in the docket. Interested persons, including those persons currently importing and exporting hazardous waste, are encouraged to read and comment on the accuracy of the assumptions and the burden estimates presented in this document (*e.g.,* for hiring or training of additional staff, including legal counsel or external consultants, to comply with the finalized requirements).

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2519.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The requirements covered in this ICR are necessary for EPA to oversee the international trade of hazardous wastes. EPA is promulgating the above regulatory changes/amendments under the authority of Sections 1006, 1007, 2002(a), 3001 through 3010, 3013 through 3015, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6905, 6906, 6912, 6921 through 6930, 6934, and 6938.

The Office of Enforcement and Compliance Assurance, U.S. EPA, uses the information provided by each U.S. exporter, receiving facility, transporter, and recognized trader to determine compliance with the applicable RCRA regulatory provisions. In addition, the information is used to determine the number, origin, destination, and type of exports from and imports to the U.S. for tracking purposes and for reporting to the OECD. This information also is used to assess the efficiency of the program.

Most of the information required by the regulations covered by this ICR is not available from any source but the respondents. In certain occasions, such as the notification of intent to export hazardous waste, EPA allows the primary exporter to submit one notice that covers activities over a period of twelve months.

Except as described below, the proposed rule does not result in the collection of duplicate data. Although some of the information required for the

hazardous waste manifest and the movement document is substantively the same, up to six pieces of additional information are required for the movement document. In addition, these two documents serve different purposes. A signed copy of the hazardous waste manifest, which is not valid beyond U.S. borders, is dropped off at the U.S. Customs check point when the shipment leaves the U.S. to verify pertinent information, including point of departure, date, destination, and contents of the shipment. The movement document must accompany the shipment until it reaches the foreign recovery facility. The signed movement document is subsequently returned to EPA and the U.S. exporter to acknowledge receipt of the shipment.

In certain cases, some of the information on the tracking document also may be collected by the Department of Commerce in its Census Bureau form titled ''Shipper's Export Declaration'' (15 CFR part 30). This form, which is required for all shipments that have a value in excess of $2,500, must be filed at the U.S. port of exit, similar to the current export requirements. However, the information currently contained in the Census Bureau's form is not adequate for EPA's purpose of tracking and identifying the export of hazardous waste from the U.S. For example, the wastes are identified by tariff codes that are less precise than the waste codes required by the tracking document.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which defines EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the proposed rule. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

Respondents/affected entities: Importers, exporters, and recycling and disposal facilities.

Respondent's obligation to respond: Mandatory (RCRA 3002 (42 U.S.C. 6922) and RCRA 3003 (42 U.S.C. 6923)).

Estimated number of respondents: 1,305.

Frequency of response: Annual or on occasion.

Total estimated burden: 43,212 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: For the affected entities, the average total burden costs in the first three years, including operations and maintenance, are estimated to be $1.1 million.

There are no capital costs associated with the proposed rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oria_submissions@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than November 18, 2015. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are exporters, importers, transporters, and recognized traders. The Agency has determined that between 30 and 38 percent of exporters, importers, and recognized traders, and approximately 80 percent of transporters, are small entities, for a total of 590 small entities, may experience an impact of approximately $40 to $22,000 per year, or between 0.1 and 0.3 percent of annual revenues. Thus, the average costs of the proposed rule, on a per entity basis, will not exceed one percent of annual revenues for any respondent. Details of this analysis are presented in the document titled ''Economic Assessment: EPA's 2014 RCRA Proposed Rule Hazardous Waste Export-Import Revisions,'' which is available in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Further, UMRA does not apply to the portions of this action concerning application of OECD import and export procedures because those portions are necessary for the national security or the ratification or implementation of international treaty obligations (*i.e.,* the 1986 OECD Decision-Recommendation and the Amended 2001 OECD Decision).

E. Executive Order 13132: Federalism

This action does not have federalism implications because the state and local governments do not administer the export and import requirements under RCRA. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No exporters, importers or transporters affected by this action are known to be owned by Tribal governments or located within or adjacent to Tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The procedural requirements in this action should prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action will have little to no effect on the supply, distribution, or use of energy, as this action is intended to prevent mismanagement of hazardous wastes in foreign countries and better

document proper management of imported hazardous wastes in the United States.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because this action should prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States. Specifically, this action is designed to increase tracking of individual hazardous waste import and export shipments, improve regulatory efficiency and improve information collection on imports and exports of hazardous wastes subject to RCRA notice and consent requirements.

K. Executive Order 13659: Streamlining the Export/Import Process for America's Businesses

Executive Order 13659, titled ''Streamlining the Export/Import Process for America's Business'' (79 FR 10657, February 25, 2014), establishes federal executive policy on improving the technologies, policies, and other controls governing the movement of goods across our national borders. It directs participating agencies to have capabilities, agreements, and other requirements in place by December 31, 2016, to utilize the ITDS and supporting systems as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export. To meet the requirement of the Executive Order, portions of this proposed action directly propose requiring exporters subject to RCRA export consent requirements to electronically file consent related data within the AES, the supporting IT system for exports under the ITDS. Additionally, this action improves regulatory efficiency related to hazardous waste imports and exports by consolidating import and export procedures for hazardous waste into one set of procedures that are widely accepted by other countries, and by replacing existing submittals to EPA of paper documentation related to hazardous waste imports and exports with electronic submittal into EPA's hazardous waste import/export database. Thus, this action is consistent with the purpose of Executive Order 13659, and is a necessary first step in complying with it.

VII. 2013 CEC Report on Spent Lead Acid Batteries and Related Analysis

On February 8, 2012, the Secretariat for the CEC [24] began to examine the environmental and public health issues associated with the transboundary movement of SLABs across North America. EPA provided data to the CEC and submitted technical comments on the CEC's draft report released on November 30, 2012. The CEC's final report,[25] issued on April 15, 2013, included the following conclusions: Mexico's existing regulatory framework covering secondary lead smelters has significant gaps and is the furthest from the United States' standards, which has the most stringent overall regulatory framework of the three countries; between 2004 and 2011, U.S. net exports to Mexico increased by an estimated 449 to 525 percent; and, there were significant discrepancies between summary data on export shipments reported to the EPA annually and individual export shipment data collected under U.S. Census Bureau (Census) authority.

The CEC's review of the EPA and Census data found that the Census data on SLAB exports to Mexico in 2011 was 47.35 million kg lower than the data from EPA, which could indicate that exporters of SLABs may not be correctly applying the proper harmonized tariff code. Additionally, the CEC's review found that 2.1 million kg of SLABs were exported to 47 countries where EPA had no record of having obtained consent from those countries to receive SLABs while 571.55 million kg of SLABs total were exported with EPA and the receiving country's consent.

The final report recommended that the U.S. require the use of manifests for each international shipment of SLABs, and require exporters to obtain a certificate of recovery from recycling facilities to better track individual shipments and thereby ensure that shipments go to the approved destination facility and are recycled in a timely manner. Further, the report recommended that the U.S. explore establishing a system to allow exporters to submit export annual report data electronically to reduce the time and resources needed by the agency to manually enter the data from the paper export annual reports. Lastly, the report recommended that the U.S. work to share the import and export data maintained by its respective environmental and border agencies to identify trends that may require a policy response or that may raise compliance issues.

After reviewing the CEC report, EPA independently compared SLAB export annual report data submitted to EPA and Census data on exports of SLABs being shipped for recovery of lead [26] from 2012. The results were very similar to the analysis of the 2011 EPA and Census data conducted by the CEC. While most of the tons of SLABs exported for recycling in 2012 occurred with the consent of Mexico, Canada, Korea and Spain, a much smaller total quantity of SLABs was shipped to 48 countries apparently without consent. Specifically looking at SLAB export shipments to Mexico, 51,805 tons of SLABs were exported with consent but without declaring the correct Schedule B commodity classification number. Export shipment declarations that misclassify the hazardous waste are of concern because the misclassification can cause confusion for the Customs offices in the various countries. Also, if the misclassification is shared with the shipping company taking the shipment out of the United States, the misclassification can complicate any emergency response to an incident involving the shipment while it is in transit. The data appear to indicate that misclassification accounts for most or nearly all of the discrepancies in the case of SLAB exports to Mexico. Nevertheless, significant discrepancies on SLAB shipment data when comparing export annual report data

[24] The Commission for Environmental Cooperation (CEC) is an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC). The CEC was established, among other things, to address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the North American Free Trade Agreement (NAFTA). More information on the CEC is available on its Web site at *www.cec.org.*

[25] *http://www.cec.org/Storage/149/17479_CEC_Secretariat-SLABs_Report_may7_en_web.pdf.*

[26] Shipments were classified as 8548.10.0540 (''lead-acid storage batteries of a kind used for starting engines, for the recovery of lead'') and 8548.10.0580 (''spent primary cells, spent primary batteries, & spent electric storage batteries for recovery of lead, other than lead-acid storage batteries for starting engines''), under the U.S. Census Bureau's Schedule B commodity classifications (''Schedule B: Statistical Classification of Domestic and Foreign Commodities Exported from the United States''), *http://www.census.gov/foreign-trade/schedules/b/.*

reported to EPA with data compiled from exporter declarations reported to the U.S. Census Bureau, suggest export shipments have occurred that are not in compliance with EPA's notice and consent procedures.

Subsequent efforts to compare EPA's export annual report data and U.S. Census Bureau data for other exported hazardous wastes proved to be much more difficult. Exports of a number of chemical industry related wastes are not currently required to report exported quantities based on their Schedule B commodity codes.[27] Exports of other hazardous wastes, such as hazardous waste spent catalysts, could be declared under Schedule B commodity codes [28] that cover exports of new catalysts as well as export of spent catalysts subject to RCRA export requirements. However, given the discrepancies between SLAB export annual report data submitted to EPA and SLAB export data from the U.S. Census Bureau, it is possible that similar differences are occurring for other exported hazardous wastes.

When hazardous waste is shipped across multiple countries to be disposed or recycled, there can be a higher risk of mismanagement that could result in damage to the environment and human health in the surrounding communities. This higher risk is due to the increased number of custodial transfers that international shipments incur, the entry and exit procedures (and associated temporary storage) at the ports and border crossings for the countries of export, transit and import, and the varying levels of environmental controls and worker safety practices at the destination facilities. The risk is highest when shipments are sent to unapproved facilities. According to the executive summary for the October 2012 OECD publication titled ''Illegal Trade in Environmentally Sensitive Goods'' [29] the economic and environmental impacts of illegal hazardous waste disposal include (1) the undermining of legitimate hazardous waste treatment and disposal companies, (2) lead poisoning, (3) cancer, (4) and lung and kidney disease. World Health Organization fact sheets [30] on the effects of exposures to cadmium, lead, mercury and arsenic make clear the significant potential impact to public health from releases to the environment from illegal management of hazardous waste.

The concerns with lead exposures from SLAB recycling in other countries have been relatively well documented, and were generally discussed in the October 6, 2008, rulemaking proposing to make SLAB exports subject to notice and consent requirements (see section D.2 in 74 FR 58388). The 2013 CEC report also discussed in some detail the potential damage to human health and the environment when the lead exposures are not kept to a minimum. Domestic examples of damage from mismanagement at recycling operations were examined in the Definition of Solid Waste proposed rule published on July 22, 2011 (see 76 FR 44094), and in the 2014 final rule published on January 13, 2015 (see 80 FR 1694). In Exhibit 8B of the Regulatory Impact Analysis for EPA's 2014 Revisions to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste,[31] based on the cleanup costs associated with 115 of the 250 Industrial Recycling Environmental Damage Cases that occurred in the United States between 1982 and 2011, the nationwide average cleanup expenditure per damage case was $7.8 million (in 2012 dollars). These damage cases included facilities recycling batteries, mercury wastes, and spent solvents. It is likely that similar or worse damage cases from these types of facilities exist in other countries.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

40 CFR Part 261

Environmental protection, Hazardous materials, Intergovernmental relations, Recycling, Waste treatment and disposal.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, International organizations, Labeling, Packaging and containers, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Exports, Hazardous materials transportation.

40 CFR Part 264

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Exports, Hazardous recyclable materials, Imports, Precious metal recovery, Recycling, Spent Lead-Acid Batteries, Waste treatment and disposal.

40 CFR Part 267

Environmental protection, Hazardous waste, Imports, Reporting and recordkeeping requirements

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 273

Environmental protection, Exports, Imports, Universal waste.

Dated: September 24, 2015.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

■ 2. Amend § 260.10 by adding, in alphabetical order, the definition ''Recognized trader'' to read as follows:

[27] Reporting units for Schedule B commodity codes 3825.41.0000 (Halogenated waste of organic solvents), 3825.49.0000 (Waste of organic solvents, NESOI), 3825.50.0000 (Waste of metal-pickling liquors, hydraulic fluids, brake fluids and anti-freeze fluids), 3825.61.0000 (Wastes from the chemical or allied industry consisting mainly of organic constituents, NESOI), 3825.69.0000 (Wastes from the chemical or allied industries, NESOI), and 3825.90.0000 (Wastes, as specified in note 6 to chapter 38, NESOI) are ''X'', indicating reporting shipment quantities in the Automated Export System is not required.

[28] 3815.11.0000 (Supported catalysts: With nickel or nickel compounds as the active substance), 3815.12.0000 (Supported catalysts: With precious metal or precious metal compounds as the active substance), 3815.19.0000 (Supported catalysts, NESOI).

[29] *http://www.oecd.org/tad/envtrade/ExecutiveSummaryIllegalTradeEnvSensitiveGoods.pdf.*

[30] *http://www.who.int/mediacentre/factsheets/en/.*

[31] ''Regulatory Impact Analysis: EPA's 2014 Revisions to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste'', November 26, 2014, *http://www.regulations.gov/#!documentDetail;D=EPA-HQ-RCRA-2010-0742-0369.*

§ 260.10 Definitions.

* * * * *

Recognized trader means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

* * * * *

■ 3. Amend § 260.11 by revising paragraphs (g) and (g)(1) to read as follows:

§ 260.11 Incorporation by reference.

* * * * *

(g) The following materials are available for purchase from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France.

(1) The OECD waste lists, as set forth in Annex B (''Green List'') and Annex C (''Amber List'') (collectively ''OECD waste lists'') of the 2009 ''Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations,'' IBR approved for 262.82(a), 262.83(b), 262.83(d), 262.83(g), 262.84(b), 262.84(d) of this chapter.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 5. Amend § 261.4 by:
■ a. Revising paragraph (d)(1) introductory text;
■ b. Adding paragraph (d)(4);
■ c. Revising paragraph (e)(1) introductory text; and
■ d. Adding paragraph (e)(4).

The revisions and additions read as follows:

§ 261.4 Exclusions.

* * * * *

(d) *Samples.* (1) Except as provided in paragraphs (d)(2) and (d)(4) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this part or parts 262 through 268 or part 270 or part 124 of this chapter or to the notification requirements of section 3010 of RCRA, when:

* * * * *

(4) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, samples that will be exported to a foreign laboratory or that will be imported to a U.S. laboratory from a foreign source must weigh no more than 25 kg.

(e) *Treatability Study Samples.* (1) Except as provided in paragraphs (e)(2) and (e)(4) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in section 260.10, are not subject to any requirement of parts 261 through 263 of this chapter or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of § 261.5 and § 262.34(d) when:

* * * * *

(4) In order to qualify for the exemption in paragraph (e)(1)(i) of this section, samples that will be exported to a foreign laboratory or testing facility, or that will be imported to a U.S. laboratory or testing facility from a foreign source must weigh no more than 25 kg.

* * * * *

■ 6. Amend § 261.6 by revising paragraphs (a)(3)(i) and (a)(5) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(3) * * *

(i) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of 40 CFR part 262, subpart H.

* * * * *

(5) Hazardous waste that is exported or imported for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H.

* * * * *

■ 7. Amend § 261.39 by revising paragraphs (a)(5)(ii), (v), (vi), and (xi) to read as follows:

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

(a) * * *

(5) * * *

(ii) Notifications must be submitted electronically using EPA's hazardous waste import/export database.

* * * * *

(v) The export of CRTs is prohibited unless all of the following occur:

(A) The receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(B) The exporter or a U.S. authorized agent:

(*1*) Submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES), under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(*2*) Includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(*i*) EPA license code;

(*ii*) Commodity classification code per 15 CFR 30.6(a)(12);

(*iii*) EPA consent number;

(*iv*) Country of ultimate destination per 15 CFR 30.6(a)(5);

(*v*) Date of export per 15 CFR 30.6(a)(2);

(vi) Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(vii) EPA net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change using the allowable methods listed in paragraph (a)(5)(ii) of this section, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (a)(5)(i)(H) of this section) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

* * * * *

(xi) Annual reports must be submitted to the office listed using the allowable methods specified in paragraph (a)(5)(ii) of this section. Exporters must keep

copies of each annual report for a period of at least three years from the due date of the report.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C 6906, 6912, 6922–6925, 6937, and 6938.

■ 9. Amend § 262.10 by revising paragraph (d) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(d) Any person who exports or imports hazardous wastes must comply with § 262.12 and subpart H of this part.

* * * * *

■ 10. Amend § 262.12 by adding paragraph (d) to read as follows:

§ 262.12 EPA identification numbers.

* * * * *

(d) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the Administrator.

■ 11. Amend § 262.41 by revising paragraph (b) to read as follows:

§ 262.41 Biennial report.

* * * * *

(b) Exports of hazardous waste to foreign countries are not required to be reported on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.83(g) for hazardous waste exporters.

Subpart E—[Removed and Reserved]

■ 12. Remove and reserve subpart E, consisting of §§ 262.50 through 262.58.

Subpart F—[Removed and Reserved]

■ 13. Remove and reserve subpart F, consisting of § 262.60.

■ 14. Subpart H is revised to read as follows:

Subpart H—Transboundary Movements of Hazardous Waste for Recovery or Disposal

Sec.

§ 262.80 Applicability.

(a) The requirements of this subpart apply to transboundary movements of hazardous wastes.

(b) Any person (including exporter, importer, disposal facility operator, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

§ 262.81 Definitions.

In addition to the definitions set forth at 40 CFR 260.10, the following definitions apply to this subpart.

Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes.

Countries concerned means the countries of export or import and any countries of transit.

Country of export means any country from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any country to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery or disposal operations therein.

Country of transit means any country other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Disposal operations means activities which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternate uses, which include:

D1 Release or Deposit into or onto land, other than by any of operations D2 through D5 or D12.

D2 Land treatment, such as biodegradation of liquids or sludges in soils.

D3 Deep injection, such as injection into wells, salt domes or naturally occurring repositories.

D4 Surface impoundment, such as placing of liquids or sludges into pits, ponds or lagoons.

D5 Specially engineered landfill, such as placement into lined discrete cells which are capped and isolated from one another and the environment.

D6 Release into a water body other than a sea or ocean, and other than by operation D4.

D7 Release into a sea or ocean, including sea-bed insertion, other than by operation D4.

D8 Biological treatment not specified elsewhere in operations D1 through D12, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.

D9 Physical or chemical treatment not specified elsewhere in operations D1 through D12, such as evaporation, drying, calcination, neutralization, or precipitation, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.

D10 Incineration on land.

D11 Incineration at sea.

D12 Permanent storage.

D13 Blending or mixing, prior to any of operations D1 through D12.

D14 Repackaging, prior to any of operations D1 through D13.

D15 (or DC17 for transboundary movements with Canada only) Interim Storage, prior to any of operations D1 through D12.

DC15 Release, including the venting of compressed or liquified gases, or treatment, other than by any of operations D1 to D12 (for transboundary movements with Canada only).

DC16 Testing of a new technology to dispose of a hazardous waste (for transboundary movements with Canada only).

EPA Acknowledgment of Consent (AOC) means the letter EPA sends to the exporter documenting the specific terms of the country of import's consent and the country(ies) of transit's consent(s). The AOC meets the definition of an export license in U.S. Census Bureau regulations 15 CFR 30.1.

Export means the transportation of hazardous waste from a location under the jurisdiction of the United States to a location under the jurisdiction of another country, or a location not under the jurisdiction of any country, for the purposes of recovery or disposal operations therein.

Exporter, also known as primary exporter on the RCRA hazardous waste manifest, means the person domiciled in the United States who is required to originate the movement document in accordance with 40 CFR 262.83(d) or the manifest for a shipment of hazardous waste in accordance with 40 CFR part 262, subpart B, or equivalent State provision, which specifies a foreign receiving facility as the facility to which the hazardous wastes will be sent, or any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import.

Foreign Exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the hazardous wastes and who proposes shipment of the hazardous wastes to the United States for recovery or disposal operations.

Foreign Importer means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the exported hazardous waste is received in the country of import.

Foreign Receiving Facility means a facility which, under the importing country's applicable domestic law, is operating or is authorized to operate in the country of import to receive the hazardous wastes and to perform recovery or disposal operations on them.

Import means the transportation of hazardous waste from a location under the jurisdiction of another country to a location under the jurisdiction of the United States for the purposes of recovery or disposal operations therein.

Importer means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the imported hazardous waste is received in the United States.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

OECD means the Organization for Economic Cooperation and Development.

OECD Member country means the countries that are members of the OECD and participate in the Amended 2001 OECD Decision. (EPA provides a list of OECD Member countries at [cite to URL of EPA's Web site that will maintain OECD member country list].

Receiving facility means a U.S. facility which, under RCRA and other applicable domestic laws, is operating or is authorized to operate to receive hazardous wastes and to perform recovery or disposal operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

R2 Solvent reclamation/regeneration.

R3 Recycling/reclamation of organic substances which are not used as solvents.

R4 Recycling/reclamation of metals and metal compounds.

R5 Recycling/reclamation of other inorganic materials.

R6 Regeneration of acids or bases.

R7 Recovery of components used for pollution abatement.

R8 Recovery of components used from catalysts.

R9 Used oil re-refining or other reuses of previously used oil.

R10 Land treatment resulting in benefit to agriculture or ecological improvement.

R11 Uses of residual materials obtained from any of the operations numbered R1 through R10 or RC14 (for transboundary shipments with Canada only).

R12 Exchange of wastes for submission to any of the operations numbered R1 through R11 or RC14 (for transboundary shipments with Canada only).

R13 Accumulation of material intended for any operation numbered R1 through R12 or RC14 (for transboundary shipments with Canada only).

RC14 Recovery or regeneration of a substance or use or re-use of a recyclable material, other than by any of operations R1 to R10 (for transboundary shipments with Canada only).

RC15 Testing of a new technology to recycle a hazardous recyclable material (for transboundary shipments with Canada only).

RC16 Interim storage prior to any of operations R1 to R11 or RC14 (for transboundary shipments with Canada only).

Transboundary movement means any movement of hazardous wastes from an area under the national jurisdiction of one country to an area under the national jurisdiction of another country.

§ 262.82 General conditions.

(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and whether the waste is or is not hazardous waste. The OECD Green and Amber lists are incorporated by reference in § 260.11.

(1) *Green list wastes.* (i) Green wastes that are not hazardous wastes are subject to existing controls normally applied to commercial transactions, and are not subject to the requirements of this subpart.

(ii) Green wastes that are hazardous wastes are subject to the requirements of this subpart.

(2) *Amber list wastes.* (i) Amber wastes that are hazardous wastes are subject to the requirements of this subpart, even if they are imported to or exported from a country that does not consider the waste to be hazardous or control the transboundary shipment as a hazardous waste import or export.

(A) For exports, the exporter must comply with § 262.83.

(B) For imports, the recovery or disposal facility and the importer must comply with § 262.84.

(ii) Amber wastes that are not hazardous wastes, but are considered hazardous by the other country are subject to the Amber control procedures in the country that considers the waste hazardous, and are not subject to the requirements of this subpart. All responsibilities of the importer or exporter shift to the foreign importer or foreign exporter in the other country that considers the waste hazardous unless the parties make other arrangements through contracts.

Note to Paragraph (a)(2): Some Amber list wastes are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the requirements of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (*e.g.,* the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this subpart.

(3) Mixtures of wastes. (i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not hazardous waste is not subject to the requirements of this subpart.

Note to Paragraph (a)(3)(i): The regulated community should note that some countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is hazardous waste is subject to the requirements of this subpart.

Note to Paragraph (a)(3)(ii): The regulated community should note that some countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are hazardous wastes, such wastes are subject to the requirements of this subpart.

(ii) If such wastes are not hazardous wastes, such wastes are not subject to the requirements of this subpart.

(b) General conditions applicable to transboundary movements of hazardous waste:

(1) The hazardous waste must be destined for recovery or disposal operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the country of import;

(2) The transboundary movement must be in compliance with applicable international transport agreements; and

Note to Paragraph (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of hazardous waste through one or more countries must be conducted in compliance with all applicable international and national laws and regulations.

(c) Duty to return wastes subject to the Amber control procedures during transit through the United States. When a transboundary movement of hazardous wastes transiting the United States and subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover or dispose of these wastes in an environmentally sound manner, the waste must be returned to the country of export. The U.S. transporter must inform EPA at the specified mailing address in paragraph 262.82(e) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned countries.

(d) Laboratory analysis exemption. Export or import of a hazardous waste sample is exempt from the requirements of this subpart if the sample is destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery or disposal operations, does not exceed twenty-five kilograms (25 kg) in quantity, and is appropriately packaged and labeled, and complies with the conditions of 40 CFR 260.4(d) or (e).

(e) EPA Address for submittals by postal mail or hand delivery. Submittals required in this subpart to be made by postal mail or hand delivery should be sent to the following addresses:

(1) For postal mail delivery, the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

(2) For hand-delivery, the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, William Jefferson Clinton South Bldg., Room 6144, 12th St. and Pennsylvania Ave. NW., Washington, DC 20004.

§ 262.83 Exports of hazardous waste.

(a) *General export requirements.* Export of hazardous waste is prohibited unless:

(1) The exporter complies with the contract requirements in paragraph (f) of this section;

(2) The exporter complies with the notification requirements in paragraph (b) of this section;

(3) The exporter receives an AOC from EPA documenting consent from the countries of import and transit (and original country of export if exporting previously imported hazardous waste);

(4) The exporter ensures compliance with the movement documents requirements in paragraph (d) of this section;

(5) The exporter ensures compliance with the manifest instructions for export shipments in paragraph (c) of this section; and

(6) The exporter or a U.S. authorized agent:

(i) Submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES), under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(ii) Includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(A) EPA license code;

(B) Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);

(C) EPA consent number for each hazardous waste;

(D) Country of ultimate destination code per 15 CFR 30.6(a)(5);

(E) Date of export per 15 CFR 30.6(a)(2);

(F) RCRA hazardous waste manifest tracking number, if required;

(G) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(H) EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(b) *Notifications.* (1) General Notifications. At least sixty (60) days before the first shipment of hazardous waste is expected to leave the United States, the exporter must provide notification in English to EPA of the proposed transboundary movement. Notifications must be submitted electronically using EPA's hazardous waste import/export database. The notification may cover up to one year of shipments of one or more hazardous wastes being sent to the same recovery or disposal facility, and must include all of the following information:

(i) Exporter name and EPA identification number, address, telephone, fax numbers, and email address;

(ii) Foreign receiving facility name, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(iii) Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and email address;

(iv) Intended transporter(s) and/or their agent(s); address, telephone, fax, and email address;

(v) ''US'' as the country of export name, ''USA01'' as the relevant competent authority code, and the intended U.S. port(s) of exit;

(vi) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of entry for the country of import;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix) Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi) Description(s) of each hazardous waste, including whether each hazardous waste is regulated universal waste under 40 CFR part 273, or the state equivalent, spent lead-acid batteries being exported for recovery of lead under 40 CFR part 266, subpart G, or the state equivalent, or industrial ethyl alcohol being exported for reclamation under 40 CFR 261.6(a)(3)(i), or the state equivalent, estimated total

quantity of each waste in either metric tons or cubic meters, the applicable RCRA waste code(s) for each hazardous waste, the applicable OECD waste code from the list incorporated by reference in § 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each waste;

(xii) Specification of the recovery or disposal operation(s) as defined in § 262.81.

(xiii) Certification/Declaration signed by the exporter that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.

Name:
Signature:
Date:

(2) Exports to pre-consented recovery facilities in OECD Member countries. If the recovery facility is located in an OECD member country and has been pre-consented by the competent authority of the OECD member country to recover the waste sent by exporters located in other OECD member countries, the notification may cover up to three years of shipments. Notifications proposing export to a pre-consented facility in an OECD member country must include all information listed in paragraphs (b)(1)(i) through (b)(1)(xiii) and additionally state that the facility is pre-consented. Exporters must submit the notification to EPA using the allowable methods listed in paragraph (b)(1) of this section at least ten days before the first shipment is expected to leave the United States.

(3) Notifications listing interim recycling operations or interim disposal operations. If the foreign receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 to R13 or interim disposal operations D13 through D15, or in the case of transboundary movements with Canada, any of the interim recovery operations R12 to R13, or RC16, or interim disposal operations D13 to D14, or DC17, the notification submitted according to paragraph (b)(1) must also include the final foreign recovery or disposal facility name, address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, or in the case of transboundary movements with Canada, which of the applicable recovery or disposal operations R1 through R11, RC14 to RC15, D1 through D12, and DC15 to DC16 will be employed at the final foreign recovery or disposal facility.

(4) *Renotifications.* When the exporter wishes to change any of the information specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the exporter must submit a renotification of the changes to EPA using the allowable methods in paragraph (b)(1) of this section. Any shipment using the requested changes cannot take place until the countries of import and transit consent to the changes and the exporter receives an EPA AOC letter documenting the countries' consents to the changes.

(5) For cases where the proposed country of import and recovery or disposal operations are not covered under an international agreement to which both the United States and the country of import are parties, EPA will coordinate with the Department of State to provide the complete notification to country of import and any countries of transit. In all other cases, EPA will provide the notification directly to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (b)(1)(i) through (b)(1)(xiii) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraphs (b)(1)(i) through (b)(1)(xiii) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(6) Where the countries of import and transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the exporter documenting the countries' consents. Where any of the countries of import and transit objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the exporter.

(7) Export of hazardous wastes for recycling or disposal operations that were originally imported into the United States for recycling or disposal operations in a third country is prohibited unless an exporter in the United States complies with the export requirements in § 262.83, including providing notification to EPA in accordance with paragraph (b)(1) of this section. In addition to listing all required information in paragraphs (b)(1)(i) through (b)(1)(xiii) of this section, the exporter must provide the original consent number issued for the initial import of the wastes in the notification, and receive an AOC from EPA documenting the consent of the competent authorities in new country of import, the original country of export, and any transit countries prior to re-export.

(8) Upon request by EPA, the exporter must furnish to EPA any additional information which the country of import requests in order to respond to a notification.

(c) *RCRA Manifest instructions for export shipments.* The exporter must comply with the manifest requirements of 40 CFR 262.20 through 262.23 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the exporter must enter the name and site address of the foreign receiving facility;

(2) In the International Shipments block, the exporter must check the export box and enter the U.S. port of exit (city and State) from the United States.

(3) In the Special Handling Instructions or Additional Information block, the exporter must list the consent number from the AOC for each hazardous waste listed on the manifest, followed by the relevant list number for the hazardous waste from block 9b in parentheses. If additional space is needed, the exporter should use a Continuation Sheet(s) (EPA Form 8700–22A).

(4) The exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (*e.g.,* states, waste handlers, and/or commercial forms printers).

(5) The exporter must require the foreign receiving facility to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 40 CFR 264.72(a)) between the manifest and the shipment. A copy of the manifest or the movement document required in paragraph (d) of this section signed by the foreign receiving facility may be used to confirm delivery of the hazardous waste.

(6) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the foreign receiving facility listed in the EPA AOC, the exporter must instruct the transporter in writing via fax, email or mail to:

(i) Return the hazardous waste to the exporter in the United States or designate another facility within the country of import (if allowed by the country of import) or within the United States; and

(ii) Revise the manifest in accordance with the exporter's instructions.

(d) *Movement document requirements for export shipments.* (1) All exporters must ensure that a movement document meeting the conditions of paragraph (d)(2) of this section accompanies each transboundary movement of hazardous wastes from the initiation of the shipment until it reaches the foreign receiving facility, including cases in which the hazardous waste is stored and/or sorted by the foreign importer prior to shipment to the foreign receiving facility, except as provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(i) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the exporter must forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if exported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the exporter must forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if exported by rail.

(2) The movement document must include the following paragraphs (d)(2)(i) through (d)(2)(xv) of this section:

(i) The corresponding consent number(s) and hazardous waste number(s) for the listed hazardous waste from the relevant EPA AOC(s);

(ii) The shipment number and the total number of shipments from the EPA AOC;

(iii) Exporter name and EPA identification number, address, telephone, fax numbers, and email address;

(iv) Foreign receiving facility name, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(v) Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and email address;

(vi) Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, applicable OECD waste code for each hazardous waste from the list incorporated by reference in § 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name (if not exporter), address, telephone, fax numbers, and email of company originating the shipment;

(ix) Company name, EPA ID number, address, telephone, fax, and email address of all transporters;

(x) Identification (license, registered name or registration number) of means of transport, including types of packaging;

(xi) Any special precautions to be taken by transporter(s);

(xii) Certification/declaration signed and dated by the exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer (*e.g.,* transporter, importer, and owner or operator of the foreign receiving facility);

(xiv) Each U.S. person that has physical custody of the hazardous waste from the time the movement commences until it arrives at the foreign receiving facility must sign the movement document (*e.g.,* transporter, foreign importer, and owner or operator of the foreign receiving facility); and

(xv) As part of the contract requirements per paragraph (f) of this section, the exporter must require that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authorities of the countries of import and transit.

(e) *Duty to return or re-export hazardous wastes.* When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the exporter must ensure that the hazardous waste is returned to the United States or re-exported to a third country. If the waste must be returned, the exporter must provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned countries agree. In all cases, the exporter must submit an exception report to EPA in accordance with paragraph (h) of this section.

(f) *Export Contract Requirements.* (1) Exports of hazardous waste are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter, foreign importer (if different from the foreign receiving facility), and the owner or operator of the foreign receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (f)(2)(i) through (f)(2)(iv) of this section:

(i) The company from where each export shipment of hazardous waste is initiated;

(ii) Each person who will have physical custody of the hazardous wastes;

(iii) Each person who will have legal control of the hazardous wastes; and

(iv) The foreign receiving facility.

(3) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(i) The transporter or foreign receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the exporter, EPA, and either the competent authority of the country of transit or the competent authority of the country of import of the need to make alternate management arrangements; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of hazardous wastes and, as the case may be, shall provide the notification for re-export to the competent authority in the country of import and include the equivalent of the information required in paragraph (b)(1) of this section, the original consent number issued for the initial export of the hazardous wastes in the notification, and obtain consent from EPA and the competent authorities in the new country of import and any transit countries prior to re-export.

(4) Contracts must specify that the foreign receiving facility send a copy of

the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authorities of the countries of import and transit.

(5) Contracts must specify that the foreign receiving facility shall send a copy of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter, to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authority of the country of import.

(6) Contracts must specify that the foreign importer or the foreign receiving facility that performed interim recycling operations R12 through R13 or RC16, or interim disposal operations D13 through D15 or DC17, as appropriate, will:

(i) provide the notification required in paragraph (f)(3)(ii) prior to any re-export of the hazardous wastes to a final foreign recovery or disposal facility in a third country; and

(ii) promptly send copies of the confirmation of recovery or disposal that it receives from the final foreign recovery or disposal facility within one year of shipment delivery to the final foreign recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, DC15 or DC16 to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authority of the country of import.

(7) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of the country of import and any countries of transit, in accordance with applicable national or international law requirements.

Note to Paragraph (f)(7): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries and other foreign countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, persons or facilities located in those OECD Member countries or other foreign countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(8) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(9) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

(g) *Annual reports.* The exporter shall file an annual report with EPA, using the allowable methods listed in paragraph (b)(1) of this section, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. The annual report must include all of the following paragraphs (g)(1) through (6) of this section specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each foreign receiving facility;

(4) By foreign receiving facility, for each hazardous waste exported:

(i) A description of the hazardous waste;

(ii) The applicable EPA hazardous waste code(s) (from 40 CFR part 261, subpart C or D) for each waste;

(iii) The applicable waste code from the appropriate OECD waste list incorporated by reference in § 260.11;

(iv) The applicable DOT ID number;

(v) The name and U.S. EPA ID number (where applicable) for each transporter used over the calendar year covered by the report; and

(vi) The consent number(s) under which the hazardous waste was shipped, and for each consent number, the total amount of the hazardous waste and the number of shipments exported during the calendar year covered by the report;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kg but less than 1,000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the exporter that states:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(h) *Exception reports.* The exporter must file an exception report in lieu of the requirements of § 262.42 (if applicable) with EPA, using the allowable methods listed in paragraph (b)(1) of this section, if any of the following occurs:

(1) The exporter has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the hazardous waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter, in which case the exporter must file the exception report within the next thirty (30) days;

(2) The exporter has not received a written confirmation of receipt from the foreign receiving facility in accordance with paragraph (d) of this section within ninety (90) days from the date the waste was accepted by the initial transporter in which case the exporter must file the exception report within the next thirty (30) days; or

(3) The foreign receiving facility notifies the exporter, or the country of import notifies EPA, of the need to return the shipment to the US, in which case the exporter must file the exception report within thirty (30) days of notification, or one (1) day prior to the date the return shipment commences, whichever is sooner.

(i) *Recordkeeping.* (1) The exporter shall keep the following records in paragraphs (i)(1)(i) through (i)(1)(v) of this section:

(i) A copy of each notification of intent to export and each EPA AOC for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery (*i.e.,* movement document) sent by the foreign receiving facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter; and

(iv) A copy of each confirmation of recovery or disposal sent by the foreign receiving facility to the exporter for at least three (3) years from the date that the foreign receiving facility completed interim or final processing of the hazardous waste shipment.

(v) A copy of each contract or equivalent arrangement established per § 262.85 for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.84 Imports of hazardous waste.

(a) *General import requirements.* (1) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.

(2) In cases where the country of export does not require the foreign exporter to submit a notification and obtain consent to the export prior to shipment, the importer must submit a notification to EPA in accordance with paragraph (b) of this section.

(3) The importer must comply with the contract requirements in paragraph (f) of this section.

(4) The importer must ensure compliance with the movement documents requirements in paragraph (d) of this section; and

(5) The importer must ensure compliance with the manifest instructions for import shipments in paragraph (c) of this section.

(b) *Notifications.* In cases where the competent authority of the country of export does not regulate the waste as hazardous waste and, thus, does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, but EPA does regulate the waste as hazardous waste: (1) The importer is required to provide notification in English to EPA of the proposed transboundary movement of hazardous waste at least sixty (60) days before the first shipment is expected to depart the country of export. Notifications submitted on or after [Effective date of final rule] must be submitted electronically using EPA's hazardous waste import/export database. The notification may cover up to one year of shipments of one or more hazardous wastes being sent from the same foreign exporter, and must include all of the following information:

(i) Foreign exporter name, address, telephone, fax numbers, and email address;

(ii) Receiving facility name, EPA ID number, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(iii) Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and email address;

(iv) Intended transporter(s) and/or their agent(s); address, telephone, fax, and email address;

(v) ''US'' as the country of import, ''USA01'' as the relevant competent authority code, and the intended U.S. port(s) of entry;

(vi) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of exit for the country of export;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix) Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi) Description(s) of each hazardous waste, estimated total quantity of each hazardous waste, the applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable OECD waste code from the list incorporated by reference in § 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(xii) Specification of the recovery or disposal operation(s) as defined in § 262.81; and

(xiii) Certification/Declaration signed by the importer that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.

Name:
Signature:
Date:

Note To Paragraph (b)(1)(xiii): The United States does not currently require financial assurance for these waste shipments.

(2) Notifications listing interim recycling operations or interim disposal operations. If the receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 to R13 or interim disposal operations D13 through D15, the notification submitted according to paragraph (b)(1) of this section must also include the final recovery or disposal facility name, address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, will be employed at the final recovery or disposal facility.

(3) *Renotifications.* When the foreign exporter wishes to change any of the conditions specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the importer must submit a renotification of the changes to EPA using the allowable methods in paragraph (b)(1) of this section. Any shipment using the requested changes cannot take place until EPA and the countries of transit consent to the changes and the importer receives an EPA AOC letter documenting the consents to the changes.

(4) A notification is complete when EPA determines the notification satisfies the requirements of paragraph (b)(1)(i) through (xiii) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraphs (b)(1)(i) through (xiii) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(5) Where EPA and the countries of transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the importer documenting the countries' consents and EPA's consent. Where any of the countries of transit or EPA objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the importer.

(6) Export of hazardous wastes originally imported into the United States. Export of hazardous wastes that were originally imported into the United States for recycling or disposal

operations is prohibited unless an exporter in the United States complies with the export requirements in § 262.83(b)(7).

(c) *RCRA Manifest instructions for import shipments.* (1) When importing hazardous waste, the importer must meet all the requirements of § 262.20 for the manifest except that:

(i) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(ii) In place of the generator's signature on the certification statement, the importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(2) The importer may obtain the manifest form from any source that is registered with the EPA as a supplier of manifests (*e.g.,* states, waste handlers, and/or commercial forms printers).

(3) In the International Shipments block, the importer must check the import box and enter the point of entry (city and State) into the United States.

(4) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with § 264.71(a)(3) and § 265.71(a)(3) of this chapter.

(5) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the receiving facility, the importer must instruct the transporter in writing via fax, email or mail to:

(i) Return the hazardous waste to the foreign exporter or designate another facility within the United States; and

(ii) Revise the manifest in accordance with the importer's instructions.

(d) *Movement document requirements for import shipments.*

(1) The importer must ensure that a movement document meeting the conditions of paragraph (d)(2) of this section accompanies each transboundary movement of hazardous wastes from the initiation of the shipment in the country of export until it reaches the receiving facility, including cases in which the hazardous waste is stored and/or sorted by the importer prior to shipment to the receiving facility, except as provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(i) For shipments of hazardous waste within the United States by water (bulk shipments only), the importer must forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if imported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the importer must forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if imported by rail.

(2) The movement document must include the following paragraphs (d)(2)(i) through (d)(2)(xv) of this section:

(i) The corresponding AOC number(s) and waste number(s) for the listed waste;

(ii) The shipment number and the total number of shipments under the AOC number;

(iii) Foreign exporter name, address, telephone, fax numbers, and email address;

(iv) Receiving facility name, EPA ID number, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(v) Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and email address;

(vi) Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable OECD waste code for each hazardous waste from the lists incorporated by reference in § 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name (if not the foreign exporter), address, telephone, fax numbers, and email of the foreign company originating the shipment;

(ix) Company name, EPA ID number, address, telephone, fax, and email address of all transporters;

(x) Identification (license, registered name or registration number) of means of transport, including types of packaging;

(xi) Any special precautions to be taken by transporter(s);

(xii) Certification/declaration signed and dated by the foreign exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer (*e.g.,* transporter, importer, and owner or operator of the receiving facility);

(xiv) Each person that has physical custody of the waste from the time the movement commences until it arrives at the receiving facility must sign the movement document (*e.g.,* transporter, importer, and owner or operator of the receiving facility); and

(xv) The receiving facility must send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the foreign exporter, to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authorities of the countries of export and transit.

(e) Duty to return or export hazardous wastes. When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the hazardous waste in an environmentally sound manner in the United States, the hazardous waste must be returned to the country of export or exported to a third country. The provisions of paragraph (b)(6) of this section apply to any hazardous waste shipments to be exported to a third country. If the hazardous waste must be returned, the importer must inform EPA, using the allowable methods listed in paragraph (b)(1) of this section, and the foreign exporter of the need to return the shipment. EPA will then inform the competent authorities of the original country of export and any countries of transit for the return shipment's route, citing the reason(s) for returning the waste. The importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the importer.

(f) *Import Contract Requirements.* (1) Imports of hazardous waste must occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the foreign exporter, importer, and the owner or operator of the receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (f)(2)(i) through (iv) of this section:

(i) The foreign company from where each import shipment of hazardous waste is initiated;

(ii) Each person who will have physical custody of the hazardous wastes;

(iii) Each person who will have legal control of the hazardous wastes; and

(iv) The receiving facility.

(3) Contracts or equivalent arrangements must specify the use of a movement document in accordance with § 262.84(d).

(4) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export submitted by either the foreign exporter or the importer. In such cases, contracts must specify that:

(i) The transporter or receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the foreign exporter and importer, and the competent authority where the shipment is located of the need to arrange alternate management or return; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of the hazardous wastes and, as the case may be, shall provide the notification for re-export required in § 262.83(b)(7).

(5) Contracts must specify that the importer or the receiving facility that performed interim recycling operations R12 to R13 or RC16, or interim disposal operations D13 through D15 or DC15 through DC17, as appropriate, will provide the notification required in § 262.83(b)(7) prior to the re-export of hazardous wastes.

(6) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to Paragraph (f)(6): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries or other foreign countries do. It is the responsibility of the importer to ascertain and comply with such requirements; in some cases, persons or facilities located in those countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(7) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(8) Upon request by EPA, importers or disposal or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

(g) *Confirmation of Recovery or Disposal.* The receiving facility must do the following:

(1) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authority of the country of export.

(2) If the receiving facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, the receiving facility shall promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC14 to RC15, or one of disposal operations D1 through D12, or DC15 to DC16 to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authority of the country of export.

(h) *Recordkeeping.* (1) The importer shall keep the following records: (i) A copy of each notification of intent to export that the importer sends to EPA under paragraph (b)(1) of this section and each EPA AOC it receives in response for a period of at least three (3) years from the date the hazardous waste was accepted by the initial foreign transporter; and

(ii) A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) The receiving facility shall keep the following records:

(i) A copy of each confirmation of delivery (*i.e.,* movement document) that the receiving facility sends to the foreign exporter for at least three (3) years from the date it received the hazardous waste;

(ii) A copy of each confirmation of recovery or disposal that the receiving facility sends to the foreign exporter for at least three (3) years from the date that it completed processing the waste shipment; and

(iii) For the receiving facility that performed any of recovery operations R12 to R13, or RC16, or disposal operations D13 through D15, or DC17, a copy of each confirmation of recovery or disposal that the final recovery or disposal facility sent to it for at least three (3) years from the date that the final recovery or disposal facility completed processing the waste shipment.

(iv) A copy of each contract or equivalent arrangement established per paragraph 262.84(f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(3) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.85 [Reserved]

§ 262.86 [Reserved]

§ 262.87 [Reserved]

§ 262.88 [Reserved]

§ 262.89 [Reserved]

■ 15. Amend the Appendix to Part 262, of the manifest instructions, under ''II Instructions for International Shipment Block'' by revising Item 16 to read as follows:

Appendix to Part 262—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700–22 and 8700–22A and Their Instructions)

* * * * *

II. Instructions for International Shipment Block

Item 16. International Shipments

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United

States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States.

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 16. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 17. Amend § 263.10 by:
■ a. Removing from paragraph (a), in the Note, the last paragraph; and
■ b. Revising paragraph (d).
The revisions read as follows:

§ 263.10 Scope.

* * * * *

(d) A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to this Subpart and to all other relevant requirements of subpart H of 40 CFR part 262, including, but not limited to, 40 CFR 262.83(d) and 262.84(d) for movement documents.

* * * * *

■ 18. Amend § 263.20 by revising paragraphs (a)(2), (c), (e)(2), (f)(2), and (g) to read as follows:

§ 263.20 The manifest system.

(a)(1) * * *

(2) *Exports.* For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with this section, as appropriate, and a movement document that includes all information required by § 262.83(d).

* * * * *

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a movement document that includes all information required by § 262.83(d) also accompanies the hazardous waste. In the case of imports, the transporter must ensure that a movement document that includes all information required by § 262.84(d) also accompanies the hazardous waste.

* * * * *

(e) * * *

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports or imports, a movement document that includes all information required by 40 CFR 262.83(d) or 40 CFR 262.84(d) accompanies the hazardous waste; and

* * * * *

(f) * * *

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports or imports, a movement document that includes all information required by 40 CFR 262.83(d) or 40 CFR 262.84(d) accompanies the hazardous waste at all times.

* * * * *

(g) Transporters who transport hazardous waste out of the United States must:

(1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

(2) Retain one copy in accordance with § 263.22(d);

(3) Return a signed copy of the manifest to the generator; and

(4) For paper manifests only, send a copy of the Manifest to the e-Manifest system in accordance with the allowable methods specified in 40 CFR 264.71(a)(2)(v).

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 19. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

■ 20. Amend § 264.12 by revising paragraph (a) to read as follows:

§ 264.12 Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must submit the following required notices:

(1) As per § 262.84(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in § 262.84(b)(1) at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) As per § 262.84(d)(2)(xv), a copy of the movement document bearing all required signatures to the foreign exporter; to EPA using the allowable methods listed in § 262.84(b)(1); and to the competent authorities of the countries of export and transit within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years.

(3) As per § 262.84(e), if the waste must be returned to the country of export and the owner or operator of the facility is acting as the importer, such owner or operator of the facility must inform EPA, using the allowable methods listed in § 262.84(b)(1) of the need to return the shipment.

(4) As per § 262.84(f), such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authority of the country of export.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authority of the country of export.

* * * * *

■ 21. Amend § 264.71 by revising paragraphs (a)(3) and (d) to read as follows:

§ 264.71 Use of manifest system.

(a)(1) * * *

(3) The owner or operator of a facility receiving hazardous waste subject to 40

CFR part 262, subpart H from a foreign source must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, followed by the relevant list number for the waste from block 9b in parentheses. If additional space is needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700–22A); and

(ii) Send a copy of the manifest within thirty (30) days of delivery to EPA using the allowable methods listed in § 262.84(b)(1).

* * * * *

(d) As per § 262.84(d)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authorities of the countries of export and transit. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 22. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

■ 23. Amend § 265.12 by revising paragraph (a) to read as follows:

§ 265.12 Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must submit the following required notices:

(1) As per § 262.84(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in § 262.84(b)(1) at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) As per § 262.84(d)(xv), a copy of the movement document bearing all required signatures to the foreign exporter; to EPA using the allowable methods listed in § 262.84(b)(1); and to the competent authorities of the countries of export and transit within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years.

(3) As per § 262.84(e), if the waste must be returned to the country of export and the owner or operator of the facility is acting as the importer, such owner or operator of the facility must inform EPA, using the allowable methods listed in § 262.84(b)(1) of the need to return the shipment.

(4) As per § 262.84(f), such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, using either block 19 on the OECD/Basel ''Movement document for transboundary movements/shipments of waste'' or the Canadian ''Confirmation of Disposal or Recycling'' form, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authority of the country of export.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authority of the country of export.

* * * * *

■ 24. Amend § 265.71 by revising paragraphs (a)(3) and (d) to read as follows:

§ 265.71 Use of manifest system.

(a)(1) * * *

(3) The owner or operator of a facility that receives hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, followed by the relevant list number for the waste from block 9b in parentheses. If additional space is needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700–22A); and

(ii) Send a copy of the manifest to EPA using the allowable methods listed in § 262.84(b)(1) within thirty (30) days of delivery.

* * * * *

(d) As per § 262.84(d)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authorities of the countries of export and transit. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 25. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

■ 26. Amend § 266.70 by revising paragraph (b) to read as follows:

§ 266.70 Applicability and requirements.

* * * * *

(b) Persons who generate, transport, or store recyclable materials that are regulated under this subpart are subject to the following requirements:

(1) Notification requirements under section 3010 of RCRA;

(2) Subpart B of part 262 (for generators), §§ 263.20 and 263.21 (for transporters), and §§ 265.71 and 265.72 (for persons who store) of this chapter; and

(3) For precious metals exported to or imported from other countries for recovery, subpart H of part 262 and § 265.12.

* * * * *

■ 27. Amend § 266.80 by:

■ a. Revising paragraph (a) table entries 6 and 7, and

■ b. Adding paragraph (a) table entries 8, 9, and 10.

The revisions and additions to the table read as follows:

§ 266.80 Applicability and requirements.

(a) * * *

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
*	*	*	*
(6) Will be reclaimed through regeneration or any other means.	export these batteries for reclamation in a foreign country.	are exempt from 40 CFR parts parts 262 (except for § 262.11, § 262.12 and subpart H), 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR part 261, § 262.11, § 262.12, and 40 CFR part 262, subpart H.
(7) Will be reclaimed through regeneration or any other means.	Transport these batteries in the U.S. to export them for reclamation in a foreign country.	are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	must comply with applicable requirements in 40 CFR part 262, subpart H.
(8) Will be reclaimed other than through regeneration.	Import these batteries from foreign country and store these batteries but you aren't the reclaimer.	are exempt from 40 CFR parts 262 (except for § 262.11, § 262.12 and subpart H), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, § 262.11, § 262.12, part 262 subpart H, and applicable provisions under part 268.
(9) Will be reclaimed other than through regeneration.	Import these batteries from foreign country and store these batteries before you reclaim them.	must comply with 40 CFR 266.80(b) and as appropriate other regulatory provisions described in 266.80(b).	are subject to 40 CFR parts 261, § 262.11, § 262.12, part 262 subpart H, and applicable provisions under part 268.
(10) Will be reclaimed other than through regeneration.	Import these batteries from foreign country and don't store these batteries before you reclaim them.	are exempt from 40 CFR parts 262 (except for § 262.11, § 262.12 and subpart H), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, § 262.11, § 262.12, part 262 subpart H, and applicable provisions under part 268.

* * * * *

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

■ 28. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

■ 29. Amend § 267.71 by:

■ a. Revising paragraphs (a)(4) and (5);

■ b. Adding paragraph (a)(6); and

■ c. Revising paragraph (d).

The revisions and additions read as follows:

§ 267.71 Use of the manifest system.

(a) * * *

(4) Within 30 days after the delivery, send a copy of the manifest to the generator;

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery; and

(6) If a facility receives hazardous waste subject to 40 CFR part 262, subpart H from a foreign source, the receiving facility must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, followed by the relevant list number for the waste from block 9b in parentheses. If additional space is needed, the receiving facility should use a Continuation Sheet(s) (EPA Form 8700–22A); and

(ii) Mail a copy of the manifest to EPA using the allowable methods listed in § 262.84(b)(1) within thirty (30) days of delivery.

* * * * *

(d) As per § 262.84(d)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authorities of the countries of export and transit. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 30. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

■ 31. Amend § 271.1 (j)(2) by:

■ a. Adding an entry to Table 1 in chronological order by ''Promulgation date'' and

■ b. Adding an entry to Table 2 in chronological order by ''Effective date''.

The additions read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

(2) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* *	* * *	*	*
[*Date of publication of final rule in the* ***Federal Register*** *(FR)*].	Hazardous Waste Export-Import Revisions	[*Insert FR page numbers*].	[*Date of X months from date of publication of final rule*].

* * * * *

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* *	* * *	*	*
[*Date X days after of publication of final rule in the* ***Federal Register*** *(FR)*].	Hazardous Waste Export-Import Revisions	3017(a)	[***Federal Register*** *citation*].

* * * * *

■ 32. Amend § 271.10 by revising paragraph (e),

The revision reads as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR part 262 subpart H, and other import and export regulations, except that States shall not replace EPA or international references with State references.

* * * * *

■ 33. Amend § 271.11 by revising paragraph (c)(4) to read as follows:

§ 271.11 Requirements for transporters of hazardous wastes.

(c) * * *

(4) For exports of hazardous waste, the state must require the transporter to refuse to accept hazardous waste for export if the exporter has not provided the movement document, a manifest listing the consent numbers for the hazardous waste shipment, and the ITN number for the hazardous waste shipment, to carry a movement document and manifest with the shipment, to sign and date the International Shipments Block of the manifest to indicate the date the shipment leaves the U.S. and to send a copy of the manifest, if in paper form, to the e-Manifest system using the allowable methods listed in § 264.71(a)(2)(v).

* * * * *

■ 34. Amend § 271.12 by revising paragraph (i)(2) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(i) * * *

(2) To EPA using the allowable methods listed in § 262.84(b)(1) to indicate the receipt of a shipment of hazardous waste imported into the U.S. from a foreign source.

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

■ 35. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

■ 36. Revise § 273.20 to read as follows:

§ 273.20 Exports.

A small quantity handler of universal waste who sends universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

■ 37. Amend § 273.39 by revising introductory paragraphs (a) and (b) to read as follows:

§ 273.39 Tracking universal waste shipments.

(a) *Receipt of shipments.* A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste received must include the following information:

* * * * *

(b) *Shipments off-site.* A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste sent must include the following information:

* * * * *

■ 38. Revise § 273.40 to read as follows:

§ 273.40 Exports.

A large quantity handler of universal waste who sends universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

■ 39. Revise § 273.56 to read as follows:

§ 273.56 Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

■ 40. Amend § 273.62 by revising introductory paragraph (a) to read as follows:

§ 273.62 Tracking universal waste shipments.

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste received must include the following information:

* * * * *

■ 41. Revise § 273.70 to read as follows:

§ 273.70 Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the requirements of 40 CFR part 262 subpart H and the applicable requirements of this part, immediately after the waste enters the United States, as indicated in paragraphs (a) through (c) of this section:

(a) A universal waste transporter is subject to the universal waste transporter requirements of subpart D of this part.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of subparts B or C, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of subpart E of this part.

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Part III

Federal Communications Commission

47 CFR Parts 51 and 63
Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers and Special Access for Price Cap Local Exchange Carriers; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 63

[GN Docket No. 13–5, RM–11358; WC Docket No. 05–25, RM–10593; FCC 15–97]

Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers and Special Access for Price Cap Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission initiated this rulemaking in January 2015 to help guide and accelerate the technological revolutions that are underway involving the transitions from networks based on TDM circuit-switched voice services running on copper loops to all-IP multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. This rulemaking and order on reconsideration is only one of a series of Commission actions to protect core values and ensure the success of these technology transitions. In this item, we take steps to ensure that competition continues to thrive and to protect consumers during transitions. These steps will help to ensure that the technology transitions continue to succeed.

DATES: Effective November 18, 2015, except for 47 CFR 51.325(a)(4) and (e), 51.332, and 51.333(b) and (c), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order on Reconsideration in GN Docket No. 13–5, RM–11358, and WC Docket No. 05–25, RM–10593, FCC 15–97, adopted August 6, 2015 and released August 7, 2015. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It is available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis

I. Introduction

1. Communications networks are rapidly transitioning away from the historic provision of time-division multiplexed (TDM) services running on copper to new, all-Internet Protocol (IP) multimedia networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. Our actions today further the technology transitions underway in our Nation's fixed communications networks that offer the prospect of innovative and improved services to consumers and businesses alike. The core goals of the January 2014 *Technology Transitions Order* frame our approach here. In the *Technology Transitions Order,* we emphasized the importance of speeding market-driven technological transitions and innovations while preserving the core statutory values as codified by Congress: Competition, consumer protection, universal service, and public safety. Furthering these core values will accelerate customer adoption of technology transitions. Today, we take the next step in advancing longstanding competition and consumer protection policies on a technologically-neutral basis in order to ensure that the deployment of innovative and improved communications services can continue without delay.

2. Industry is investing aggressively in modern telecommunications networks and services. Overall, according to data supplied by USTelecom and AT&T, capital expenditures by broadband providers topped $75 billion in 2013 and continue to increase. AT&T recently announced that by the year 2020, 75 percent of its network will be controlled by software. To do this, AT&T is undergoing a massive effort to train about 130,000 of its employees on software-defined networking architecture and protocols. AT&T has also expanded its wireline IP broadband network to 57 million customer locations, as well as extended fiber to 725,000 business locations. Moreover, Verizon passes more than 19.8 million premises with its all-fiber network—the largest such network in the country—and it projects that soon about 70 percent of the premises in its landline territory will have access to all-fiber facilities. Verizon too has announced an SDN-based strategy ''to introduce new operational efficiencies and allow for the enablement of rapid and flexible service delivery to Verizon's customers.'' And CenturyLink has announced the launch of 1 Gbps broadband service to 16 cities. According to recent reports, CenturyLink's national fiber network upgrade has expanded availability of CenturyLink's gigabit broadband services to nearly 490,000 business locations. These are just a few of many examples in which industry is investing heavily to bring the benefits of new networks and services to customers of all sizes.

3. We recognize that the success of the technology transitions is dependent, among other things, on clear and certain direction from the Commission that preserves the historic values that Congress has incorporated in the Communications Act of 1934, as amended (the Act). In the November 2014 *Notice of Proposed Rulemaking (NPRM),* 80 FR 450, we sought comment on limited oversight that would encourage transitions that could otherwise be delayed if a portion of consumers were left behind or competition were allowed to diminish—recognizing that the transitions that are underway are organic processes without a single starting or stopping point. Building on that NPRM, in this item we support the transitions by adopting limited and targeted regulation to preserve competition and to protect consumers, especially those in vulnerable populations who have not yet voluntarily migrated from plain old telephone service (POTS) and other legacy services. In taking these steps, we seek to avoid the need for future regulation and dispute resolution that could cause delays down the road. Carriers involved in the historic transitions have made clear their intention to protect consumers and preserve a competitive marketplace going forward, and the pro-transition rules we adopt today are consistent with those mutually shared goals.

4. Building on our proposals in the *NPRM,* we adopt clear ''rules of the road'' to ensure that all consumers will enjoy the benefits of two distinct but related kinds of technology transitions: (1) Changes in network *facilities,* and in particular, retirement of copper facilities; and (2) changes that involve the discontinuance, impairment, or reduction of legacy *services,* irrespective of the network facility used to deliver those services. We summarize each of the actions that we take today below.

5. *Informing and Protecting Consumers as Networks and Services Change.* We take the following actions to ensure that consumers are able to make informed choices and that new retail services meet consumers' fundamental needs:

• *Copper Retirement:* We believe that the best balance is struck when consumers are informed, technological

progress is fully incented, and current networks are maintained while they are in use. To that end, we reaffirm our decision not to create an approval requirement for retirement of legacy facilities so long as the change of technology does not discontinue, reduce, or impair the services provided—ensuring that incumbent local exchange carriers (LECs) can continue to transition to an all-fiber environment. However, because our current network change rules do not take account of the needs of consumers for accurate information about the consequences of retirements of copper facilities, we provide simply that incumbent carriers (*i.e.,* incumbent LECs) must provide notice of planned copper retirements to retail customers when such retirements remove copper to the customers' premises, along with particular consumer protection measures. We define ''copper retirement'' so that incumbent LECs know when these responsibilities are triggered. The definition that we adopt will prevent copper facilities from being ''*de facto* retired'' without adequate notice to affected persons.

- *Service Discontinuance:* Congress has mandated, per Section 214 of the Act, that carriers must obtain our approval before they discontinue, reduce, or impair service to a community or part of a community. This discontinuance process allows the Commission to satisfy its obligation under the Act to protect the public interest and to minimize harm to consumers. For convenience, in certain circumstances this item uses ''discontinue'' (or ''discontinuance,'' etc.) as a shorthand that encompasses the statutory terms ''discontinue, reduce, or impair,'' unless the context indicates otherwise.

6. *Safeguarding the Public Interest by Preserving the Benefits of Competition.* Incumbent carriers compete with competitive carriers (*i.e.,* competitive LECs) to provide communications services to businesses, schools, healthcare facilities, government entities, and other organizations of all shapes and sizes. The competitive carriers often rely on a combination of their own facilities and the purchase of last-mile facilities and services from the incumbent carriers, such as unbundled network elements and special access services to provide business services. The organizations these carriers serve benefit from this competition in their purchase of communications services, which helps them serve their customers better and more efficiently. Within the subset of non-residential multi-location expenditures by companies with at least 250 employees, GeoResults estimated that in the third quarter of 2014 competitive LECs accounted for 32% of expenditures and non-LECs accounted for only 5% of expenditures. Through today's action, we are adopting policies to ensure competition thrives as our networks continue to transition. Specifically, we implement revisions to our copper retirement rules and our service discontinuance rules to ensure that: (i) Competitive carriers are adequately informed about technology changes that impact them; (ii) the interests of end users impacted by upstream changes in service by providers of wholesale inputs are adequately recognized as important to our service discontinuance process; and (iii) competitive carriers do not lose the access that they need to continue to provide the benefits of competition.

- We update the process by which incumbent LECs notify interconnecting entities of planned copper retirements. Among other things, we require incumbent LECs to provide at least six months' advance notice of proposed copper retirements to interconnecting carriers in order to provide such carriers adequate time to prepare their networks for the changes.
- To fulfill our statutory obligation to ensure that changes to telecommunications services that negatively affect the public occur with proper oversight, we clarify that a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input, but only when the carrier's actions will discontinue, reduce, or impair service to end users, including a carrier-customer's retail end users. We emphasize that carriers must consider the impact of their actions on end user customers, including the end users of carrier-customers.
- The Commission has long intended to conduct a comprehensive evaluation of dedicated high-capacity connections used daily and intensively by businesses and institutions to transmit their voice and data traffic, known traditionally as ''special access.'' That evaluation will enable us to address critical long-term questions about the state of competition for business data connections and the role of regulation in facilitating competitive markets. Today, we adopt an interim rule to preserve competitive access while the special access proceeding remains pending and to maintain incentives for all parties to rapidly transition to IP. We conclude that to receive authority to discontinue, reduce, or impair a legacy TDM-based service that is used as a wholesale input by competitive providers, an incumbent LEC must as a condition to obtaining discontinuance authority commit to providing competitive carriers

II. Report and Order

A. Background

7. The Commission initiated this rulemaking in November 2014 to help guide and accelerate the technological revolutions that are underway involving the transitions from networks based on TDM circuit-switched voice services running on copper loops to all-IP multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. This rulemaking is only one of a series of Commission actions to protect core values and ensure the success of these technology transitions. The Commission also is undertaking a comprehensive evaluation of the correct policies for the long-run concerning access to a key form of competitive inputs and technology change—special access. The Commission will use the data and public comment addressing the data to develop the long-term policies that will supersede the reasonably comparable wholesale access requirements adopted today. However, we recognize that for them to succeed, we need to ensure competition continues to thrive and we protect consumers, especially those in vulnerable populations, who rely on POTS and other legacy services.

8. Recent data indicates that 30 percent of all residential customers choose IP-based voice services from cable, fiber, and other providers as alternatives to legacy voice services. Moreover, 44 percent of households were ''wireless-only'' during January–June of 2014. The growth of ''wireless-only'' homes will necessitate more backhaul services than ever before, and these services are increasingly IP-based. Overall, almost 75 percent of U.S. residential customers (approximately 88 million households) no longer receive telephone service over traditional copper facilities. As consumer demand for faster service speeds continues, wireless providers and their customers have benefited from the transition to Ethernet, which is more easily scalable to increasing user demands compared to copper; and, by the end of 2014, certain incumbent LECs have dropped between 30 to 60 percent of their copper-based DS1 special access circuits, replacing these special access circuits with IP offerings. Similar change is occurring in the supply of mass-market services. Moreover, advancements in technology and interconnection have changed the relationship between broadband Internet access and Voice over Internet

Protocol (VoIP) applications such that users indiscriminately communicate between North American Numbering Plan (NANP) and IP endpoints on the public switched network.

9. At the same time, competitive carriers today continue to rely on incumbent LEC TDM-based DS1 and DS3 special access services to serve a large number of utility, residential, and enterprise customer locations throughout the United States. Commenters assert that many areas across the country have few viable alternatives to currently-available incumbent LEC copper loop or TDM-based wholesale inputs. Competitive LECs have submitted evidence in this record and in other proceedings that, in such areas, the prices incumbent LECs charge for these replacement wholesale inputs (*e.g.,* for 2 Mbps IP service) are significantly higher than a comparable service using a TDM-based service subject to a dominant carrier rate regulation.

10. The Commission received comments from over 65 parties in response to the *NPRM,* including incumbent and competitive carriers, and industry organizations representing wireless, cable, rural and communications equipment companies as well as consumer advocates, state public service commissions, and local government entities. And the National Telecommunications and Information Administration weighed in on behalf of the federal government, noting that ''U.S. government departments and agencies . . . are among the largest customers of U.S. telecommunication service providers'' and that the vagaries of the budgeting, appropriations, and procurement processes make it difficult for the government to accommodate transitions quickly. It thus noted the need for ''careful planning while supporting continued growth and innovation in our communications networks.'' These parties provided a wide range of arguments and legal analyses as well as relevant data and information on the important issues raised in the *NPRM* to help the Commission make informed findings and final rules. Despite their varying positions, all the parties recognize the significance of the technology transitions and the need to protect the enduring values of our communications network.

B. Discussion

1. Revision of Copper Retirement Processes To Facilitate Technology Transitions by Promoting Competition and Protecting Consumers

11. Today, we significantly update our copper retirement rules for the first time in over a decade to address the increasing pace of copper retirement and its implications for consumers and competition. We do so to facilitate the smoothest possible transition of the Nation's legacy communications networks to newer technologies while ensuring this transition happens free from the obstacles that might arise were this transition not handled responsibly. We believe the updated rules that we adopt today will benefit the entire ecosystem of industry and consumers by ensuring that everyone has the information they need to adapt to an evolving communications environment. Interconnecting entities will be able to accommodate the planned network changes without disruption of service to their customers. Competitive opportunities will be ensured, resulting in greater consumer choice. Government departments and agencies will not be left unable to respond to changes in the networks over which their vital communications services are provided. Customer confusion regarding the impact of planned copper retirements, and possible complaints arising from such confusion, will be minimized. And incumbent LECs will be able to move forward with highly beneficial planned network changes with greater comfort and certainty. Verizon, for instance, estimates that the cost of maintaining parallel copper facilities and the consumer welfare benefits from its existing fiber deployment each run in the hundreds of millions of dollars.

12. The Commission issued the current rules governing copper retirement in 2003 in the *Triennial Review Order.* At that time, fiber to the home deployment was in its infancy. In the intervening twelve years, however, incumbent LECs have built extensive fiber networks, with fiber becoming the preferred choice for new greenfield deployments and in some instances deployed in parallel to existing copper networks. And in the last few years, the pace of copper retirement has accelerated. This rapid pace of formal copper retirements, along with the deterioration of copper networks that have not been formally retired, has led to requests from both competitive LECs and public advocates for changes to the Commission's copper retirement rules to protect competition and consumers. We reaffirm that ''the increasing frequency and scope of copper retirements call into question key assumptions that underpinned our existing copper retirement rules.'' Indeed, today we find that the pace and impact of copper retirement necessitates changes to ensure that our rules governing copper retirement serve the public interest. Sixteen copper retirement notices have been filed with the Commission since November 2014. We thus conclude, as we tentatively concluded in the *NPRM,* that the foreseeable and increasing impact that copper retirement is having on competition and consumers warrants revisions to our network change disclosure rules to allow for greater transparency, opportunities for participation, and consumer protection. By retaining a notice-based process that promotes certainty for consumers, interconnecting carriers, and incumbent LECs, our actions advance the transition to fiber while serving our key pro-competition and pro-consumer goals.

13. We clarify at the outset that the revisions we adopt today to the network change disclosure rules are not intended to change the nature of the process from one based on notice to one based on approval. The current network change disclosure process applies to situations in which an incumbent LEC makes a change in its network facilities, such as when it replaces copper facilities with fiber. If this change in facilities does not result in a discontinuance, reduction, or impairment of service, then the carrier need not file an application under Section 214(a) seeking Commission authorization for the planned network change. Rather, it must only provide notice in compliance with the Commission's network change disclosure rules. However, some changes in network facilities can result in a discontinuance, reduction, or impairment of service for which Commission authorization is needed. For instance, in one prominent example, Verizon filed an application under Section 214(a) when it sought to replace the copper network serving Fire Island that was damaged by Superstorm Sandy with a wireless network over which it would provide its VoiceLink wireless service. We expect all carriers to consider carefully whether a proposed copper retirement will be accompanied by or be the cause of a discontinuance, reduction, or impairment of service provided over that copper such that they must file a discontinuance application pursuant to Section 63.71 of our rules. If the answer to that question is no, then the carrier need only comply with the Commission's network change disclosure process as revised herein.

(a) Copper Retirement Notice Process

(i) Expansion of Notice Requirements To Promote Competition

14. *Background.* Certain commenters express fear that incumbent LECs will use technology transitions as an opportunity to thwart competition from competitive LECs and others by erecting market barriers. Thus, competitive LECs and state commissions, as well as other commenters, largely support the concept of revising the network change disclosure rules to provide for more robust notice to competitors of planned copper retirements. On February 26, 2015, the California PUC filed a motion for acceptance of its late-filed comments because it was first able to consider the *NPRM* at its public meeting on February 5, 2015, and PUC staff was unable to provide a recommendation prior to that date. No oppositions to this motion were filed. We grant the California PUC's motion and accept its comments, which we cite herein without reference to the date filed. They believe that the existing network change disclosure rules ''are not sufficient to enable competitive LECs to prepare for an ILEC's broad-scale transition to an all-IP network.'' Incumbent LECs, on the other hand, argue that the Commission's network change disclosure rules are sufficient and that there is no need for the revisions proposed in the *NPRM.* They assert that the proposed revised requirements would impose onerous and unnecessary burdens on incumbent LECs. Cincinnati Bell asserts that the Commission should not require direct notice to interconnecting carriers because of the ''scores of interconnection agreements with CLECs, many of whom never became active or have only limited interconnection activity'' and because ''[m]any CLECs have been subject to various mergers and acquisitions but have failed to maintain current contact information.'' And many of the requirements proposed by competitive LEC commenters, they argue, go beyond the concept of adequate notice and would deter additional investment in fiber deployment. We note, however, that Windstream, which is both an incumbent LEC and a competitive LEC, has stated that it ''believes it could feasibly implement [the proposed] requirements, and they would not cause disruption to its copper retirement processes.''

15. *Discussion.* After reviewing the record before us, we conclude that the Commission's network change disclosure rules should be updated in light of marketplace developments to address the needs of competitive carriers for more robust notice of planned copper retirements. To make our rules sufficient for this purpose, we revise them to require incumbent LECs planning copper retirements to include in their network change disclosures a description of any changes in prices, terms, or conditions that will accompany the planned changes. In addition, as explained in detail below, we establish a process in which incumbent LECs must provide direct notice to interconnecting entities at least 180 days prior to the planned implementation date, except when the facilities to be retired are no longer being used to serve customers in the affected service area. The requirements that we adopt reflect the revisions proposed in the *NPRM,* subject to certain modifications discussed further below.

16. We conclude that receipt of the additional information and the extended notice period we adopt today will allow interconnecting entities to work more closely with their customers to ensure minimal disruption to service as a result of any planned copper retirements. Contrary to some commenters' assertions, the record in this proceeding contains significant evidence that our existing rules are insufficient to ensure adequate notice to interconnecting carriers. We wish to avoid situations such as the one recounted by XO, where it received notice that one of its customers—a group of nursing homes—would be losing service the next day as a result of glitches in the copper retirement process (a result XO narrowly managed to avoid). Although some commenters claim that our rule changes will discourage copper retirements, we find that retaining a time-limited notice-based process ensures that our rules strike a sensible and fair balance between meeting the needs of interconnecting carriers and allowing incumbent LECs to manage their networks.

17. Also contrary to some commenters' assertions, we find that the revised notice requirements do not serve to conflate the Section 251(c)(5) network change disclosure process and Section 214(a) discontinuance process. Other commenters, however, are concerned that incumbent LECs are themselves ''blur[ring] the distinction between mere retirement of copper facilities (while the carrier continues to offer the same service(s) using other facilities), on the one hand, and the discontinuance, reduction, or impairment of service on the other.'' Consistent with the proposal in the *NPRM,* we retain a notice-based regime for copper retirement, in contrast to the approval-based process for a Section 214(a) discontinuance of service. The Rural Broadband Policy Group asserts that we should not permit automatic enrollment in or switching of services unless explicitly approved by the customer. We believe this concern is obviated by the fact that we are retaining the notice-based nature of the network change disclosure process. Customers will have an opportunity to obtain service from other providers if they determine based upon a notice of a planned copper retirement that they no longer desire to receive service through their current provider. We realize certain commenters are concerned that a planned copper retirement might amount to a discontinuance of service. As discussed above, any loss of service as a result of a copper retirement may constitute a discontinuance, reduction, or impairment of service for which a Section 214(a) application is necessary. The modifications we adopt today do not convert the network change disclosure process. Customers will have an opportunity to obtain service from other providers if they determine based upon a notice of a planned copper retirement that they no longer desire to receive service through their current provider. We realize certain commenters are concerned that a planned copper retirement might amount to a discontinuance of service. As discussed above, any loss of service as a result of a copper retirement may constitute a discontinuance, reduction, or impairment of service for which a Section 214(a) application is necessary.

18. *Scope and Form.* In the *NPRM,* we proposed requiring that incumbent LECs provide public notice of copper retirement by the means currently permitted by Section 51.329(a) of the Commission's rules, as well as requiring them to directly provide notice of copper retirement to ''each information service provider and telecommunications service provider that directly interconnects with the incumbent LEC's network.'' Certain commenters support the proposal contained in the *NPRM,* while other commenters seek to expand the scope further to also require notice to additional entities. For example, one group of commenters urged the Commission to extend the notice requirements to competitive LECs that purchase UNEs and special access. We decline to adopt this proposal. First, by broadening copper retirement notice to encompass ''each entity'' that directly interconnects with the incumbent LEC's network, we ensure notice to a broad range of entities. Second, if after a

change from copper to fiber facilities UNEs will no longer be available, that is an issue arising under Section 251(c)(3) of the Act, pertaining to unbundled access, rather than Section 251(c)(5), which applies to notice of change in facilities. With respect to special access, that is a service issue rather than a facilities issue. As such, any change in the availability may fall under the purview of our Section 214(a) authority, as discussed *infra* in Section II.B.2.

19. Based on the record before us, we conclude that we should adopt these proposed requirements, modified to require notice to ''each entity'' within the affected service area that directly interconnects with the incumbent LEC's network. We find that doing so constitutes ''reasonable public notice'' under Section 251(c)(5) of the Act because it will ensure that all entities potentially affected by a planned copper retirement, be they telephone exchange service providers, information service providers, or other types of providers that may or may not yet have been classified by the Commission, receive the information necessary to allow them to accommodate the copper retirement with minimal impact on their end user customers. We do not, however, similarly expand the pool of entities to whom incumbent LECs must provide direct notice of network changes outside of the copper retirement context. The record does not contain any evidence sufficient to justify such an expansion.

20. We are not persuaded by the arguments of incumbent LEC commenters that this requirement ''would impose onerous and unnecessary administrative burdens.'' AT&T argues that this requirement, in conjunction with expansion of the copper retirement notice requirement to encompass retirement of copper feeder plant, would necessitate providing direct notice to potentially hundreds of competitive LECs that do not have any facilities implicated by the planned network change. Because under existing requirements incumbent LECs must notify potentially large numbers of directly interconnected telephone exchange service providers as part of the copper retirement process, we do not find that argument supports the claim that the revisions we adopt today are unreasonable. Under the predecessor rules to those we adopt today, copper retirements were already subject to the ''short term notice provisions'' set forth in Section 51.333(a). Unless otherwise specified or dictated by context, citations in this Order to specific sections of the Commission's rules governing network change disclosures are to the version of those rules as they exist prior to the effective date of the rules adopted herein. Under Section 51.333(a), which applies ''[i]f an incumbent LEC wishes to provide less than six months' notice of planned network changes,'' the incumbent LEC must file with the Commission a certificate of service that includes a statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network; and the name and address of each such telephone exchange service provider upon which the notice was served. Such certificates of service reflect that incumbent LECs have been obligated to provide notice to large numbers of interconnecting carriers.

21. Incumbent LECs have not provided sufficient detail to establish that providing the direct notice described in those certificates of service was burdensome or specifically how expanding the pool of recipients as proposed in the *NPRM* would impose a new ''onerous and unnecessary administrative burden'' on them. Rather, they rely solely on conclusory allegations. As a result, we conclude that expanding this existing requirement to include all entities that directly interconnect with the incumbent LEC's network within the affected service area would not impose an appreciably greater burden on incumbent LECs. We also find this revision to our rules reasonable because it will ensure that all competitive LECs and other interconnecting entities that could be affected by the planned copper retirement receive information that would assist them in preparing to accommodate the planned network change. We require the method of transmission of the notice to match existing requirements for notice to interconnecting telephone exchange service providers, as the record does not indicate that this existing requirement has been insufficient. This approach provides as much flexibility as possible to incumbent LECs while ensuring that the notice will serve its function.

22. The rule that we adopt today requires notice to the Commission and omits the option to provide written public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site. This is merely a technical modification of our proposal, under which some form of notification to the Commission would have been required in all prior cases and publication-based notice would have been optional and thus not required. Therefore, this change streamlines our rules and emphasizes that notice to the Commission initiates the copper retirement process. We find this change warranted to ensure that the Commission is notified promptly of all planned copper retirements and to streamline the rule. We nonetheless encourage incumbent LECs to provide notice through industry fora, industry publications, and the carrier's publicly accessible Internet site as a good practice.

23. *Content of Notice.* In the *NPRM,* we proposed requiring incumbent LECs to include in their public notices of copper retirement, and thus their notices to interconnecting carriers, the information currently required by Section 51.327(a) of our rules, as well as ''a description of any changes in prices, terms, or conditions that will accompany the planned changes.'' Based on the record before us, we conclude that it is appropriate to adopt these proposed requirements. We find that doing so is consistent with Section 251(c)(5)'s mandate that incumbent LECs provide ''information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks'' because it will ensure that interconnecting entities, including competitive LECs, are fully informed about the impact that copper retirements will have on their businesses.

24. We are unpersuaded by incumbent LEC commenters' assertions that the proposed expanded copper retirement notice requirements would impose an undue burden on them because it is impossible to determine how a planned change can be expected to impact various interconnecting entities. Section 51.327(a) already requires that incumbent LEC network change public notices include ''changes planned'' and ''the reasonably foreseeable impact of the planned changes.'' We conclude that the proposed expanded content requirement, which is limited to a description of any changes in prices, terms, or conditions that will accompany the planned retirement, is a narrow and targeted extension of the existing requirement to provide notice of the ''reasonably foreseeable impact of the planned changes'' already required by Section 51.327(a)(6) of our rules. We address commenter concerns regarding our legal authority to require this information in copper retirement notices *infra* in Section II.B.1.a(vi). We

do not believe providing this additional information will present an undue burden on incumbent LECs, and any such additional burden will be outweighed by the needs for an interconnecting entity to have sufficient information to adjust its network to accommodate planned copper retirements, which could require costly and disruptive changes to the interconnecting carrier's network simply to allow it to continue serving its end user customers. Indeed, the Commission rejected this very argument when it adopted the network change disclosure rules.

25. We decline, however, to require that the descriptions of the potential impact of the planned changes be specific to each interconnecting carrier to whom an incumbent LEC must give notice, as requested by the Competitive Carriers Association. We conclude that such a requirement would impose an unreasonable burden on incumbent LECs. We also decline to require, as suggested by Windstream, that copper retirement notices include information regarding impacted circuits and wholesale alternatives. Section 51.327(a) already requires that notices of planned network changes include references to technical specifications, protocols, and standards regarding transmission, signaling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection. And as discussed below, the rule we adopt today requires that incumbent LECs work in good faith with interconnecting entities to provide information necessary to assist them in accommodating planned copper retirements without disruption of service to their customers. We conclude that these requirements, included in proposed new Section 51.332, already ensure that enough information will be provided to address Windstream's concerns and ensure sufficient protection to interconnecting carriers. We further conclude that such requirements will adequately address the concerns raised by Cincinnati Bell that incumbent LECs cannot ''know what type of alternative arrangements might suit any impacted carriers.''

26. We conclude that the content requirements we adopt today capture the needs of competitive providers for information that allows them to plan for and accommodate the planned network change while providing incumbent LECs the flexibility to provide that information in the form best suited to the particulars of their situation. We therefore require only that copper retirement notices include the information set forth in new Section 51.332(c). We decline to adopt a particular required format for copper retirement notices. We are not persuaded that the Commission's rules should mandate a particular format for copper retirement notices. Rather, we believe that a specified format could prove problematic. As noted by the California PUC, ''a uniform format may not cover all aspects of each provider's copper retirement plans. The FCC should require that all necessary components of the incumbent LEC's planned retirement be contained in any notice, but also allow each provider to include additional information about options available to customers.''

27. *Notice Period.* In the *NPRM,* we sought comment on whether the 90-day minimum notice period for copper retirements currently required by our rules is sufficient or whether it should be extended. Verizon asserts that if an incumbent LEC gives notice more than six months in advance of a planned implementation, there is no justification for requiring it to comply with the more burdensome short-term notice rules. However, the Commission's short-term notice rules apply to planned copper retirements, and provide that ''under no circumstances may an incumbent LEC provide less than 90 days' notice of such a change.'' In response, commenters propose that if we replace the existing time period, we adopt either six months, one year, or an unspecified amount of time. Commenters proposed a variety of time periods for notice, ranging from the existing ninety days, to 180 days, to one year, to an unspecified amount of time as is provided for in Section 68.110(b) of the Commission's rules. Based on the record in this proceeding, we conclude that 180 days' advance notice of copper retirements is an appropriate time frame. We find that the ninety-days' notice of planned copper retirements currently provided for by the Commission's network change disclosure rules is insufficient. Most competitive LECs provide service to business customers pursuant to multi-year contracts. And competitive LECs assert that a ninety-day notice period ''may not provide competitive carriers with sufficient lead time to make the upgrades or reconfigurations necessary to complete a seamless transition to IP-based service, or to make alternative arrangements.'' The record reflects numerous instances in which competitors and their customers have suffered significantly due to the short notice period. Although current rules allow for the possibility for interconnecting carriers to object and attempt to extend the retirement to six months (*i.e.,* approximately 180 days), this procedure is rarely used, likely because of the short time to file and the fact that objections are deemed denied absent Commission action. Indeed, at least one competitive LEC asserts that shortcomings in the incumbent LEC's public notice precluded any meaningful opportunity to object within the permitted time period.

28. We conclude that a notice period of at least 180 days (*i.e.,* approximately six months) strikes an appropriate balance between the planning needs of interconnecting carriers and their customers and the needs of incumbent LECs to be able to move forward in a timely fashion with their business plans. The period of time that we adopt is approximately the maximum time period that had been available in response to a successful objection previously. We conclude a notice period of this length will not impose an undue burden on incumbent LECs, who must plan their deployments over extended periods of time. Indeed, at least one incumbent LEC has acknowledged that it has provided notice to customers of a planned fiber-to-the-premises overbuild deployment six months prior to deployment. Regardless, other incumbent LEC commenters contend that we should not extend the ninety-day notice period in the existing rules. And we find that any increased burden on incumbent LECs is outweighed by the need to ensure that interconnecting carriers receive sufficient notice to allow them to accommodate the transition without disruption of service to their customers, which can include enterprise and government customers whose communications needs and budgeting concerns require more than 90 days' notice. To ensure at least 180 days of notice, we require notice to interconnected entities to be provided no later than the same date on which the incumbent LEC provides notice of the retirement to the Commission. After the Commission receives notice of the retirement, it will issue a public notice of the retirement, starting the 180-day ''countdown'' such that the copper retirement may go forward under our rules. This use of Commission public notice to trigger the ''countdown'' matches the predecessor process, matches our proposal in the *NPRM,* and helps to further ensure that the public is informed about copper retirements. The *NPRM* sought comment on extending the notice period to 180 days, but it did not specifically propose this change and therefore the proposed rules

retained the pre-existing 90-day ''countdown'' period. The shift to a 180-day ''countdown'' period retains the timing mechanism in the proposed rules but reflects that a notice period to interconnecting entities of at least 180 days is necessary.

29. We are not persuaded by Verizon that our existing requirements provide more than sufficient notice. It is the incumbent LEC itself that controls the timing of the decision to make or procure a product whose design necessitates the network change. This is a business decision on the part of the incumbent LEC, and, as such, there is no reason to assume that the timing it chooses will coincide with the needs of interconnecting carriers—indeed, as stated above, the record reflects that it does not. We agree with Verizon, however, that where facilities are no longer being used to serve any customers, whether wholesale or retail, a shorter notice period is appropriate. Accordingly, we do not apply the new notice period of at least 180 days to such situations and instead adopt a notice period of at least 90 days, which is similar to the baseline under the prior rules.

30. Finally, we find that in light of the longer notice period we adopt today, we will discard the objection procedures as they apply to copper retirements. Specifically, we will modify the proposed rule as it pertains to objection procedures to delete the references to implementation dates in proposed paragraphs (g), (h), and (i) in their entirety. We do not, however, remove the objection procedures pertaining to short-term notices of non-copper retirement network changes in Section 51.333 because we are not creating a fixed six-month notice period for such planned network changes and because there is no evidence in the record that the concerns pertaining to copper retirements apply equally to other types of network changes. The extended notice period we adopt today will provide to interconnecting entities a notice period similar to the six months they previously would have been afforded if they successfully objected to the timing of a planned network change. Under the current rules, an interconnecting provider can object to the timing of a copper retirement and, if successful, delay the implementation of that retirement to six months from the date the incumbent LEC gave its original notice. This fixed period following the Commission's release of public notice will provide parties sufficient opportunity to work together to allow for any accommodations needed to maintain uninterrupted service to end users. And by fixing a single time period following the Commission's release of public notice, we provide all parties certainty and avoid the costs inherent in the objection process, which itself will be beneficial to all concerned.

31. We recognize the importance of information flow to competitors' abilities to ensure that a retirement of copper facilities does not disrupt service to their end users. We therefore include a good faith communication requirement in the modified rule we adopt today. Under the prior rules, an interconnecting provider could request ''specific technical information or other assistance'' to enable it to accommodate the planned network change. And in the *NPRM,* we sought comment on what additional information interconnecting providers might need in order to make an informed decision. The good faith communication requirement we adopt today will ensure that interconnecting entities still may obtain the information they need in order to accommodate the planned copper retirement without disruption of service to their customers that they would have been entitled to seek through the objection procedures that we eliminate. Specifically, we provide that an entity that directly interconnects with the incumbent LEC's network may request that the incumbent LEC provide additional information where necessary to allow the interconnecting entity to accommodate the incumbent LEC's changes with no disruption of service to the interconnecting entity's end user customers, and we require incumbent LECs to work with such requesting interconnecting entities in good faith to provide such additional information. We conclude that incorporating a good faith requirement into the rule strikes an appropriate balance between the needs of interconnecting carriers for sufficient information to allow for a seamless transition and the need to not impose overly burdensome notice requirements on incumbent LECs. Certain commenters propose more extensive content requirements for copper retirement notices than we adopt today. WorldNet also proposes adoption of ''a requirement for an ILEC to work with a CLEC in good faith by responding to reasonable requests for additional information about a proposed retirement and to work collaboratively with a CLEC in effectuating desired CLEC transitions to alternate facilities.'' In the Further Notice of Proposed Rulemaking (FNPRM), we seek comment on possible specific indicia of such good faith. We note that the Commission will not hesitate to take appropriate measures, including enforcement action, where incumbent LECs fail to act in good faith to provide appropriate information to interconnecting entities.

32. We conclude that the good faith communication requirement that we adopt today is consistent with the First Amendment because it compels disclosure of factually accurate information in a commercial context. Compelled commercial disclosures are not afforded the same protections as prohibitions on speech. Indeed, the Supreme Court has held that ''[b]ecause the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides,'' the commercial speaker's ''constitutionally protected interest in *not* providing any particular factual information . . . is minimal.'' The Court held further in that case that an advertiser's rights are reasonably protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers, and that the right of a commercial speaker not to divulge accurate information regarding his services is not a fundamental right. Thus, compelled disclosure is subject to a less stringent standard of review than prohibitions on speech. The United States Court of Appeals for the DC Circuit has held that the holding in *Zauderer* can be read broadly and that government interests in addition to correcting deception can be invoked to sustain a mandate for the disclosure of purely factual information in the commercial context in the face of a First Amendment free speech challenge. We find that, in this case, the government has an interest sufficient to compel incumbent LECs to provide necessary technical information to interconnecting entities to enable those entities to accommodate planned copper retirements without disruption of service to their customers. The disclosure that we require is designed ultimately to protect retail customers. This entails the provision only of factual information. We therefore find that the good faith requirement is reasonably related to the government's interest in advancing competition, and that this interest outweighs the incumbent LECs' ''minimal'' interest in not providing particular factual information to interconnecting entities. We note that, even if the higher standard of *Central Hudson Gas & Electric Corp.* v. *Public Service Commission of New York* applied in this instance, the good faith communication requirement adopted as part of this Order satisfies this higher

standard of judicial scrutiny. Under *Central Hudson,* a court in a commercial speech case must determine: (1) Whether the expression is protected by the First Amendment; (2) whether the asserted government interest is substantial; and (3) whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest. Even assuming the expression is subject to constitutional protection, we believe that the asserted government interest in this case of protecting retail customers is, indeed, substantial. Similarly, we conclude that ensuring competition in communications is a substantial interest. Moreover, we also find that the good faith requirement does not impose a more extensive burden than necessary because it applies only to information that is *necessary* to meet the government interest in allowing interconnecting carriers to accommodate the incumbent LEC copper retirements with no disruption of service. Thus, even were the more stringent standard of *Central Hudson* to apply in this instance, we believe that the good faith communication requirement detailed above satisfies such a standard.

33. *Revisions to Other Rule Sections.* As proposed in the *NPRM,* we revise Section 51.331 by deleting paragraph (c), which provides that competing service providers may object to planned copper retirements by using the procedures set forth in Section 51.333(c), and we revise Section 51.333 to remove those provisions and phrases applicable to copper retirement. We find that consolidation of all notice requirements and rights of competing providers pertaining to copper retirements in one comprehensive rule provides clarity to industry and customers alike when seeking to inform themselves of their respective rights and obligations.

34. *Other Proposals.* We decline to adopt Ad Hoc's proposal that, for a network change to qualify as a ''mere'' copper retirement, in contrast to a service discontinuance, ''a carrier must present the same standardized interface to the end user as it did when it used copper.'' Ad Hoc argues that if a network change requires the use of ''new or upgraded terminating equipment to convert traffic on the new facility into a format compatible with the installed base of network interface devices, customer premises equipment (CPE), or inside wire,'' the carrier should ''install that terminating equipment on its own side of the network demarcation point . . . and absorb the costs of doing so as part of its network modernization costs.'' We are not persuaded that the requirement Ad Hoc proposes is necessary. Section 68.110(b) of the Commission's rules, which speaks to the effect of ''changes in facilities, equipment, operations, or procedures'' on customers' terminal equipment, requires only that a carrier afford customers notice of such changes if such changes can be reasonably expected to render the equipment incompatible with the carrier's facilities or require modification or alteration of the equipment, or otherwise materially affect use or performance, for the purpose of allowing the customer ''an opportunity to maintain uninterrupted service.'' While Section 68.110(b) requires mere notice, Ad Hoc's proposal goes significantly further by requiring significant action on the part of the carrier, and the record is insufficient to support this significant and potentially burdensome departure from our current rules. And, as noted by AT&T in opposing this proposal, there is no reason to believe that all changes to customer CPE will be ''costly'' and that customers will not desire any freedom to select their own upgraded CPE.

35. We also decline to adopt the proposal of certain commenters that incumbent LECs should provide competitive providers with an annual forecast of copper retirements. We understand that competitive LECs would find this type of information useful in planning for the effects copper retirements might have on their respective networks and customer contracts. However, incumbent LECs maintain that this type of information can constitute some of their most competitively sensitive information, and that such an advance disclosure requirement may risk putting them at a competitive disadvantage. We note that information contained in a forecast can change over time as circumstances change. Thus, the inclusion of a particular wire center in a copper retirement forecast does not guarantee that such a change in facilities will in fact occur or that it will occur within that timeframe. Thus, based on the record before us, we are skeptical of the value of such a requirement.

36. Finally, we decline to adopt a requirement that incumbent LECs establish and maintain a publicly available and searchable database of all their copper plant, whether it has been or will be retired, whether it will be removed, or a database of where copper retirements have occurred. Incumbent LECs oppose such a requirement because it ''would divert vital resources away from the deployment of new fiber'' and because ''CLECs seeking to purchase UNEs . . . already have access to preorder systems that identify loop availability.'' It simply is not clear based on the record available that creation of any such databases would be feasible or cost-effective. We are persuaded by commenters that such a requirement could impose an expensive and potentially duplicative, and therefore unnecessary, burden.

(ii) Notice to Retail Customers

37. *Background.* In the *NPRM,* we proposed revisions to the Commission's network change disclosure rules ''to provide additional notice of planned copper retirements to affected retail customers, along with particular consumer protection measures, and to provide a formal process for public comment on such plans.'' Specifically, we proposed requiring incumbent LECs to provide notice of planned copper retirements to retail customers who are directly impacted by the planned change, and we did not limit this proposal to consumers. We further proposed allowing incumbent LECs to provide such notice to retail customers by either written or electronic means, and we sought comment on possible procedures to ensure that such notice is both received and accessible by customers. We also proposed specific content requirements to ensure that retail customers receive sufficient information ''to understand the practical consequences of copper retirement'' and sought comment on whether the proposed requirements are adequate to protect consumer interests. With respect to the timing of the proposed notice to retail customers, we proposed imposing the same requirement that currently applies to notice to interconnecting carriers and giving such retail customers thirty days from the Commission's release of its Public Notice in which to comment on a proposed copper retirement. And we sought comment on our statutory authority to impose these proposed requirements. To address allegations of inappropriate actions taken by incumbent LECs with respect to consumers, we also sought comment on requiring incumbent LECs to ''supply a neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change,'' as well as requiring incumbent LECs to undertake consumer education efforts in connection with planned copper retirements.

38. *Discussion.* After reviewing the record before us, we conclude that modification of our network change disclosure rules to require direct notice to retail customers of planned copper retirements is warranted and is

consistent with the public interest, including our core value of consumer protection, and with Section 251(c)(5)'s requirement of reasonable public notice of network changes. To be clear, as explained further below, this notice is required only where the retail customer is within the service area of the retired copper and only where the retirement will result in the involuntary retirement of copper loops to the customer's premises, *i.e.,* in the circumstances in which retail customers are likely to be affected. Copper retirements of this nature often affect consumers and other end users, whether for better or for worse, and these customers need to understand how they will be affected. A variety of commenters support our proposal to require direct notice to retail customers of planned copper retirements. And consumers need to understand the ways in which copper retirement will *not* affect them; absent such notice, consumers may not understand that they may retain their existing service (if applicable in the particular circumstance). The record reflects numerous instances in which notice of copper retirement has been lacking, leading to consumer confusion. Public interest commenters have brought to our attention proceedings in various states, including Maryland, California, New York, New Jersey, Illinois, and the District of Columbia, alleging customer complaints about being migrated from copper networks to other types of facilities, including allegations that such migrations have resulted in a move from regulated to unregulated services, without adequate customer notice and consent. Based on this information, we are unconvinced by certain commenters' assertion that there is no record evidence to support the Commission's expressed concerns regarding customer confusion about their options. And such consumer complaints and confusion persist. Even commenters critical of aspects of our proposed customer notification requirements otherwise agree that consumers deserve to receive information regarding the effect of copper retirements on their service. And we believe that requiring incumbent LECs to provide this information to their customers will allow for a smoother transition by minimizing the potential for consumer complaints arising out of a lack of understanding regarding the planned network change.

39. We conclude the benefits of providing customers with the information needed to make informed decisions regarding the services they receive from incumbent LECs outweigh any additional burdens these new notice requirements may impose on the incumbent LECs. Indeed, incumbent LEC commenters note the importance of working with their customers in connection with copper-to-fiber transitions. CenturyLink has even made sure in at least one instance to send postcards to its own customers, as well as to advise competitive LECs when their end user customers would be affected by a planned network change. And under the rules we adopt today, which we have modified from the rules proposed in the *NPRM* in order to minimize the burden they impose on incumbent LECs, incumbent LECs will be required to provide only one neutral statement to consumers and will not be subject to any other additional obligations.

40. We disagree with commenters who assert that rules mandating such notice are unnecessary. Although some incumbent LECs assert that they already provide such notice, it is not clear that many or all provide such notice, and as noted above the record reflects numerous instances in which notice has been unreliable absent a regulatory mandate. We thus find unpersuasive Cincinnati Bell's argument that because a carrier that will discontinue a service after a copper retirement will have to file a Section 214 application, to also requirement a copper retirement notice ''would be redundant and confusing to consumers.'' The simple, clear notice that we require is necessary because the record reflects that consumers are not receiving sufficient notice in all cases. Some incumbent LECs assert that they already must contact customers who need to have new terminal equipment installed as a result of a network change so that they may obtain access to the customers' premises. But this merely shows that incumbent LECs have incentives to communicate to a degree sufficient to obtain access to a consumer's premises; this does not demonstrate any incentive to educate consumers about issues such as whether existing services will remain available.

41. We also find unpersuasive the assertion that a notice requirement is unnecessary because the Commission's current rules already provide for notice to the public of planned network changes via Sections 51.325 and 68.110(b). First, we note that Section 68.110(b)'s notice requirements are not always triggered by a planned copper retirement. More importantly, however, we find that the general public notice now provided by incumbent LECs under Section 51.325, which typically takes the form of a general notice posted on the carrier's Web site, is not sufficient to give actual notice to those customers most likely to be affected by planned copper retirements. Until recently, consumers generally would not be directly affected in serious ways by most network changes because copper retirements in favor of fiber-only facilities were largely voluntary. In that environment, reasonable public notice could be effectuated indirectly by posting on the carrier's Web site where those most affected (*e.g.,* competitive LECs) would know to look. Given the accelerated pace of copper retirement, however, we find that consumers are directly affected in ways they had not been at the time the Commission adopted the copper retirement rules in the *Triennial Review Order,* and therefore consumers need direct notice for these important network changes that may directly affect them. We simply do not find it credible to believe that the public regularly checks the network change notification portion of our Web site or of their service provider's Web site.

42. We disagree with commenters who assert that our proposed notice requirement would impose an unnecessary burden because most customers are ultimately happy with an upgrade from copper to fiber facilities. This line of argument reflects a fundamental misunderstanding of the purpose of the notice requirement, which in no way reflects a view that fiber services are inferior to copper—indeed, the Commission has embraced the transition to fiber and other high-capacity transmission media. First, even the many customers who are ultimately happy with a copper-to-fiber transition are likely to benefit from understanding the change that will be occurring. Moreover, there remains a segment of the population, however comparatively small, that is resistant to changes in technology or for whom the new technology proves to be inferior to the old, and that will benefit from information that might ease the transition for them or that will allow them to seek out service from another provider. In the case of copper, such individuals may prefer a line-powered transmission medium, they may be comfortable with a long-standing technology that ''just works,'' or they may not understand the benefits of alternative technologies. As noted by the Pennsylvania PUC, ''copper retirements under the existing rule apparently has the potential to reduce wholesale, incumbent, or competitor access, thereby reducing retail customer choice.'' And as noted by the City of New York, ''absent clear, direct notice to

decision-makers for any discontinuance or network change, consumers will not be empowered to either plan or respond.'' And one commenter noted the possibility for confusion regarding whether certain advanced services offer the same functionality consumers have come to depend on from their legacy services. And public interest commenters have expressed concern regarding the perceived state trend toward deregulation. While we do not establish an approval process for copper retirement that would disrupt technological advancement, neither can we ignore the benefits afforded to consumers from receiving information regarding planned network changes that may affect the service to which they subscribe. Moreover, we fear that without a clear, neutral message explaining what copper retirement does and does not mean, some consumers will easily fall prey to marketing that relies on confusion about the ability to keep existing services. As with the DTV transition, we must ensure that the most vulnerable populations of consumers do not fall through the cracks. We believe that the minimally intrusive requirements we adopt today, which represent an education-based approach, strikes the correct balance between minimizing the impact on incumbent LECs' fiber deployment plans and ensuring that consumers are informed about how they will be impacted.

43. *Recipients.* In the *NPRM,* we proposed requiring direct notice to ''all retail customers affected by the planned network change,'' and we defined ''affected customers'' as ''anyone who will need new or modified CPE or who will be negatively impacted by the planned network change.'' Based on a review of the record in this proceeding, we conclude that we should adopt a modified version of this proposal. Thus, under the updated rules we adopt today, incumbent LECs will be required to provide direct notice of planned copper retirements to all of their retail customers within the affected service area(s), but only where the copper to the customer's premises is to be retired (*e.g.,* where an incumbent LEC replaces copper-to-the-premises with fiber-to-the-premises regardless of the customer's preference). We believe limiting the notice requirement to retirements involving involuntary replacement of copper to the customer's premises limits notice to circumstances in which customers are most likely to be affected, thereby avoiding confusion and minimizing the costs of compliance. We recognize that in some cases copper is removed in connection with a voluntary election by the customer to receive fiber-to-the-premises or other non-copper-to-the-premises service; in such cases, of course, the regulatory notice requirement is not triggered. Our notice requirement is focused on circumstances in which an incumbent LEC chooses to stop offering service to the customer's premises via the copper network, irrespective of the customer's preference.

44. We also believe modifying the proposed class of recipients in this way will make it easier for incumbent LECs to comply with their notice obligations by (1) limiting the circumstances under which they must provide notice to retail customers, and (2) removing the need for the incumbent LEC to make an independent determination regarding whether particular customers will require new or modified CPE or whether particular customers will be negatively impacted by the planned network change. This also obviates the need for the New York PSC's proposed requirement that incumbent LECs define ''impacted customers'' in their certifications. Notice to customers will not be required in those instances where operational copper remains in place. While under the rule that we adopt notice of a given copper retirement may be provided to more customers than would have received notice under the proposed rule, the notice requirement will be triggered less often because it will not be required if copper continues to reach the premises. Further, we conclude that this approach strikes the right balance in providing clarity, ensuring no customers are inadvertently excluded from the pool of recipients, and ensuring that notice is provided where it is most needed. Incumbent LEC commenters expressed concern regarding what they perceive as ambiguity about the proposed definition of ''affected customers.'' Another incumbent LEC feels that '' 'affected customers' should be limited to those who must take some action in response to a network change, or whose service is affected due to a change in price, service feature or function, or equipment.'' We emphasize that, consistent with our proposal set forth in the *NPRM,* the rule we adopt herein extends copper retirement notice requirements not just to consumers, but also to non-residential end users such as businesses and anchor institutions. Certain commenters assert that our proposed notice requirements should be extended to include utilities and critical infrastructure industries. This includes incumbent LEC enterprise customers, such as utilities and critical infrastructure industries within the affected service area.

45. *Content.* In the *NPRM,* we proposed requiring that copper retirement notices to retail customers ''provide sufficient information to enable the retail customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes,'' including the information required by Section 51.327(a), as well as statements notifying customers that they can still purchase existing services and that they have a right to comment, and advising them regarding timing and the Commission's process for commenting on planned network changes. Certain commenters assert that our proposed notice requirements should be extended to include utilities and critical infrastructure industries.

46. After review of the record in this proceeding, we conclude that it is warranted and appropriate to adopt the content requirements proposed in the *NPRM,* with several modifications described below. The record supports a finding that a significant number of consumers are confused regarding the effect of copper retirements on their service, and would thus benefit from notices providing them the information needed in order to properly evaluate the continued ability of their current service to meet their needs. We note that the requirements we adopt today provide as much flexibility as possible subject to necessary limits to help ensure that consumers will receive and understand the copper retirement notices they receive. Various commenters support our proposals regarding the content of copper retirement notices to retail customers. The notice requirement will have the added benefit of increasing consumer confidence in technology transitions. We further find that these content requirements should not be overly burdensome. Indeed, they are similar to existing Commission rules governing notice in the context of the discontinuance process and the use of customer proprietary network information (CPNI). We find the CPNI notice process a useful comparison point because it also involves educating and informing consumers and because those rules prescribe detailed steps to ensure that consumers will receive and recognize email based notice, which we also permit here.

47. The rule we adopt today is modified from the proposal in the *NPRM* in four ways. First, we adopt the additional requirement that the mandatory statements in the notice must be made in a clear and conspicuous manner. As stated above,

the record reflects that a number of consumers are confused when copper retirements occur, so clear and conspicuous provision of information will help to remedy that issue. Our rules already require ''clear and conspicuous'' notice in a number of contexts. To provide additional guidance, we clarify that a statement is ''clear and conspicuous'' if it is disclosed in such size, color, contrast, and/or location that it is readily noticeable, readable, and understandable. In addition, the statement may not contradict or be inconsistent with any other information with which it is presented; if a statement materially modifies, explains or clarifies other information with which it is presented, then the statement must be presented in proximity to the information it modifies, explains or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner; and hyperlinks included as part of the message must be clearly labeled or described. We adopt this detailed definition of ''clear and conspicuous'' to provide guidance to help ensure that customers will understand the required notice and to provide certainty to industry about our requirements. To streamline the filing and reduce the burden on incumbent LECs, we decline to require that the notice include: (1) Information required by Section 51.327(a)(5), because that primarily requires provision of technical specifications that are unlikely to be of use to most retail customers; (2) a statement regarding the customer's right to comment on the planned network change, because, as discussed below, we decline to include in the updated rule we adopt today a provision regarding the opportunity to comment on planned network changes; and (3) a statement that ''[t]his notice of planned network change will become effective a certain number of days after the Federal Communications Commission (FCC) releases a public notice of the planned change on its Web site'' because this statement is likely to be unnecessarily confusing and because 47 CFR 51.327(a)(3), which we incorporate as to customer copper retirement notices, already requires disclosure of the implementation date of the planned changes.

48. *Neutral Statement.* In the *NPRM,* we proposed prohibiting incumbent LECs from including in copper retirement notices to retail customers ''or any other communication to a customer related to copper retirement any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes.'' In addition, we proposed requiring incumbent LECs to include ''a neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change.''

49. After reviewing the record before us, we conclude that we should require incumbent LECs to include in copper retirement notices to retail customers a neutral statement of the various service options that they make available to retail customers affected by the planned copper retirement. We also conclude that the notice that we require must be free from any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes, but that this prohibition will apply *only* to copper retirement notices provided pursuant to the Commission's network change disclosure rules and not to any other communication. We intend that this notice serve not only this consumer protection goal, but also provide affected customers with the opportunity to learn about the facility change and give them an opportunity to seek more information. To that end, we require that providers maintain a toll-free number that customers may call to raise any questions about the planned retirement, and a URL for a related Web page with relevant information (*e.g.,* a ''frequently asked questions'' page). Both the toll-free number and the address for the Web page should be included in the notice to the customer, along with contact information for the Commission (including a link to the Commission's consumer complaint portal) and the relevant state PUC. This requirement will ensure that consumers have direct access to the provider to better understand what to expect regarding the process of copper retirement and any possible impact on their service. Moreover, while the requirement we adopt today is for a single notice to the affected customers, we emphasize that this single notice is a floor, not a ceiling. We strongly encourage carriers to follow up with affected consumers to ensure that they have received the notification and understand the implications to facilitate a smooth transition for these customers.

50. This neutral statement requirement and limited prohibition will better enable retail consumers to make informed choices about their services and will give them the necessary tools to determine what services to purchase without swaying them towards new or different offerings. We believe that this strikes the right balance between allowing incumbent LECs to advise their customers regarding the availability of advanced services and preventing potentially aggressive marketing tactics that might lead to consumer confusion. To be clear, nothing in the requirements that we adopt prohibits marketing new or different services in communications other than the notice that we require.

51. The record reflects extensive support for these requirements, and that they will carry clear value for consumers. As ADT observes, ''[t]he Commission should not permit ILECs to use the technology transition to create new marketing opportunities for themselves.'' Contrary to some assertions, we are not inserting ourselves in carriers' marketing strategies—indeed, carriers remain free to engage in unlimited marketing with the exception of the single neutral notice that we require.

52. Certain commenters assert that there is no record evidence to support the Commission's expressed concerns regarding the pressure certain carriers have allegedly brought to bear on customers to switch services. However, the record belies this assertion. For example, NASUCA pointed to a news story in Montgomery County, Maryland describing a consumer's experience with pressure to move from copper not just to fiber but to a package of digital services offered over the fiber network. And public interest commenters cite to various incumbent LEC actions that raise the concern that incumbent LECs' motivation to sell bundles may discourage the kind of neutral communication that we require. According to the Director of Montgomery County's Office of Consumer Protection, that office received complaints from consumers alleging that the carrier in question was engaged in ''deceptive marketing practices'' as it transitioned customers to the fiber network. That article also points to nationwide complaints filed with the Federal Trade Commission. The assertions about lack of evidence in the record also ignore the sources of support cited in the *NPRM.*

53. We are not persuaded by the argument that prohibiting incumbent LECs from discussing the availability of advanced services prevents carriers from educating consumers regarding the benefits of fiber. The only thing our new rule prevents is the inclusion of such discussions in copper retirement notices issued pursuant to our rules, which could lead to confusion regarding the continued availability of the type of service to which the consumer currently subscribes. Incumbent LECs are free to provide information regarding advanced

services offered over fiber in any of their marketing materials, as those materials are not the required copper retirement notice. While incumbent LECs and their representative organizations assert that the majority of consumers have embraced the benefits of fiber, these assertions ignore the existence of those consumers who have not yet chosen to purchase services beyond basic voice, many of whom are among the more vulnerable segments of the population. And it is those consumers who are most in need of the notice requirement that we adopt. Our ''one neutral notice'' requirement ensures that consumers will receive key information on the services available to them without significantly inhibiting incumbent LEC marketing efforts, therefore striking the best balance between informing consumers and facilitating the technology transitions.

54. Aside from the neutral statement requirement discussed above and the related requirement to make available a toll-free number and contact information, we decline to adopt any further content requirements. Certain commenters want the notices to retail customers to include detailed information regarding all possible changes that could result from a planned copper retirement, including ''the impact on continuity of service in an electrical power outage'' and the availability of substitute services. And one commenter proposes that notices to retail customers also ''inform customers of their avenues to appeal to their Public Utilities Commission, Office of Consumer's Counsel, or the Federal Communications Commission if the change would bring about negative consequences for consumers.'' We decline to adopt these proposed expanded content requirements. In an effort to minimize our regulation, we additionally decline to adopt the ''separate postage'' rule proposed by ADT, which would prohibit notices to retail customers from being included ''in the same envelope'' as any material marketing advanced services. The modified rule we adopt today will require incumbent LECs to identify ''any changes to the service(s) and the functionality and features thereof,'' which would include continuity of power. And as discussed below, the updated rule will require that incumbent LECs certify their compliance with Section 68.110(b)'s requirement that carriers notify customers when a planned change in facilities will affect the compatibility of CPE. With respect to the proposal that we require incumbent LECs to identify the availability of substitute services, we proposed in the *NPRM* that incumbent LECs be required to include in their copper retirement notice to retail customers ''a neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change.'' As discussed above, we incorporate this requirement into the updated rule. At this time, we do not believe it is necessary to require more than this in the context of the notice to customers, where the copper retirement does not rise to the level of a discontinuance, reduction, or impairment of service for which a carrier would need to seek Commission authorization.

55. *Constitutionality.* We are not persuaded by arguments that the prohibition on marketing new services and the requirement of a neutral statement of service offerings amount to violations of their constitutional right to free expression. We conclude that the notice requirement that we adopt is consistent with the First Amendment because it merely contains a narrow, targeted time, place, and manner restriction and compels disclosure of factually accurate information in a commercial context.

56. The ''one neutral notice'' requirement that we adopt today largely addresses incumbents' arguments in opposition to the proposed prohibition on upselling contained in the *NPRM,* which was far more restrictive. In fact, the upselling prohibition that we adopt today applies only to the notice that we require. Incumbent LECs are free to inform their customers of advanced services offered over fiber facilities through as many other communications as they wish. We believe deployment of fiber facilities is beneficial in many respects, and we do not seek to deter it. However, we must ensure that such deployments do not happen in a manner that negatively impacts vulnerable populations. The ''one neutral notice'' requirement that we adopt strikes this balance while imposing the most limited restriction possible.

57. It is well-established that government may impose time, place, and manner restrictions on protected speech ''provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a substantial government interest, and that they leave open ample alternative channels for communication of the information.' '' The Commission's upselling prohibition and neutral statement requirement are reasonable time, place, and manner restrictions given the low burden that these requirements place on providers and the substantial government interest they serve. Incumbent LECs will still be free to seek to inform customers about new or upgraded services in separate communications using whatever means they so choose, even during a network upgrade. Instead, the requirement of a neutral statement of product offerings and the prohibition on attempts at upselling in a copper retirement notice are intended to promote the substantial government interest of protecting retail customers, especially vulnerable ones such as the elderly, from aggressive and confusing upselling by incumbent LECs at the same time the carriers are informing those customers of changes in facilities. We are not seeking to control what incumbent LECs say to their customers or to impose our own view of appropriate upselling; rather, we seek to ensure that retail customers are fairly informed of the effect of a planned copper retirement without the possible added confusion of contemporaneous communications by their providers to attempt to sell them other, possibly more expensive services. The objective is to better enable retail consumers to make informed choices about their services. We conclude that this significant government interest would be achieved less effectively absent implementation of the prohibition and the neutral statement requirement.

58. The customer notice that we require is consistent with the First Amendment because it merely requires the provision of true factual information in a commercial context and therefore is consistent with *Zauderer.* We find that, in this case, the government has an interest sufficient to compel incumbent LECs to include a neutral statement in their copper retirement notices that, among other things, includes the various choices available to retail customers affected by the planned network change and provide sources of additional information related to that planned network change, and to inform interconnecting entities about technical information concerning the changes. The notice that we require is designed to protect retail customers, in particular vulnerable populations such as elderly consumers, and to ensure that they are made aware of the full range of product offerings available to them following a planned copper retirement. The notice entails the provision only of factual information. We therefore find that the notice is reasonably related to the government's interest in safeguarding retail consumers, and that this interest outweighs the incumbent LECs' ''minimal'' interest in not providing

particular factual information to their customers. We note that, even if the higher standard of *Central Hudson* applied in this instance, the notice requirement adopted as part of this Order satisfies this higher standard of judicial scrutiny. Even assuming the expression is subject to constitutional protection, we believe that the asserted government interest in this case of protecting retail customers—including but not limited to elderly consumers and other vulnerable populations—and ensuring that they are made aware of the full range of product offerings following a copper retirement is, indeed, substantial. Moreover, the requirement of a single neutral statement of service offerings has been tailored narrowly to directly advance these stated interests by providing retail customers with a list of the full range of product offerings made available by their providers. We also find that this notice requirement does not impose a more extensive burden on providers than is necessary to serve the asserted governmental interests. Thus, even were the more stringent standard of *Central Hudson* to apply in this instance, we believe that the notice requirement satisfies such a standard.

59. *Form.* In the *NPRM,* we proposed allowing incumbent LECs to use written or electronic notice such as postal mail or email to provide notice to retail customers of a planned copper retirement. Based on a review of the record in this proceeding, we conclude that we should adopt this proposed requirement, which a variety of commenters support. Although certain commenters urge the Commission to permit more flexibility, we conclude that the requirement we adopt today strikes the right balance between ensuring receipt of notice and avoiding unnecessary burdens. In particular, we find that notice in formats other than email or postal mail would be too easily ignored by consumers. The requirement we adopt today should be sufficient to ensure that retail customers receive notice, without imposing unnecessary additional burdens on incumbent LECs.

60. However, we are cognizant of concerns that permitting customers to directly reply to emails containing copper retirement notices could impose a heavy administrative burden on them. Because we retain the notice-based process for copper retirement network change disclosures, we find that there is little reason to require incumbent LECs to allow customers to reply directly to these email notices. On the other hand, we find that the benefits to consumers of the other requirements we proposed in the *NPRM* outweigh any additional administrative burdens on incumbent LECs. These requirements are consistent with the requirements contained in our CPNI rules, and only one commenter opposed to our proposed notice requirements touched on this specific issue. Dissemination of the notice shall be made available and accessible to persons with disabilities. We note that incumbent LECs are required to make their disseminated information and Web site accessible.

61. *Notice Period for Retail Customers.* In the *NPRM,* we proposed providing retail customers at least ninety-days' notice of planned copper retirements. We conclude that this notice period is appropriate for residential retail customers, to whom earlier notice may be confusing and potentially forgotten over a long period of time. Based on our review of the record in this proceeding, however, we conclude that non-residential retail customers, which include businesses and anchor institutions, require more than ninety-days' notice. As discussed above, we have concluded that it is appropriate to extend the notice period for interconnecting carriers to at least 180 days. We now conclude that non-residential retail customers should receive the same amount of notice as interconnecting carriers. Enterprise customer commenters and the competitive LECs that provide them service assert that they require more than ninety days' notice of planned copper retirements to allow for planning to accommodate the network changes. Certain commenters believe 180 days is an appropriate period for notice to retail customers. One commenter asserts, however, that utilities need notice of a planned copper retirement at least one year in advance. On the other hand, CenturyLink currently gives its DSL consumer customers thirty days' notice of ''network upgrades.'' At least one commenter supports providing retail customers the same amount of notice as provided to interconnecting carriers. As stated above, we find this longer time period warranted as to non-residential customers but potentially confusing and unwarranted for residential customers. This should allow non-residential retail customers sufficient time to evaluate the impact of the planned network change on the service they would continue to receive and whether they need to seek out alternatives. Given that we are extending the notice period for interconnecting carriers, there is no significant added cost to matching that notice period for non-residential end users compared to adopting a shorter notice period solely for such end users. We note that where the facilities to be retired are no longer in use, we conclude that incumbent LECs need not provide notice of the planned copper retirement to their retail customers because there are no retail customers to whom to provide notice.

62. *Other Consumer Education.* In the *NPRM,* we sought comment on whether we should require incumbent LECs to undertake consumer education initiatives in connection with planned copper retirements. We conclude that the rules we adopt today requiring detailed notices to retail customers, together with the requirement to make available a toll-free number and contact information for additional resources, lessens the immediate need for further educational efforts directed toward consumers at this time. That said, we remain concerned about whether consumers will have the information they need on copper retirement specifically and technology transitions more generally. For instance, the Michigan PSC states that ''education during the copper transition is critical to alleviate misunderstandings and confusion for consumers and supports requiring initiatives similar to the digital television (DTV) transition to allow the copper transition to move along more smoothly.'' While we set a foundation today by implementing a more targeted solution, we suspect that more will be necessary as the transition progresses. To be clear, we do not foreclose the possibility of adopting additional consumer education initiatives in response to the *NPRM* and we otherwise may revisit the issue particularly if there is evidence of consumer confusion and concerns following copper retirements.

63. In addition, we emphasize and support the role of state commissions and Tribal governments to support consumer education around copper retirement. States traditionally have played a critical role in consumer protection, and we strongly encourage carriers engaging in copper retirement that affects consumers directly to partner with state public service commissions, Tribal entities, and other state and local entities to ensure consumers understand and are prepared for the transition. We note that the record reflects the benefit of cooperation between state commissions and carriers during the copper retirement process—including by ensuring minimal disruption to consumers. For instance, the Massachusetts Department of Telecommunications and Cable reports on its ''recent experience with the transition of the Town of Lynnfield, Massachusetts to an all fiber network''

and explains that ''the MDTC worked collaboratively with Verizon Massachusetts on prior customer notification, and that as a result the Lynnfield transition was successfully completed with minimal disruption.'' We applaud such efforts and encourage other providers to coordinate cooperatively with their state commissions.

64. *Other Proposals.* We decline to adopt the proposed rural exemption advocated by TCA, an organization representing a large number of rural LECs. TCA asserts that many of its members are small, member-owned or locally-owned businesses located in the very communities they serve. As a result, TCA asserts that the requirements proposed in the *NPRM* are ''onerous and unnecessary.'' We conclude the modifications we have adopted in response to the record received sufficiently address these concerns. And while the rules necessarily impose some burden on incumbent LECs, we do not find that burden to be greater for rural LECs or that rural consumers are less in need of information regarding planned copper retirements.

65. We also decline to adopt the proposal of the Communications Workers of America that we should impose different notice requirements for network upgrades (*i.e.,* replacing the copper facilities with fiber facilities), network downgrades (*e.g.,* ''a removal to replace the copper with [facilities for] an inferior voice-only service (such as Verizon's Voice Link service)''), and ''the complete abandonment of facilities.'' We do not believe such differentiation is necessary. The ''downgrade'' CWA refers to is framed in terms of replacing one service with a different, inferior service. Such a situation is more appropriately addressed in the context of a Section 214(a) discontinuance, reduction, or impairment of service, rather than a change in facilities. With respect to ''the complete abandonment of facilities,'' if this change in facilities results in a discontinuance, reduction, or impairment of service, then it also would fall within the purview of our rules governing such situations and the incumbent LEC would be obligated to comply with the copper retirement notice obligations and file a discontinuance application.

66. Finally, we decline to adopt the City of New York's proposal that we require proof of notice acknowledged by individual customers before allowing changes. We are concerned that such a requirement would unfairly penalize incumbent LECs for the failure of their customers to act. End users typically would not have an incentive to provide such an acknowledgement.

(iii) Ability To Comment

67. After consideration of the record and other avenues for input, we find that avenues to communicate with the Commission are sufficient and that formalizing a right to comment is not needed. We therefore decline to adopt the proposal to revise the network change disclosure rules to provide ''the public, including retail customers and industry participants, with the opportunity to comment on planned network changes.'' We are persuaded that a formalized comment process could be confusing to consumers because there is no approval process associated with copper retirements. Certain commenters support the Commission's proposal to provide retail customers with the formal right to comment on planned copper retirements, although at least one commenter urged the Commission to at least make clear how it will use comments submitted by the public. However, various commenters on both sides of this issue note that providing the public the right to submit comments formally (1) does not provide additional advantage beyond use of the existing email address, and (2) will confuse consumers and lead to dissatisfaction, because we did not propose to convert the network change disclosure process to one requiring Commission approval. As stated above, we reject requests that the Commission convert the current notice-based network change disclosure process to a process in which an incumbent LEC must obtain Commission approval before implementing a proposed copper retirement. The public, including consumers and competitive carriers, have multiple means with which to communicate with us regarding copper retirements. Since we adopted the *NPRM,* an amendment to Section 51.329 of the Commission's rules requiring that carriers file network change disclosures in the Commission's Electronic Comment Filing System and permitting responsive filings to be filed via ECFS has become effective. Thus, network change disclosures are now docketed proceedings open to public comment. Consumers and others are able to submit complaints to the Consumer and Governmental Affairs Bureau. The public also may continue to comment on planned network change disclosures via the email address established specifically for that purpose. We find that no further action is needed at this time.

(iv) Notice to States, Tribal Governments, and the Department of Defense

68. In the *NPRM,* the Commission proposed requiring incumbent LECs to send notices of proposed copper retirements to the public utility commission (PUC) and to the governor of the state in which the network change is proposed and to the Secretary of Defense, similar to the current requirement for such notice in connection with Section 214 discontinuance applications. We sought comment on whether to also require notice of planned network changes that do not involve copper retirement and whether to require notice to other governmental entities, such as the Federal Aviation Administration, Tribal governments, or municipalities. Public interest advocates, including various state PUCs, support the Commission's proposal to require notice to state authorities and the Department of Defense. We noted that the Commission is ''not the only governmental authority with important responsibilities with respect to technology transitions'' and ''[i]n particular, States serve a vital function in safeguarding the values of the Network Compact.''

69. After reviewing the record before us, we conclude that ''reasonable public notice'' in the context of copper retirements includes providing notice of the planned copper retirements directly to state authorities (the governor and the state PUC), the Department of Defense, and federally recognized Tribal Nations where the copper retirement will occur within their Tribal lands. Throughout this document, ''Tribal Nations'' and ''Tribal governments'' include any federally recognized Indian tribe's reservation, pueblo of colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; and Hawaiian Home Lands—areas held in trust for Native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Act July 9, 1921, 42 Stat. 108, *et seq.,* as amended. The copper retirement notices containing the information required by the rule we adopt today and existing state notification obligations under Section 214 will provide state authorities with significant information concerning technology transitions. We therefore decline to impose any of the additional state and local notification requirements proposed by Public Knowledge at this time. We further conclude that this notice should occur contemporaneously

with notice to interconnecting entities. Specifically, this notice must be provided no later than the same time as the incumbent LEC notifies the Commission (*i.e.,* no later than the same time that it submits the notice that will trigger the Commission to issue a public notice that establishes a period of at least 180 days before retirement) unless there are no customers, in which case the notice must be provided at least 90 days before retirement. We find this time period warranted to ensure adequate notice to these entities so that they can discharge their responsibilities, and we find the 90-day exception warranted because governance issues are likely to be fewer where there are no customers. In light of the accelerated pace of copper retirements and the allegations in the record of this and other proceedings, we conclude that the states should be fully informed of copper retirements occurring within their respective borders so that they can plan for necessary consumer outreach and education. State authorities are an important source of consumer outreach and education, and they need the information that can allow them to field the calls that will come when consumers receive copper retirement notices. As noted by the Pennsylvania PUC, ''copper retirements under the existing rule apparently ha[ve] the potential to reduce wholesale, incumbent, or competitor access, thereby reducing retail customer choice. This has real consequences on the ground in the states.'' Because of the impact of copper retirements at the State level, we believe it is important to address ''concerns about technological change, competitive access, and universal service . . . with the principle of cooperative federalism.'' The concern is no less on Tribal lands, where state commissions may not have jurisdiction to regulate carriers or address consumer complaints, and we find no basis in the record for distinguishing between States and Tribal governments. And given the increased cybersecurity risks posed by IP-based networks, the Department of Defense should be kept informed of copper retirements. The requirement we adopt today is consistent with the requirements associated with Section 214 of the Act and Section 63.71 of the Commission's rules. Indeed, when the Commission adopted the requirement that carriers seeking to discontinue services notify state PUCs and the Department of Defense, it noted: ''State commissions with notice will be better able to bring to our attention the effects of discontinuances upon customers who may be unable themselves to inform us that they lack substitute service, upon interexchange access providers, and upon competing carriers who may not receive notice of anti-competitive discontinuances. Accordingly, 47 CFR 63.71 will include the requirement that the applicant must submit a copy of its application to the public utility commission as well as to the Governor of the State and the Secretary of Defense. . . .'' Carriers previously had been required to provide this same notice under Sections 1.764 and 63.90(d) of the Commission's rules. We decline to adopt this same notice requirement for other network change notifications at this time given a lack of sufficient support in the record or clear need on the part of the governmental or Tribal Nations.

70. No commenters in this proceeding have brought to our attention any concrete difficulties that incumbent LECs would experience due to compliance with this proposed requirement. And various states already require carriers to file notices of network change with their public utility commissions. Moreover, various state commission commenters support this requirement, undercutting incumbent LEC arguments that states will be flooded with notices they do not necessarily want. Commenters opposed to the proposed rules argue that requiring additional notice to affected states and the Department of Defense could ''introduce new and unwarranted complexity into the process'' since such agencies will already receive notice to the extent they are customers who will receive notice in the regular course, pursuant to the *NPRM*'s other proposed notice requirements. And, they argue, as the pace of copper retirement accelerates, these agencies likely will be deluged with notices for which the incumbent LECs argue there is no corresponding benefit. We are not persuaded by these arguments. Various states already require carriers to file notices of network change with their public utility commissions. And we are not convinced that a government authority's receipt of notice of a copper retirement should depend on whether the authority is a customer of the carrier because: (1) Not every copper retirement in a state will affect the state as a customer; and (2) the notice of copper retirement to the state as a customer will likely go to a different administrative office than a notice to the State as a governmental entity. Nor are we convinced that carrier participation in forums such as the National Security Telecommunications Advisory Committee obviates the Department of Defense's need for copper retirement notifications. Rather, as explained above, these notifications will ensure that government authorities have timely and consistent access to information they need to perform their consumer protection and public safety responsibilities throughout the technology transitions.

(v) Certificate of Service

71. In the *NPRM,* we proposed requiring that incumbent LECs file along with their public notice a certification containing specified information, much of which was previously required by Sections 51.329(a)(2) and 51.333(a) of our rules.

72. After reviewing the record before us, we conclude that we should adopt the proposal, as modified below. In particular, we adopt a rule that requires an incumbent LEC to file with the Commission at least ninety (90) days before retirement is permissible a certificate of service, signed by an officer of the company and complying with Section 1.16 of the Commission's rules, that includes the following information:

- A statement that identifies the proposed changes;
- A statement that notice has been given in compliance with paragraph (b)(1) of the Section;
- A statement that the incumbent LEC timely served a copy of its notice filed pursuant to paragraph (b)(1) of the Section upon each entity within the affected service area that directly interconnects with the incumbent LEC's network;
- The name and address of each entity referred to in paragraph (d)(3) of the Section upon which written notice was served;
- A statement that the incumbent LEC timely notified and submitted a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, to any federally recognized Tribal Nations with authority over the Tribal lands in which the network change is proposed, and to the Secretary of Defense in compliance with paragraph (b)(4) of the Section;
- If customer notice is required by paragraph (b)(3) of the Section, a statement that the incumbent LEC timely served the customer notice required by paragraph (b)(3) of the Section upon all retail customers to whom notice is required;
- If a customer notice is required by paragraph (b)(3) of the Section, a copy of the written notice to be provided to retail customers;

• A statement that the incumbent LEC has complied with the notification requirements of Section 68.110(b) or that the notification requirements of Section 68.110(b) do not apply;
• A statement that the incumbent LEC has complied with the good faith communication requirements of paragraph (g) of the Section and that it will continue to do so until implementation of the planned copper retirement is complete; and
• The docket number and NCD number assigned by the Commission to the incumbent LEC's notice.

73. Requiring this information is reasonable and necessary to ensure compliance with our rules, will assist with enforcement if any inaccuracies were subsequently found, and is consistent with the current requirement applicable to short-term notices in Section 51.333(a). Numerous commenters support this requirement. Incumbent LEC commenters, however, believe such a requirement is unwarranted. As previously noted, under the existing rules, notices of copper retirements must comply with the short-term notice provisions. We require identification of the docket number and NCD number to facilitate our processing of the certification. Monitoring compliance with the rules we adopt today would be difficult without incumbent LECs confirming for us that they have complied. And the consumer complaints brought to our attention by public interest commenters as well as the concerns raised by various competitive providers highlight the need for the Commission to be able to monitor compliance with the requirements we adopt today. The at least ninety-day time period we adopt is appropriate because it is as prompt as possible after all possible notification duties have been completed. We decline to require multiple staggered certifications to minimize the regulatory burden on incumbent LECs. The Enforcement Bureau will investigate potential carrier violations of the rules we adopt today governing the copper retirement process and will pursue enforcement action when necessary.

74. We conclude that Section 68.110(b)'s notice requirements and the customer notice requirements we adopt today are complementary. Section 68.110(b) requires that telecommunications providers give customers ''adequate notice'' of changes in network facilities if such changes will render CPE incompatible. Certain commenters argue that the protections afforded by Section 68.110(b)'s notice requirements, in conjunction with Section 51.325's public notice requirements for network changes, afford sufficient protections. Others argue for cross-referencing Section 68.110(b)'s notice requirements in any revised rules we adopt. We note, however, that Section 68.110(b)'s notice requirements will not always be triggered when public notice of a planned copper retirement is required under revised Section 51.325. We therefore also conclude that requiring incumbent LECs to certify their compliance with Section 68.110(b)'s notice requirements, when applicable, will ensure that incumbent LECs have evaluated the effect of any planned copper retirements on customers' terminal equipment. We are not persuaded by Cincinnati Bell that requiring incumbent LECs to certify that they have directly notified all interconnecting carriers ''may be an impossible burden to meet.'' As discussed above, under the predecessor rules to those we adopt today, copper retirements have been subject to the ''short term notice provisions'' set forth in Section 51.333(a); and under Section 51.333(a), which applies ''if an incumbent LEC wishes to provide less than six months' notice of planned network changes,'' the incumbent LEC already must certify that they have provided the public notice required by Section 51.325(a) directly to interconnecting telephone exchange service providers. As previously noted, incumbent LECs in fact include such certificates of service when filing their copper retirement notices with the Commission. The accelerated pace of broadband deployment and technology transitions warrant the Commission's reevaluation of the role of network change disclosures in protecting core values. Moreover, we conclude that the certification requirement embodied in Section 51.333(a), which we carry over to new Section 51.332(d), provides important protections. It ensures that all affected parties receive the appropriate notification.

(vi) Legal Authority

75. *Notice Requirements.* We conclude that we have authority pursuant to Sections 201(b) and 251(c)(5) of the Act to adopt the proposed revisions to the network change disclosure rules regarding the types of information that must be contained in copper retirement notices. As noted above, Section 251(c)(5) of the Act requires ''reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.'' We conclude that this language in the Act affords the Commission broad discretion in determining the information an incumbent LEC should be required to provide to interconnecting carriers. However, in implementing Section 251(c)(5) and adopting the network change disclosure rules, the Commission in the *Second Local Competition Order* defined the phrase ''information necessary for transmission and routing'' as ''any information in the incumbent LEC's possession that affects interconnectors' performance or ability to provide services.'' Noting that network change disclosures promote ''open and vigorous competition contemplated by the 1996 Act, the Commission declined to restrict the types of information that must be disclosed and noted that ''[t]imely disclosure of changes reduces the possibility that incumbent LECs could make network changes in a manner that inhibits competition.'' The Commission thus noted that the information ''must include *but not be limited to* references to technical specifications.'' We thus reject arguments that the enhanced content requirements proposed in the *NPRM* go beyond the type of information authorized by Section 251(c)(5). We conclude that providing interconnecting entities with information regarding the effect of a planned copper retirement on rates, terms, or conditions will allow those entities to better plan their business. We further conclude that, contrary to AT&T's assertions, this is consistent with the Commission's determination in the *Second Local Competition Order* that the information to be provided in network change disclosures is not limited to information that will affect existing interconnection arrangements but rather should include ''information concerning network changes that potentially could affect anticipated interconnection.'' We also conclude that the additional information proposed in the *NPRM* is necessary to ensure that the incumbent LECs' practices are just and reasonable under Section 201(b) of the Act. Competitive providers need information regarding changes to the rates, terms, and conditions that will result from a planned copper retirement in order to engage in appropriate business planning.

76. The updated network change disclosure rules we adopt today are crucial to protecting the core values of the Act, specifically the promotion of competition and protection of consumers. We disagree with

commenters that argue that requiring incumbent LECs to provide notice to retail customers goes beyond the authority of Section 251(c)(5) to require that incumbent LECs provide ''reasonable public notice.'' We conclude that the phrase ''reasonable public notice'' requires the Commission to determine what notice must be provided and to whom it should be provided in order to serve the public interest. We agree with public interest commenters that our actions here ensure that consumers have accurate and timely notice of network changes that could impact the functionality and interoperability of their devices or third-party services, the Commission is giving clarity to what is considered '''reasonable public notice'' of changes that affect the transmission, routing, and interoperability of services on the network. We further conclude that ''reasonable'' notice to non-expert members of the public cannot strictly be limited to a bare description of the changes; instead, it should encompass the kind of clarifying information that we require here.

77. Finally, we reject arguments that Section 706 of the 1996 Act counsels against the actions we take today. Section 706(a) is a grant of authority to ''utilize, in a manner consistent with the public interest, convenience, and necessity . . . measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.'' Additionally, if the Commission determines that ''advanced telecommunications capability'' is not being deployed in a ''reasonable and timely fashion,'' Section 706(b) requires that the Commission ''take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.'' Our actions are consistent with these provisions. Contrary to Cincinnati Bell's assertion, it simply is not true that we are ''forc[ing] [incumbent LECs] to preserve their copper networks.'' In fact, we retain a notice-based process that provides a clear path to copper retirement. By promoting an environment in which all parties are more able to accept transitions away from copper, creating a more predictable retirement notification process, and retaining a notice-based process that does not erect additional regulatory barriers, the Commission acts to facilitate the deployment of advanced telecommunications services and remove potential barriers to infrastructure investment in a manner consistent with the public interest. We also promote competition by ensuring that interconnecting entities have the information that they need to continue to serve customers, and thus retain income needed for further investment, when copper facilities with which they interconnect are retired.

78. *Provision to Governmental and Tribal Entities.* We also conclude that Section 251(c)(5)'s requirement that incumbent LECs provide ''reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks'' supports our decision to require notice to state authorities, Tribal governments, and the Department of Defense. State authorities and the Department of Defense already receive notice of service discontinuances, and this information provision will facilitate a consolidated understanding of technology transitions. These key public agencies are important recipients of such notice as guardians of the public interest. And given their extensive duties and limited resources, it would be unreasonable to expect them to have to constantly monitor the Web sites of numerous incumbent LECs as well as the Commission. We conclude that cooperating and coordinating with these key governmental authorities to ensure that consumers are protected and competition is preserved is also supported by Section 201(b)'s broad grant of authority to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the Act. We are persuaded that the minimal additional notice requirements that we adopt here will not reduce incentives for incumbents to continue to deploy fiber, and the consumer protection and public safety benefits outweigh the additional burden on incumbent LECs. We realize that Section 63.71(a) of the Commission's rules does not require notice to Tribes in connection with a discontinuance application, and that it could be incongruous to require greater notice for copper retirement than for discontinuances. However, as noted above, we believe it is important to act cooperatively with state and Tribal authorities to address ''concerns about technological change, competitive access, and universal service,'' and the concern is no less on Tribal lands, where state commissions may not have jurisdiction. We therefore include in the FNPRM a request for comment on revising Section 63.71(a) to include such a requirement.

b. Definition of ''Cooper Retirement''

79. Due to the current frequency and scope of copper network retirement, it is critical that industry participants and stakeholders clearly understand when our copper retirement notice process is triggered so that the momentum of prompt, responsible transitions is not abated. Therefore, it is necessary to clarify when a ''copper retirement'' occurs. We endeavor to catalyze further fiber deployment and find that eliminating this uncertainty removes one potential source of industry resistance or hesitation to retiring copper. Further, we find that providing additional clarity is critical for properly informing the public of network changes in accordance with Section 251(c)(5) of the Act and also for maintaining the Commission's core values. Our actions build on the *NPRM,* which requested comment on proposed revisions to the ''retirement'' definition, with particular focus on: (1) The types of copper facilities to be included within the concept of ''retirement'', and (2) the actions (or lack of action) constituting ''retirement.''

80. For the reasons set forth below, we adopt the expanded definition proposed in the *NPRM* and therefore define copper retirement to mean ''removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops, or the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops.'' We also define copper retirement to include *de facto* retirement, *i.e.,* failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling. By providing additional clarity in our rules, we will minimize ongoing disputes and carrier uncertainty as to what is required as technology transitions occur in the marketplace.

81. Section 251(c)(5) of the Act imposes on incumbent LECs ''[t]he duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.'' Although our rules require this statutorily mandated notice in the event of ''retirement'' of copper facilities, we have not specified what constitutes ''retirement,'' and we have not revisited the issue of when copper retirement triggers a network change notification requirement in over a decade. Given the increasing pace and

scope of retirements of copper facilities, we find the definition that we adopt necessary to ensure fulfillment of the goals of Section 251(c)(5).

(i) Copper Facilities To Be Included

82. The current network change disclosure rules do not include the feeder portion of loops within the relevant provisions, but they do include ''retirement of copper loops or copper subloops, and the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops.'' In the *NPRM,* the Commission sought comment on expanding ''retirement'' to include the feeder portion of the loop and also on whether other copper facilities should also be included. Prior to the *NPRM,* various parties requested a rulemaking to adopt rules encompassing the feeder portion of the loop, noting that if the feeder portion is unavailable for unbundled access, ''the practical difficulty of obtaining access to the remaining portion of the loop forecloses competitive access to the customer.'' After considering the record received, we find that modifying our rule is appropriate in light of experience with our initial implementing rules and the current marketplace. The Commission received many comments regarding the expansion of copper facilities included within the retirement definition. Several commenters support including the feeder portion, noting the importance of that portion to gaining access to retail customers. Other commenters take no position on the matter. Incumbent LECs are generally opposed to the Commission's proposed revisions to the scope of copper facilities encompassed within the rules. While incumbent LECs refrained from offering specific comments regarding the feeder loop addition, their overall position is that there is ''little need for new rules in this area'' and that the proposed modifications do not provide ''any identifiable benefit to consumers or competition.''

83. We agree with the Pennsylvania Public Utility Commission that if the feeder portion is unavailable to competitive LECs, the practical difficulty of accessing the remaining portion of the loop for retail purposes is insurmountable. In many cases, replacement of copper feeder can have the same harmful effects as removal or replacement of the home run loops and sub loops, which are explicitly covered under the current rules. Therefore, we disagree with the incumbent LECs' argument regarding the supposed lack of benefits to consumers and competition. Incumbent LECs should not be permitted to avoid the network change notification requirements simply because they are replacing one portion of the loop instead of another equally critical portion. We also agree with XO Communications that specifying in our rules that retirement of copper feeder is a ''retirement'' will avoid confusion in the marketplace among both incumbent and competitive carriers. We therefore adopt our proposal that the feeder portion of the loop should be one of the copper facilities captured within the concept of retirement.

(ii) Defining ''Retirement'', ''Removal'' and ''Disabling''

84. The existing network change notification rules do not define what actions constitute ''retirement'' and thus what actions trigger the notification duty under Section 251(c)(5). To address this lack of a definition, we proposed defining the term ''copper retirement'' as ''the removal or disabling of'' covered copper facilities, *i.e.,* ''copper loops, subloops, or the feeder portion of such loops or subloops.'' For reasons discussed below, we conclude that it is appropriate to adopt a definition that defines retirement as the ''removal or disabling'' of copper facilities. We further define ''disabling'' to mean rendering the copper facilities inoperable (through acts of commission or omission). We limit the definition of ''removal'' to physical removal.

85. We find that the phrase ''removing or disabling'' is appropriate because it captures the typical activities by which incumbent LECs have transitioned away from copper networks. Notably, no commenters argued against the use of the phrase ''removal or disabling.'' Moreover, it is straightforward enough to indicate that providers should understand the type of activity that implicates the notification process.

86. We conclude that ''disabling'' should be further defined to include rendering the copper facilities inoperable. We also agree with the California PUC that ''disabling'' should only refer to long term or permanent periods of time and that instances where facilities are temporarily inoperable due to a catastrophe or for repair should not constitute ''disabling'' under the new rule. We do not intend for the retirement definition to encompass the downtime associated with scheduled upgrades and repairs. However, we caution that a sufficiently long disabling of facilities (or the functional equivalent thereof) with no end in sight, even if ostensibly temporary, may constitute retirement for which a carrier must undergo our network change notification process. Because each circumstance will require careful analysis of the particular facts at issue—including but not limited to the length of time in which the facilities have been unavailable, the announced plans of the incumbent LEC with respect to the facilities, and the extent of unavailability—we decline to adopt any bright line time limits and instead clarify that we will resolve each issue on a case-by-case basis.

87. We also clarify that the term ''disabling'' does not, however, mean only affirmative acts by incumbent LECs. As discussed below, acts of omission, such as the failure to repair or maintain copper facilities, can also render those facilities inoperable. A sufficient and long-term level of neglect can therefore constitute retirement.

88. As for ''removal,'' we conclude it should be defined as the physical removal of copper. Cincinnati Bell suggests that the Commission consider creating two categories for retirement—one for physical removal and one for non-physical removal. It argued there are several reasons that incumbent LECs should have an option to retire copper in place without physically removing it, such as: The provision of structural support for fiber optic cables and the provision of line power (from the copper) to other equipment in the field. We agree with Cincinnati Bell that copper that remains physically deployed but no longer performs its vestigial telecommunications function may nonetheless retain utility, but we find it necessary for such facilities to go through the copper retirement notification process so that the public is notified that the facilities no longer function. We conclude, however, there is no need for a non-physical definition of removal because if copper remains physically present but is no longer capable of providing telecommunications services (*i.e.,* it is inoperable), it has been ''disabled'' and is retired within the meaning of our rules. Therefore, contrary to Public Knowledge's suggestion, it is unnecessary to have multiple categories of ''removal'' in the new rule. As discussed below, we define retirement to include *de facto* retirement.

(iii) *De Facto* Retirement

89. The *NPRM* outlines numerous allegations that in some cases incumbent LECs have allowed copper networks to deteriorate to the extent that the networks are no longer reliable. In these circumstances, under our current rules, incumbent LECs have not been required to comply with the Commission's existing copper retirement procedures. The *NPRM* proposed revising our rules to require

an incumbent LEC to undergo the network change notification process for a *de facto* retirement, defined as the failure to maintain copper that is the functional equivalent of removal or disabling.

90. We find that the practice of deliberately allowing copper networks to deteriorate is harmful to competition, negatively impacting end users, and that *de facto* retirements should be covered in the copper retirement requirements. We therefore add to our definition of retirement any ''failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling.'' We adopt this change to ensure incumbent LECs are aware that intentional neglect of copper facilities triggers their notification responsibilities, and to make such practices less likely to occur. We find that while States, localities, and Tribal Nations play a critical monitoring and enforcement role for *de facto* retirement, the Commission also has an important enforcement role to play, particularly in situations where local entities no longer have the authority to act. We encourage consumers and others to file a complaint on our Web site if their service is poor due to copper facilities that are not being maintained adequately. To be clear, the Commission will not hesitate to take appropriate measures where a provider de facto retires copper facilities without first complying with our the copper retirement requirements we adopt today, including enforcement action. We anticipate that the threat of enforcement action will serve as a deterrent to *de facto* copper retirement, but if not, the Commission reserves the right to consider more specific remedies in cases where carriers allow copper facilities to deteriorate to the point that is the functional equivalent of removal or disabling of the copper facilities (such as, depending on the particular facts and the legal authorities triggered, repairing the copper facilities or making available replacement facilities).

91. We agree with competitive LECs, state PUCs, and consumer advocates that the copper retirement definition should be expanded to include *de facto* retirements resulting from a provider's intentional neglect. In response to the *NPRM,* CWA suggests eleven factors for the Commission to consider when identifying a *de facto* retirement during a complaint process. We recognize that a wide range of information may be relevant to our evaluation, but while we gain experience with this issue we prefer to adopt a case-by-case approach rather than constrain the sources of information that we will consider. Contrary to AT&T's suggestion that ''there is no such thing as a de facto retirement,'' the record suggests that this is a significant issue. Several filings in the record detail a number of specific examples of negligence in Maryland, the District of Columbia, California, Illinois, and New York. Xchange Telecom expressly disputes Verizon's assertion that *de facto* retirement is a myth. And the Utilities Telecom Council points out the consequences of *de facto* retirements. We do not, however, adopt WorldNet's proposed broader definition of *de facto* retirement that would encompass inside wiring owned or controlled by the incumbent LEC. The record does not support adoption of such a broad approach, which would go beyond the scope of our copper retirement rules. Instead, we find that the scope of facilities to which the *de facto* retirement concept applies should be no broader than the underlying scope of facilities covered by our copper retirement rules.

92. We remind carriers that where they neglect copper facilities in a manner that constitutes *de facto* retirement, any resulting loss of service may constitute a discontinuance, reduction, or impairment of service for which a Section 214(a) application is necessary. The copper retirement network change notification process and the discontinuance approval process remain fundamentally distinct because the former concerns changes in facilities and merely requires notice, while the latter concerns changes in services and requires Commission approval. We therefore disagree with assertions that the revised definition for copper retirement ''begins to look like the service discontinuance process.'' However, in those instances where a *de facto* copper retirement also results in discontinuance, we expect carriers in such a situation to file both a notice and an application. By emphasizing Section 214(a), we do not mean to suggest that it is our only source of authority to act with respect to carriers that fail to maintain copper facilities adequately.

(iv) Scope of New Rules

93. *Flexibility to address individual customer service concerns.* In recognizing the concept of ''*de facto''* copper retirement and requiring notice of certain retirements to individual customers, it is not our intent to limit a carrier's flexibility to respond to an individual customer's service quality concerns by migrating a customer from its copper facilities in areas where a carrier has already deployed fiber-to-the-premises. Accordingly, the advance notice requirements will not apply in situations in which a carrier migrates an individual customer from its copper to its fiber network to resolve service issues raised to the carrier by the customer (*e.g.,* complaints by the customer of a frequent ''crackling'' sound on the copper voice line or frequent outages in wet conditions), provided that the retirement does not result in a change in the nature of the services being provided to the affected customers. We contrast this customer-specific network migration (which will not trigger advance notice requirements or serve as *prima facie* evidence of de facto copper retirement) with migrations in which (i) the carrier requires customers in a given area to move from its copper to its fiber network as part of a planned network migration, in which case the notice process described above should be followed, or (ii) the carrier allows its copper network serving a broader geographical area (*e.g.,* an entire neighborhood) to deteriorate in a manner that is the ''functional equivalent of removal or disabling it'' without first following the notice-based copper retirement process. In addition, we caution that this clarification is not a loophole and if we see evidence of abuse, we will reevaluate the issue and take action if appropriate.

94. The clarification we provide above provides carriers with sufficient flexibility to manage service calls by moving customers from a copper to a fiber network. We therefore do not believe it is necessary or appropriate to adopt the ''safe harbors'' from the copper retirement notice requirements we adopt today requested by Verizon—one ''in which an incumbent LEC will not be considered to have engaged in *de facto* copper retirement in areas where it has deployed a fiber network and service is available to customers over fiber facilities,'' and the other ''in which an incumbent LEC that meets a statewide Network Trouble Reports Per Hundred Lines standard will not be found to have engaged in *de facto* retirement of its copper facilities.'' Fiber to the Home Council seeks an even broader exception, asserting that there should not be a finding of *de facto* retirement ''once a carrier announces its intention to deploy fiber to residential customer premises in a specific area . . . since the carrier has an incentive to install fiber promptly and any dispute about *de facto* retirements would only impose costs without any material benefit.'' We are not persuaded by this argument in light of recent news stories of incumbent LEC failures to follow through with announced intentions to

deploy fiber. In such instances, if the incumbent LEC follows the procedures set forth in the rules we adopt today, it would not subject itself to claims of *de facto* retirement. Read literally, these safe harbors could permit immediate retirement regardless of the circumstances, *e.g.,* there would be no need to notify customers even in the event of a planned retirement (as opposed to in response to an individual service complaint), and a carrier could allow its network serving many customers over a given area to deteriorate to the point of *de facto* retirement without first following the notice-based copper retirement process. In particular, we decline to adopt the first suggested safe harbor as written because it is so broad that it would eliminate any duty to educate consumers and inform carriers about transitions to fiber, undercutting a key goal of the copper retirement rules that we adopt. We also decline to adopt Verizon's second suggested safe harbor because we find it to paint with too broad a brush. While we do not suggest that this is the intent of Verizon's proposed safe harbor, meeting a statewide average troubles per line metric set by a state would allow a carrier to mask large concentrations of bad copper lines by averaging its relatively few troubles per line numbers for its fiber lines with its relatively higher troubles per line numbers for its copper lines, again undercutting the purposes of our actions today.

95. The modest clarification addresses the underlying concern that carriers will be unable to transition customers to fiber when service issues arise, while still achieving the Commission's pro-consumer goals. We understand TelePacific's concerns regarding involuntary transitions from copper to fiber, and the rules that we adopt strongly promote transparency regarding such transitions. However, we also recognize the need for carriers, when faced with exigent circumstances, to manage their networks and ensure that their customers do not have their service disrupted while their provider goes through the copper retirement network change disclosure process. Nor do we intend to subject carriers to liability for *de facto* retirement in situations where the issue is not widespread but instead the movement of a customer from a copper to a fiber network is the most effective and efficient means of addressing the customer's service concerns. Limiting the exception in the manner that we adopt strikes an appropriate balance between the needs of the incumbent LECs and the needs of competitive LECs and retail customers.

96. *States, Localities, and Tribes.* We recognized in the *NPRM* that States, localities, and Tribal Nations play a vital role in overseeing carriers' service quality and network maintenance. Nevertheless, in light of the trend in which many states' legislatures have elected to limit the scope of their PUCs' traditional authority over telecommunications services we requested comments on whether these local institutions remain able to perform key oversight functions. Many commenters indicate a strong belief that local institutions are fully capable of administering the requisite oversight—including that of copper network maintenance. Several states emphasize that they still have unique insights into their jurisdictions and require a free hand to operate. We agree that local authorities have an important and unique role to play. And contrary to Verizon's claims, our actions do not encroach on traditional state jurisdiction regarding ongoing maintenance obligations. As stated in the *NPRM,* we emphasize that we do not seek to revisit or alter the Commission's decision in the *Triennial Review Order* to preserve state authority with respect to requirements for copper retirement. Furthermore, we agree that in addition to complaints directed to the Commission, complaints from retail and wholesale customers submitted to state regulatory agencies provide critical insight as to whether an incumbent LEC has failed to adequately maintain its copper networks.

97. *Other Issues.* We decline to adopt CWA's suggestion that we distinguish disabling copper for service upgrades versus service downgrades. Our copper retirement rules do not contain such a distinction and we decline to adopt one because the Commission and the public have an equal need to be informed about all copper retirements, regardless of the purpose. We also decline at this time to adopt Public Knowledge's proposal that we establish a process for situations where a network is damaged after a natural disaster and a carrier decides to permanently replace that network with a new technology because such a clarification is unnecessary given existing requirements. The Act and our rules establish clear requirements for emergency and temporary discontinuances, and the November 2014 declaratory ruling that we reaffirm today provides significant guidance regarding when an application is required when functionality is lost. As the Commission noted when it granted Verizon's request for a waiver of Section 63.63's requirements following Superstorm Sandy: ''[T]he information required by the rule is critical to the Commission's ability to ensure that customers of communications providers are minimally affected by discontinuance, reduction, or impairment of service due to conditions beyond a provider's control.'' Further, the discontinuance and network change notification requirements that we propose in the FNPRM and adopt today are responsive to this concern because they help to ensure that carriers will notify us and seek our approval in appropriate circumstances and meet the needs of end users, so we do not find it necessary to establish a separate process at this time.

c. Sale of Copper Facilities That Would Otherwise Be Retired

98. We continue to ''believe that sale of copper facilities could be a win-win proposition that permits incumbent LECs to manage their networks as they see fit while ensuring that copper remains available as a vehicle for competition.'' We are pleased that incumbent LECs such as AT&T and Cincinnati Bell have expressed willingness to consider selling copper facilities that they intend to retire. Although we recognize that there may be difficulties involved, we encourage other incumbent LECs to consider selling copper facilities that they intend to retire.

99. While the potential benefits of sales of to-be-retired copper facilities are clear, we are not persuaded based on the record before us that we should mandate the sale of copper that an incumbent LEC intends to retire and/or establish for ourselves a supervisory role in the sale process. First, we agree with a number of commenters that Commission oversight of sales could be intrusive, costly, potentially a barrier to technology transitions, and would tax limited Commission resources. Second, the record has not revealed sufficient demand by competitive LECs or others for retired copper to warrant addressing the challenging legal and policy issues that likely would be raised. Third, as noted above, there is reason to expect that there will be willing incumbent LEC sellers in at least some markets without the need for regulatory action. Finally, we note that some state regulators are already active in this area, which mitigates at least somewhat the need for further Commission action.

100. We reject the argument that Commission intervention is necessary because incumbent LECs will refuse to sell facilities that they intend to retire to thwart competition or exercise market

power in determining the price and terms of sale. There is no evidence on the record before us that incumbent LECs have refused to sell facilities that they intend to retire. AT&T claims in its reply comments that there ''is no evidence that market-based solutions will harm competition or consumers, and thus no basis for Commission regulation.'' Several commenters assert that there is nothing prohibiting any prospective purchaser from inquiring about the sale of copper facilities that have been or are scheduled to be retired, and that such sales will occur to the extent that these facilities offer value to prospective purchasers. Further, our action today to ensure reasonably comparable wholesale access to next-generation services pending completion of the special access proceeding mitigates the concern that incumbent LEC refusal to sell would foreclose competition on next generation technology in the near term. Given the lack of existing evidence that incumbent LECs have refused to sell to-be-retired copper facilities, the potential disruption that could be caused by Commission oversight, and the lack of clear proof of demand in the record, we do not think it necessary to impose any such oversight measures at this time. However, we note that if parties bring to our attention evidence of actual anticompetitive behavior or market failures in connection with the sale of copper, we may revisit this issue in the future. Finally, we are not convinced that we must act because ''carriers were fully reimbursed for their investments'' in copper facilities—even if true, this does not show that purchasers will be able to extract additional value.

2. Updating and Clarifying Commission Section 214 Discontinuances Policy for the Technology Transitions

101. We further facilitate technology transitions by addressing the service discontinuance requirements set forth in Section 214(a) of the Act. Section 214(a) mandates that the Commission must ensure that the public is not adversely affected when carriers discontinue, reduce, or impair services on which communities rely. Today, we act to ensure that transitions in the technologies used to provide service do not undercut the availability of competitively-provided services that benefit communities and enterprise customers of all sizes that serve those communities. Our actions encourage technology transitions that could otherwise be delayed if enterprise customers lose the option to make comparable purchases at comparable rates to those which are presently available, including through supply from competitive carriers. First, we clarify that consistent with our longstanding precedent, a carrier must seek our approval if its elimination of a wholesale service results in the discontinuance, reduction, or impairment of service to a community. This clarification will minimize further disputes and carrier uncertainty as to what Section 214(a) requires as technology transitions continue in the marketplace, thereby facilitating the ability of carriers and consumers to successfully navigate this transition. Second, we require *on an interim basis* incumbent LECs that discontinue a TDM-based service to provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions during the pendency of the special access proceeding. Competition provided by competitive carriers that often rely on wholesale inputs offers the benefits of additional choice to an enormous number of small- and medium-sized businesses, schools, government entities, healthcare facilities, libraries, and other enterprise customers. We therefore take these actions to protect consumers, preserve the extent of existing competition, and facilitate technology transitions. These actions will benefit the public by ensuring that as technology transitions proceed, end users do not lose service and continue to have choices for communications services. We are not today protecting competitive carriers; rather, we act to preserve their contributions to the market, which can include lower prices, higher output, and increased innovation and quality.

(a) Scope of Section 214(a) Discontinuance Authority and Wholesale Services

102. *Overview and Background.* In this section, we provide guidance and clarification concerning the circumstances in which the statutory obligations of Section 214(a) of the Act apply to a carrier's discontinuance of a service used as a wholesale input by one or more other carriers. Consistent with Section 214(a) of the Act and our precedent, we clarify that a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input when the carrier's actions will discontinue, reduce, or impair service to end users, including a carrier-customer's retail end users. The Commission has previously equated ''community, or part of a community'' with the using public. We also clarify that a carrier may discontinue a service used as a wholesale input so long as it either (a) obtains Commission approval via the Section 214 process, or (b) determines that there will be no discontinuance, reduction, or impairment of service to end users, including carrier-customers' end users. As we explain in detail below, under the statute and our precedent it is not enough for a carrier that intends to discontinue a service to look only at its own end user customers. Instead, the carrier must follow the process established by statute and precedent for obtaining approval if its action will discontinue, reduce, or impair service to a community, or part of a community—including service provided to the community by the discontinuing carrier's carrier-customer. Thus, we explain that in order to comply with its obligations, a carrier discontinuing service—whether that carrier is an incumbent or a competitive carrier—must carefully determine whether its actions will, in fact, discontinue, reduce, or impair service to end users.

103. We provide clarity and certainty for carriers seeking to transition technologies while continuing to protect the public in the manner mandated by Congress. We find that this clarification is necessary to fortify the Commission's ability to fulfill its critical statutory role in overseeing service discontinuances under Section 214 of the Act, which requires carriers to obtain a certificate from the Commission ''that neither the present nor future public convenience and necessity will be adversely affected'' by the carrier's plan to discontinue service to a community or part of a community. Section 214(a) and our implementing rules were designed to protect retail customers from the adverse impacts associated with discontinuances of service, and they ensure that service to communities will not be discontinued without advance notice to affected customers, opportunity to comment, and Commission authorization. Section 214(a) and our implementing rules ensure that the Commission has the information needed to determine whether the present or future public convenience and necessity will be adversely affected by the carrier's action. Our rules are designed to ensure that customers are fully informed of any proposed change that will reduce or end service, ensure appropriate oversight by the Commission of such changes, and provide an orderly transition of service, as appropriate. As the Commission has stated in a prior enforcement action related to the Section 214 discontinuance process, ''[u]nless the

Commission has the ability to determine whether a discontinuance of service is in the public interest, it cannot protect customers from having essential services cut off without adequate warning, or ensure that these customers have other viable alternatives.''

104. Our actions will help to ensure that before service that benefits a community is discontinued, reduced, or impaired, the Commission is able to conduct a careful evaluation of whether that action is consistent with the public interest. Competitive LECs are concerned that they will lose the ability to access the last-mile facilities necessary to serve their customers if incumbent LECs discontinue TDM-based services when transitioning from TDM to IP-based services. Several commenters state that discontinuance of wholesale services used by competitive LECs will necessarily, or is likely to, result in a discontinuance of service to retail end users. We address these concerns in the context of Section 214(a) and precedent by emphasizing that carriers must consider the impact of their actions on end user customers, including the end users of carrier-customers.

105. We reiterate that our intent is to fulfill our statutory duty to safeguard the public interest while also facilitating technology transitions and that ''[t]o say that section 214 applies does not mean that section 214 approval will be withheld.'' We also recognize that a carrier's discontinuance, reduction, or impairment of a wholesale service may not always discontinue, reduce, or impair service to retail end users. Rather, we emphasize that a carrier must undertake a meaningful evaluation of the situation, as discussed in greater detail below.

106. Our decision will ensure that the Commission is informed and able to fulfill its statutory duty with respect to discontinuances, reductions, or impairments of service used as a wholesale input, but it also ensures that carriers need not file an application where no such discontinuance, reduction, or impairment occurs. In addition, Section 214(a) states that no authorization is required ''for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.'' Thus, our action is not in tension with commenter assertions that retail services are not necessarily discontinued, reduced, or impaired by changes in wholesale service, and that there is little evidence to support a conclusion that retail services are discontinued, reduced, or impaired by such changes. We note that we find AT&T's assertion that discontinuance of service to competitive LECs' customers would ''rarely be true'' to be in tension with its separate statement that it cannot be expected to know how its wholesale customers' end users would be affected by a service discontinuance. We further address commenters' arguments that replacement services may be available to carrier-customers such that service to retail end users may not be affected *infra* at para. 116. We do not prejudge whether and when a discontinuance occurs, and instead we simply reinforce that Section 214 mandates that our approval process be followed when it does.

107. Because our careful review of Section 214(a) and precedent leads us to adopt the clarification articulated above, we find it unnecessary to adopt the rebuttable presumption proposed in the *NPRM.* We proposed establishing a rebuttable presumption that ''where a carrier seeks to discontinue, reduce, or impair a wholesale service, that action will discontinue, reduce, or impair service to a community or part of a community such that approval is necessary pursuant to section 214(a).'' In the *NPRM,* we proposed that this presumption would be rebutted where it could be shown that either: (i) Discontinuance, reduction, or impairment of the wholesale service would not discontinue, reduce, or impair service to a community or part of a community; or (ii) discontinuance, reduction, or impairment of the wholesale service would not impair the adequacy or quality of service provided to end users by either the incumbent LEC or competitive LECs in the market. We see no need to create a new legal mechanism with the potential to unnecessarily delay technology transitions when the clarification that we adopt is sufficient to ensure that we are able to fulfill our obligation under Section 214(a) to protect the public, while continuing to facilitate these transitions.

108. *Precedent.* We take this action pursuant to Section 214, the Commission's implementing rules, and precedent. As explained in detail below, our clarification of precedent to ensure that the public interest is protected and carriers have the clarity needed to facilitate technology transitions, particularly as discontinuances increase during these transitions, is consistent with and builds on our precedent. Section 214(a) states that ''[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.'' By the plain terms of the statute, carriers must obtain Commission approval when their actions will discontinue, reduce, or impair service to a community or part of a community, not just when their actions will discontinue, reduce, or impair their own service to their own end users. The Commission has consistently held that carrier-to-carrier relationships *are* subject to Section 214(a), and that prior Commission approval is required when a carrier seeks to discontinue service that another carrier uses to provide service to the community or part of the community if discontinuing, reducing, or impairing that service will discontinue, reduce, or impair service to the carrier-customer's retail customers.

109. In *Western Union,* the Commission addressed the purpose of the Section 214(a) notice and discontinuance requirements, finding that they ''are directed at preventing a loss or impairment of a service offering to a community or part of a community without adequate public interest safeguards.'' Similarly, in that decision the Commission stated that ''[i]n determining the need for prior authority to discontinue, reduce or impair service under Section 214(a), the primary focus should be on the end service provided by a carrier to a community or part of a community, *i.e.,* the using public.'' Our clarification is consistent with these statements precisely because they focus on impact on the using public and are directed to preventing a loss to the end-user community without adequate safeguards. Notably, *Western Union* also states that the Commission ''consider[s] carrier-to-carrier interconnection relationships to come within the context of Section 214(a),'' demonstrating that carrier relationships can be cognizable within the scope of Section 214(a). The Commission found that ''for Section 214(a) purposes, we must distinguish those situations in which a change in a carrier's service offerings to another carrier will result in an actual discontinuance, reduction or impairment to the latter carrier's customers as opposed to a discontinuance, reduction or impairment of service to only the carrier itself.'' Under the particular set of facts at issue in *Western Union,* the Commission found that the carrier-customer failed to show how its claims of increased costs and loss of operational flexibility as a result of the

upstream carrier's actions would result in a loss or impairment of service to the carrier-customer's retail end users. This conclusion does not foreclose the possibility that the impact of a carrier's actions on a carrier-customer's ability to serve its end users *could* constitute discontinuance. To the contrary, it simply was a finding that the end user community simply had not undergone a discontinuance *under the facts of that case.* Consistent with *Western Union,* we recognize that a carrier's actions can result in a discontinuance, reduction, or impairment of service to the end-user community via impact on a carrier-customer's ability to serve that community, depending on the particular facts and circumstances at issue.

110. In *Lincoln County,* the Commission again considered the question of when a discontinuance under Section 214(a) occurs. The Commission noted that ''[h]ere we have one carrier attempting to invoke Section 214(a) against another carrier'' and that ''[t]he concern should be for the ultimate impact on the community served.'' The Commission further stated that ''for Section 214(a) purposes, we must distinguish those situations in which changes . . . will result in an actual discontinuance, reduction or impairment to the latter carriers' [*i.e.,* carrier-customers'] customers as opposed to a discontinuance, reduction or impairment of interconnection to only the carrier itself,'' and found that an alternate routing reconfiguration did not impair service to the community served by the carrier-customer. Again, this holding shows that there was not a discontinuance under the particular facts of the case. The Commission's decision in *Lincoln County* shows that ''an actual discontinuance, reduction or impairment to the [carrier-customers'] customers'' as a result of the upstream carrier's actions *would* require a discontinuance application. As noted in para. 115 below, we maintain the distinction, highlighted in both *Western Union* and *Lincoln County,* between situations in which a discontinuance, reduction, or impairment of service will result in an actual discontinuance, reduction, or impairment to the carrier-customer's retail end users and situations where the actions will discontinue, reduce, or impair service to only the carrier-customer itself.

111. In *Graphnet,* the Commission again addressed the issue of whether a carrier violated Section 214(a) and stated that ''in situations where one carrier attempts to invoke Section 214(a) against another carrier, concern should be had for the ultimate impact on the community served rather than on any technical or financial impact on the carrier itself.'' The Commission found that service to a community or part of a community ''was not discontinued, reduced, or impaired *in this instance''* where domestic traffic was routed through Canada but no service disruption was noted. Thus, the Commission merely found that there was not a discontinuance based on the particular facts in that case, *i.e.,* there was not a reduction or impairment of service to the using public.

112. Our clarification finds especially strong support in *BellSouth Telephone.* In that proceeding, the Commission specifically rejected BellSouth's argument that Section 214 authorization is not required to discontinue certain service because it was only discontinuing service to its carrier-customers. The Commission again emphasized that ''[i]f, for example, a discontinuance, reduction, or impairment of service to the carrier-customer ultimately discontinues service to an end user, the Commission has found that § 214(a) requires the Commission to authorize such a discontinuance.'' It also found that, under the facts at issue, a Section 214(a) application and evaluation *was* necessary prior to service discontinuance to determine if the impairment of service to the carrier-customer's end users will adversely affect the present or future public convenience or necessity. The Commission further noted that it would evaluate BellSouth's arguments for approval and the impact of such discontinuance on end users in the proceeding on that application.

113. Therefore, we reject arguments that a carrier need not ever seek Commission approval for discontinuance of service to a carrier-customer. As explained above, these arguments ignore the fact-specific nature of the conclusions in those proceedings, and they overlook *BellSouth Telephone.* We also find that our clarification is fully consistent with and strengthens the Commission's finding in these cases that it must distinguish between discontinuances, reductions, or impairments of service that will result in the discontinuance, reduction, or impairment of service to a community or part of a community and those that will not have such an impact on the using public. Discontinuance, reduction, or impairment of wholesale service is subject to Section 214(a), and prior authorization is required when the actions will discontinue, reduce, or impair service to retail customers, including carrier-customers' retail end users. In such cases, a 214 application is necessary to determine if the impairment of service to the carrier-customer's end users will adversely affect the present or future public convenience or necessity.

114. *Required Evaluation.* We clarify that carriers must assess the impact of their actions on end user customers to prevent the discontinuance of service to a community without adequate public interest safeguards, including notice to affected customers and Commission consideration of the effect on the public convenience and necessity. Specifically, carriers must undertake a meaningful evaluation of the impact of actions that will discontinue, reduce, or impair services used as wholesale inputs and assess the impact of these actions on end user customers. This meaningful evaluation must include consultation directly with affected carrier-customers to evaluate the impact on those carrier-customers' end users. If their actions will discontinue service to any such end users, Commission approval is required. Commission approval is not required, however, for a planned discontinuance, reduction, or impairment of service: (i) When the action will not discontinue, reduce, or impair service to a community or part of a community; or (ii) for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided. Consistent with the text of Section 214(a) and precedent, a carrier should not discontinue a service used as wholesale inputs until it is able to determine that there will be no discontinuance, reduction, or impairment of service to a community or part of a community of end users, including carrier-customers' end users, or until it has obtained Commission approval pursuant to Section 214(a).

115. The framework articulated above maintains the distinction between discontinuances, reductions, and impairments that affect a community or part of a community (*i.e.,* end users) and those that only affect carrier-customers. The Commission will also continue to distinguish discontinuance of service that will affect service to retail customers from discontinuances that affect only the carrier-customer itself when considering applications for discontinuance of wholesale service and determining whether the discontinuance will adversely affect the public convenience and necessity. Thus, in undertaking this evaluation, the carrier's focus must be on impact to the using public. Our clarification therefore ensures that, consistent with the statute and precedent, a carrier *fully* evaluates

whether there will be a discontinuance, reduction, or impairment of service to a community or part of a community, including a carrier-customer's retail end users. When the carrier can determine with reasonable certainty that there will be no such impact on the community or part of the community, Commission approval is not required and the carrier may proceed.

116. When assessing whether a carrier's actions will result in discontinuance, reduction, or impairment of service to a carrier-customer's retail end users, consideration of whether replacement wholesale services are available to the carrier-customer from other sources is warranted. If such replacement services are reasonably available to the carrier-customer, retail end users may not necessarily experience a discontinuance, reduction, or impairment of service. However, we caution that bare speculation will not be sufficient to establish the necessary evaluation has occurred, and the carrier must have some basis for concluding that such alternatives will not result in discontinuance, reduction, or impairment of service to the carrier-customer's end users. Some commenters assert that retail customers will not be affected because adequate replacement or alternative services will typically be available independent of the wholesale service being discontinued, reduced or impaired. AT&T also argues that competitive LECs can ''purchase or provide for itself a substitute,'' for example by obtaining bare copper loops and utilizing their own electronics to provide service. We caution that such unsupported, blanket assertions will not be sufficient to establish the necessary evaluation has occurred. Moreover, the fact that there are other carriers in the market and other services are, or may be, available to a carrier-customers' end users does not eliminate a carrier's obligation to seek Commission approval and provide notice when its actions will discontinue, reduce, or impair service to retail customers. Consistent with precedent, any discontinuance, reduction, or impairment of service to the using public must be approved by the Commission pursuant to Section 214, and the Commission will consider whether there are adequate substitutes in the market; in such cases, the existence of alternative services ''does not obviate the need for a section 214 finding.''

117. For example, many enterprise customers receive nationwide voice and other low-speed services from competitive LECs that depend upon wholesale voice inputs that combine local loops, switching, and transport. If such commercial wholesale platform services are discontinued, then this would constitute a discontinuance, reduction, or impairment to the enterprise end users if the competitive LEC carrier-customer cannot readily obtain a replacement input that would allow it to maintain its existing service without reduction or impairment. If, on the other hand, the competitive LEC could maintain its existing service through use of alternative inputs without material difficulty or costs that would necessitate discontinuance, reduction, or impairment as to its end users, then the incumbent LEC's action would not constitute a discontinuance for which an application is necessary to that set of end users. We recognize that rate increases alone do not trigger a Section 214 application and that the issue of whether rates for a service are just and reasonable is distinct from the issue of whether a discontinuance requires Commission approval. However, we disagree with commenter assertions that this principle is in conflict with our decision here, which addresses a carrier's Section 214 obligations only when: (1) The carrier ceases to provide service used by a carrier-customer as a wholesale input; (2) that discontinuance potentially adversely impacts a community; and (3) the carrier is not merely implementing a rate change for services that will remain available. Other commenters also assert that rate increases that simply increase a customer-carrier's costs do not discontinue, reduce, or impair service to a community or part of a community and are not a basis for requiring Section 214 applications. In these circumstances, prior Commission approval may be required if the increased cost to the carrier-customer due to the loss of a service input is such that it causes the carrier-customer to exit the market or materially and negatively change the services offered in the market such that there is a discontinuance, reduction, or impairment of service to end users. As the Commission has previously stated, ''where the technical or financial impact on the carrier customer is such that it would lead to discontinuance or impairment of service to its customers, such considerations may establish that Section 214 authorization is required.'' The Commission further found that the decision in *Western Union* does not preclude ''the use of technical or financial factors in determining the applicability of Section 214 to service withdrawals to carrier customers'' and ''taken in context with the entire discussion of this issue, it is clear that the intent in Western Union was merely to exclude technical or financial considerations when their impact was limited solely to the carrier customer, and did not affect the carrier customer's ability to continue to provide service to its customers.'' Accordingly, we find that financial and technical factors affecting the carrier-customer may be relevant to determining the impact of a planned discontinuance on the retail end-user for purposes of deciding whether Section 214(a) authorization is required. Of course, the ultimate test always will be the impact on the community or part of community affected, not merely on the carrier-customer.

118. We disagree with commenters who assert that incumbent LECs are not in a position to determine whether discontinuing wholesale service will discontinue service to competitive LEC retail customers or are otherwise unsure of the impact on the community when they seek to discontinue wholesale service. These commenters further argue that, if we were to adopt the rebuttable presumption proposed in the *NPRM,* carriers will be required to seek Commission approval and file Section 214 applications for the majority of wholesale discontinuances. As noted above, we do not adopt the rebuttable presumption or a ''process for rebutting the presumption.'' Rather, we are providing greater clarity regarding the scope of the existing duty under Section 214. Obtaining approval for a discontinuance is a clear statutory obligation. If a carrier is not able to determine whether discontinuing wholesale service will discontinue service to its carrier-customers' retail end users, that carrier cannot be sure that it is not discontinuing service to a community or part of a community and it should not discontinue the wholesale service until it is able to make such a determination or until it has obtained Commission approval pursuant to section 214(a). Further, this argument overlooks avenues of information available to carriers about their carrier-customers' service. For example, Windstream states that ''[w]hen Windstream orders channel terminations for last mile special access services, it must specify the end points of those services'' and ''[t]he ILEC has those end point locations.'' Windstream further asserts that, ''[w]ithin a wire center, the ILEC should be able to determine with a high degree of accuracy whether that location is its own switching office, the switching office or point of presence of a third

party carrier, a carrier hotel, or an end user premises.'' In an analogous context, CenturyLink states that it is able to notify affected telephone exchange service providers of proposed copper retirement by email, ''with detailed information, including the Circuit ID, cable and pair numbers, and impacted addresses.''

119. We emphasize that carriers must evaluate whether an application is required using all information available, including information obtained from carrier-customers. To be a thorough evaluation that would support a conclusion that no application is required, this must include at a minimum examining all information reasonably available to the carrier and reasonable efforts to ascertain the impact on retail end users. Nevertheless, we recognize that there may be times when a carrier, even after a thorough examination, is unable to determine the impact of its actions on a carrier-customer's end users. As a result, we clarify that when such information cannot be obtained from any sources, including carrier-customers, after an exercise of reasonable effort, the carrier may permissibly conclude that its actions do not constitute a discontinuance, reduction, or impairment of service to a community or part of a community with respect to end users of its carrier-customers and need not file an application for Commission approval on that basis. We anticipate that in an enforcement proceeding concerning whether a carrier discontinued, reduced, or impaired service without approval required by Section 214(a) (whether in response to a complaint from a third party or on our own motion), such efforts would be at issue. Some commenters argue that the proposed rebuttable presumption would require applications in many cases, but the statutory command of Section 214(a) does not depend on the frequency with which it applies (and, in any event, more frequent submission of applications would tend to show the importance of the statute's application in order to ensure that communities are protected in the event of a discontinuance, reduction, or impairment of service). In any event, more frequent submission of applications would tend to show the importance of the statute's application in order to ensure that communities are protected in the event of a discontinuance, reduction, or impairment of service). As noted above, we do not adopt the rebuttable presumption or a ''process for rebutting the presumption.'' Rather, we are providing greater clarity regarding the scope of the existing duty under Section 214. The Commission will continue to address such applications expeditiously. The Commission will continue to address such applications expeditiously. We note that some commenters argue that this process should be modified, and we seek comment on proposed changes to this process in the attached FNPRM.

120. Our clarification is necessary to ensure that all carriers—including both incumbent LECs *and* competitive LECs—meet their Section 214(a) obligations when a carrier discontinues a service, the Commission is able to fulfill its obligations under Section 214(a), and carriers have the clarity and certainty needed when carrying out technology transitions. Otherwise, the Commission may not be informed prior to carrier actions that discontinue, reduce, or impair service to retail end users due to the discontinuance, reduction, or impairment of a service taken by carrier-customers, actions that potentially adversely affect the present or future public convenience and necessity. Nothing stated herein excuses carrier-customers from the requirements of Section 214(a). For instance, carrier-customers that discontinue, reduce, or impair service to retail end users as a result of the elimination of a wholesale input must also comply with Section 214(a) of the Act and the Commission's implementing rules, even if the carrier that eliminates the wholesale input also is subject to the same requirements. This helps ensure that all affected retail end users are properly notified and that the Commission is able to fulfill the duties assigned by Congress. The Commission normally will authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected. Further, carrier-customers and retail end users might not receive adequate notice or opportunity to object when such actions will discontinue service to carrier-customers' retail end users. The clarification that we adopt today does not excuse carriers from any existing applicable legal duties, including obligations under the Act, and their tariffs and terms of service unless and until modified. We therefore recognize that carrier-customers may learn of changes to tariffed carrier services through updated tariff filings. However, we note that not all carrier services are tariffed services, and the notice period before the tariff change goes into effect is very short. AT&T also argues that the Commission need not address any rules regarding notice in this area because the network change notice rules, sufficiently cover notice matters and contracts and negotiation are sufficient to address early termination fees. However, AT&T fails to recognize the distinction between parts 51 and 63 of our rules. For instance, there are circumstances when a carrier will file a Section 214 application under part 63, but not a copper retirement notification under part 51. Section 214 does not permit carriers to simply avoid filing applications for approval of discontinuances because they did not look into the impact of such discontinuances. This requirement ensures that retail customers do not suffer lapses in service. Waiting until after a carrier discontinues service to determine if retail end users had adequate service substitutes could adversely affect those retail customers. Commenters' arguments that incumbent LECs do not necessarily know how the discontinuance of wholesale services will affect the retail customers of competitive LECs that rely on those services further fuel our concerns that, in the absence of clarifying and establishing a clearly articulated obligation on the part of carriers to assess the impact of their planned actions on carrier-customers' retail customers, carriers may mistakenly assume that their discontinuance, reduction, or impairment of wholesale services will not discontinue, reduce, or impair service to carrier-customers' retail customers, and carriers will discontinue those services without complying with Section 214 and the Commission's rules and precedent.

121. We find AT&T's assertion that carrier-customers should bear the burden of persuasion that discontinuance of wholesale service will discontinue service to a community to be inconsistent with the language of Section 214(a) and precedent, which put the burden on the carrier discontinuing service. Carriers must fully evaluate the impact of their actions and determine whether Section 214 requires that they file applications prior to implementation. The clarification we provide acknowledges that carrier-customers have information that will likely be useful to carriers when determining the impact of their actions on carrier-customers' retail end users. Nevertheless, the statute clearly places the compliance obligation on the carrier to seek approval if necessary before it proceeds. Evaluating whether approval

is required is a necessary predicate to fulfilling this obligation. And we have consistently held that carrier-to-carrier relationships are subject to Section 214(a) and that carriers must obtain Commission approval to discontinue service used as a wholesale input by another carrier if its actions will discontinue, reduce, or impair service to a carrier-customers' retail end users. As a result, the obligation properly falls on the carrier seeking to discontinue service. That said, as noted above, we recognize a burden of production on carrier-customers when the discontinuing carrier seeks information relevant to making the determination of a discontinuance's impact on end-user customers (*i.e.,* customers should respond to carriers if and when they are contacted).

122. Moreover, we disagree with AT&T's assertion that the Commission's decision in *Graphnet* supports a finding that the burden of persuasion should be placed on the competitive LECs. In *Graphnet,* the Commission considered a complaint that a carrier violated Section 214(a) and failed to seek Commission approval prior to reducing or impairing service. Although the Commission determined that the carrier did not violate Section 214(a) and that the carrier-customer failed to show that there would be a discontinuance, reduction, or impairment of service to the using public, the Commission did not conclude that carriers need not make such a determination regarding the effects of their actions when deciding whether Commission approval is necessary prior to implementing changes.

123. That said, we do not agree with commenters that argue we should adopt more prescriptive requirements to ensure that carriers have met their obligations under Section 214(a). For example, some commenters have proposed requirements that: The carrier submit documentation or a certification to the Commission identifying and providing the basis for its conclusion that the carrier has adequately rebutted the presumption, the carrier submit *prima facie* evidence that it has rebutted the presumption, and the carrier provide notice of such submissions and opportunity to comment. We are not adopting a rebuttable presumption, but rather clarifying the scope of an existing duty under Section 214 that functionally leads to the same result: A considered decision as to the impact of an action on the community. Regardless, we find that it is not necessary for carriers to submit information to the Commission when it determines that a Section 214 application is not needed because its actions do not discontinue, reduce, or impair service to the community or part of the community. We agree with other commenters that argue that the burdens of the suggested obligations would exceed the benefits and we do not want to unnecessarily delay technology transitions. The Enforcement Bureau will investigate potential carrier violations of Section 214(a) and our implementing rules and will pursue enforcement action when necessary. End users and carrier-customers will have incentives to monitor compliance, and thus we anticipate that any issues of potential noncompliance are likely to be brought to our attention. We encourage carriers to ensure that they undertake the necessary evaluation in a systematic way, and to be diligent and thorough when making these determinations. If this approach proves unsuccessful, we will revisit this decision.

124. Our decision today will be less burdensome for carriers than the proposed rebuttable presumption and properly balances burdens with our goals of protecting the public interest and supporting technology transitions. AT&T argues that the proposed rebuttable presumption would impose enormous costs on incumbent LECs to the detriment of the public and will ''tax the resources of both carriers and the Commission.'' AT&T also argues that this will cause unacceptable delay that will strand incumbents' resources while the Commission rules on each application and will cause adverse effects on the deployment of next-generation services that will ultimately harm consumers. AT&T seems to base its arguments on the erroneous assumption that every discontinuance of wholesale service will require Commission approval. We have articulated above the circumstances in which an application is not required. AT&T further includes the procedural burden of a ''case-by-case adjudication to rebut the presumption'' in its burden assessment. We do not adopt the rebuttable presumption or procedures to rebut the presumption and, in fact, we allow the carrier to determine through its own internal processes whether Commission approval of its actions is necessary. We have also sought to minimize burdens and cost, and facilitate technology transitions, by not requiring carriers to submit documentation or certifications to the Commission regarding their determination that no Section 214 filing is required.

125. *Other Issues.* We decline to adopt an irrebuttable presumption that discontinuance of a wholesale service necessarily results in a discontinuance, reduction, or impairment to end users. Such a presumption would require approval even where the carrier establishes that there is no actual discontinuance, reduction, or impairment to end users. We instead determine that our goals of protecting the public interest while facilitating technology transitions are best served by emphasizing and applying Section 214 and precedent, with some additional clarification and direction for carriers. The approach we adopt today better distinguishes situations in which Commission scrutiny is warranted under Section 214 because of potential negative impacts on retail users from situations in which scrutiny is not necessary because there is no similar risk of harm to end users. Further, our decision will be less burdensome for carriers than an irrebuttable presumption, as it does not presume that Commission approval is necessary in every case. We therefore prefer to take the more modest approach here that emanates from our longstanding precedent and the clear text of the statute.

126. We find unwarranted the concern that the proposed rebuttable presumption would provide an opportunity for incumbent LECs' competitors ''to abuse the section 214 process to challenge changes in service that have little impact on end-user customers'' and are inappropriate for adjudication under Section 214. Under our decision, nothing in the Commission's Section 214 process will materially change: Carriers must assess the impact of their actions on the community and determine whether an application for Commission approval is required, the Commission will oversee the 214 process and ensure that any abuses are swiftly addressed, and the Commission will not consider objections to discontinuance applications that our precedent makes clear are not appropriate. The only change is that we have made clear that carriers cannot assume their actions have no impact on the community; they must undertake some internal process to determine whether a Section 214 filing is required.

127. In addressing the proposed rebuttable presumption, some incumbent LECs expressed concern that costs and delays associated with waiting for Commission approval may impede their plans to move to IP-based services and assert that this process, and its accompanying costs and delays, are not in the public interest. However, concerns about delays are misplaced. First, as we make clear, all situations

will not require a Section 214 filing. Second, even if—after undertaking the required evaluation—a carrier concludes it is required to file a Section 214 application, that application will be granted 31 or 60 days after the Commission releases public notice of the application filing, pursuant to our existing practices, unless the Commission removes the application from streamlined processing. In the FNPRM accompanying this Order, we seek comment on whether to alter these time periods. Further, our actions are consistent with the statutorily mandated goal of ensuring that the public not suffer discontinued, reduced, or impaired service without Commission oversight.

128. We reject the suggestion that we should not ''equate the robustness of retail competition with the availability of retail service'' when interpreting Section 214(a). This sets up a false dichotomy. AT&T attempts to suggest that the extent of retail competition is beyond the ambit of Section 214, based on the fact that ''Congress added the 'discontinue, reduce, or impair' portion of section 214(a) during World War II, when telephone service was still provided to communities on a monopoly basis.'' But Congress enacted a forward-looking statute that does not tie the relevant evaluation to the specific market conditions of the monopoly era. The text of the statute simply states that ''[n]o carrier shall discontinue, reduce, or impair service to a community'' absent approval. The statute does not say, as it could, that ''no carrier shall discontinue, reduce, or impair *the only service available* to a community.'' Moreover, the availability of substitutes is explicitly a part of our evaluation of whether an application should be granted. Section 214(a) is not written to apply only to loss of a monopoly market. In fact, Section 214(a) is concerned with discontinuances, reductions, and impairments of any service to a community or part of a community. Moreover, we find that assessing the effect of discontinuances on competition in the market and its resulting effect on consumers further ensures that the Commission is able to make the determination required by Section 214 regarding whether the public convenience and necessity will be adversely affected by the discontinuance. Our actions here help to protect the public interest and minimize harm to consumers by preventing potentially abrupt discontinuances of service and preventing harm to competition that would ultimately harm the public. These actions also provide clarity and certainty to carriers during this time of technology transitions.

129. We reject ITTA's proposal that we ''adopt a safe harbor to limit liability'' pursuant to which ''if the ILEC [or other carrier] determines in the process of conducting its evaluation that'' its action ''would not impact its own retail end users (assuming, hypothetically, that it had retail end users that would be implicated), then no discontinuance application would be required.'' Adopting such a safe harbor would be tantamount to reversing the clarification that we adopt because it would foreclose a carrier's duty to consider the full impact of its discontinuance of service on the community of end users and improperly permit it to consider only the slice of the community that it serves directly.

130. We decline to adopt the suggestions of commenters to make other modifications to the Section 214 process to benefit competitive LECs at this time. Thus, we do not interpret the statutory phrase ''community, or part of a community'' to include platform providers and other competitive LECs, in addition to retail customers, as suggested by some commenters. Such an interpretation would be inconsistent with precedent, and we decline to do so at this time. We continue to believe that our touchstone under Section 214(a) is the ultimate impact on the community served. Competitive LECs play an important role in providing (at least some of) the benefits of competition in enterprise services to many communities, but within the framework of Section 214(a) ensuring that competitive LECs remain able to compete is a means to ensure that our communications landscape serves the public, rather than an end in itself.

b. Preserving the Benefits of Competition by Maintaining Reasonably Comparable Wholesale Access to Last-Mile Services

131. Adoption of an interim rule to ensure continued access to necessary wholesale inputs will facilitate continued availability of existing competing options, reduce disputes, and provide the clarity and certainty that all carriers need to accelerate their transition to all-IP infrastructure while the Commission grapples with longer-term questions. At the same time, adoption of a flexible, balanced framework will facilitate prompt transitions by incumbent LECs. Our ultimate goal is to ensure that both incumbent and competitive LECs are able to transition to IP as promptly and effectively as possible. The central issue underlying the arguments of all stakeholders on this issue is whether incumbent LECs are subject to substantial competition in the provision of the packet-based services that will replace the services being discontinued and therefore have every incentive to price competitively to retain the wholesale business. Whether and where such competitive alternatives exist sufficient to constrain rates, terms, and conditions to just and reasonable levels is strongly disputed and the subject of complex analysis we currently are conducting in the special access proceeding. By the interim rule that we adopt today, which will remain in place only until the special access proceeding is resolved, we are establishing a balanced, flexible principle that will facilitate the ability of carriers and customers alike to navigate the transition successfully and ensure that small- and medium-sized business, schools, libraries, and other enterprise customers continue to enjoy the benefits of competition.

132. Accordingly and for the reasons discussed below, we adopt an interim rule that incumbent LECs that seek Section 214 authority prior to the resolution of the special access proceeding to transition to all-IP by discontinuing, reducing, or impairing a TDM-based special access or commercial wholesale platform service (as specified further herein) that is currently used as a wholesale input by competitive carriers must as a condition to obtaining discontinuance authority provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions. Although Section 214 applies to all carriers, the reasonably comparable wholesale access condition apply only to the services specified herein. The interim condition to which incumbent LECs must commit to obtain discontinuance authority will remain in place only for a limited time—specifically, the Commission will have adopted and implemented the rules and policies that end the reasonably comparable wholesale access interim rule when: (1) It identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable; (2) it provides notice such rules are effective in the **Federal Register**; and (3) such rules and/or policies become effective. The Commission's special access proceeding involves a comprehensive evaluation of the correct policies for the long-run concerning access to a key form of competitive inputs and technology change—special access.

Special access is the non-switched dedicated transmission of voice and data traffic between two points. The Commission's *Pricing Flexibility Order* relaxed much of this traditional price regulation for incumbent LECs in competitive areas; however, the factors used to determine the level of competition an incumbent LEC faces in a given area are the topic of much debate and will be a main focus of the special access proceedings. As explained below, the reasonably comparable wholesale access condition that we adopt applies to two categories of service: (1) Special access services at DS1 speed and above; and (2) commercial wholesale platform services such as AT&T's Local Service Complete and Verizon's Wholesale Advantage. References to wholesale inputs with respect to the reasonably comparable wholesale access condition, unless stated otherwise, applies to these two categories of services. References to wholesale inputs with respect to the reasonably comparable wholesale access condition, unless stated otherwise, applies to these two categories of services. As detailed below, we evaluate whether an incumbent LEC provides reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions based on the totality of the circumstances, and our evaluation takes into account five of the specific factors for which we sought comment in the *NPRM.* The reasonably comparable wholesale access requirement is a *condition* to a grant of a discontinuance application imposed under our authority pursuant to Section 214(c) of the Act, as further explained below. When an incumbent carrier files an application for approval to discontinue, reduce, or impair a TDM-based service, the Commission will evaluate whether approval should be granted according to the longstanding criteria by which it evaluates such applications. The FNPRM proposes articulating specific factors by which the Commission will evaluate one of the factors within its multifactor test in the context of certain technology transitions. Thus, the reasonably comparable wholesale access interim rule applies as an interim condition in addition to and separate from the multifactor evaluation of whether to grant the application. If the Commission grants approval, then by interim rule the incumbent LEC will be subject to the reasonably comparable wholesale access requirement as a condition on the grant of authority pursuant to Section 214(c) of the Act. To ensure clarity for this interim rule and to assist with compliance and enforceability, we codify the reasonably comparable wholesale access condition in a new subsection to Section 63.71 of our rules. Compliance with the reasonably comparable wholesale condition does not excuse an incumbent LEC's obligation to comply with other applicable law, including applicable provisions of the Act. To ensure clarity for this interim rule and to assist with compliance and enforceability, we codify the reasonably comparable wholesale access condition in a new subsection to Section 63.71 of our rules. Compliance with the reasonably comparable wholesale condition does not excuse an incumbent LEC's obligation to comply with other applicable law, including applicable provisions of the Act.

133. The Commission received many comments on maintaining wholesale access. Competitive LECs, industry and consumer advocacy organizations, several state commissions and other government entities, businesses, schools, and healthcare facilities support the Commission's tentative conclusion to require incumbent LECs that seek Section 214 authority to provide competitive carriers wholesale access on equivalent rates, terms, and conditions. These parties also generally support the principles proposed by Windstream as an appropriate method to evaluate whether incumbent LECs satisfy the equivalency requirement for wholesale access. Some parties support the Windstream principles with modifications, as discussed below. Many incumbent LECs, ITTA, Corning, and USTelecom and other industry groups oppose the Commission's tentative conclusion and adoption of specific factors to define ''equivalent wholesale access.'' Incumbent LEC commenters argue there is sufficient competition in the wholesale access marketplace that such use of the Section 214 discontinuance process is unnecessary and will stifle the technology transitions and harm innovation. USTelecom argues that the FCC could establish a presumption that incumbent LECs are no longer dominant in most or all voice markets nationwide because competitive LECs and cable providers control over 45 percent of the market for business voice services, attempting to draw a parallel with the FCC's finding that there is effective competition for cable companies in the market for multichannel video programming (MVPD) services because the direct broadband satellite (DBS) providers have captured 34 percent of MVPD subscribers. However, we find USTelecom's comparison to be inapposite because, despite the relatively similar degrees of market share, the DBS providers do not rely on incumbent cable operators to provide their products to customers whereas competitive LECs rely on the networks and services of incumbent LECs. In addition, ''effective competition'' for cable systems is a term of art established in the Communications Act via specific tests, and such tests do not apply in the context of competition between incumbent LECs and competitive LECs.

134. We recognize the importance of preserving opportunities to continue to provide the competition that competitive LECs have brought to the enterprise market. Competitive LECs are the primary source of competition for wireline communications services purchased by enterprise customers, including government, healthcare, schools, and libraries. We note that according to the Commission's most recent Local Telephone Competition Report, competitive LECs using leased copper and fiber facilities provide substantially more business lines than cable operators. COMPTEL explains that Ethernet over Copper (EoC) services built using DS1s and DS3s as wholesale inputs allow small and medium-sized businesses to realize many of the same efficiencies of Ethernet technology that previously only were available to larger enterprise customers. Moreover, XO states that it currently provides EoC from over 565 local serving offices and to approximately 953,000 buildings. The continued existence of these competitive options enhances the ability of enterprise customers to choose the most cost-effective option for their business or organization.

135. The record contains compelling comments alleging that competitive LECs will be unable to serve their retail customers at competitive rates, terms, and conditions without reasonable access to incumbent LEC last-mile inputs. As such, their end-user customers could potentially face higher communications costs and less competitive choice. We seek to avoid the situation where a competitive LEC may irrevocably lose business as a result of the technology transitions and loss of wholesale inputs even though such wholesale inputs may ultimately be made available as a result of the special access proceeding. Although some commenters disagree, competitive LECs maintain they are still dependent on incumbent LEC last-mile inputs to serve small- and medium-sized customers. In particular, competitive LECs, which often serve their customers pursuant to long-term contracts, question whether they may continue to serve these

customers if the wholesale input prices that they relied on when negotiating their end-user contracts materially increase when incumbent LECs discontinue their legacy services, such as DS1 and DS3 special access services, and replace them with packet-based services at different rates, terms, and conditions. Competitive LECs assert that in the majority of cases there are no alternative sources for the necessary wholesale inputs, and the incumbent LEC rates for proposed replacement services are unreasonably high. Windstream has submitted a CostQuest study that it states ''demonstrates that ILECs continue to enjoy a dramatic advantage over CLECs in the average cost per building of new last-mile fiber deployment'' and that ''[t]hus, competition for most business service customer locations likely will continue to depend on CLECs' being able to lease ILEC last-mile inputs so that they can connect their CLEC fiber backbone facilities to individual customer locations.'' As Windstream notes, a replacement of a DS1 service with a 2 Mbps Ethernet service in Kings Point, Florida would result in an 800 percent input price increase to Windstream. This type of rate increase, far beyond the bounds of reasonable comparability, may result in certain geographic areas or certain classes of customers, including enterprise consumers, government, healthcare, schools, and libraries facing fewer competitive options and potentially higher rates—ultimately harming the public that these institutions and enterprises serve.

136. We conclude that in the absence of any interim protection, competition from competitive LECs could be irrevocably lost depending on the answers to key factual questions that we are not yet able to answer. To the extent the wholesale prices of replacement packet-based services are unreasonably high, competitive LECs may be unable to modify the terms of their long-term retail contracts to recover the increased cost of the wholesale inputs without losing customers or losing revenue and potentially exiting the market, to the detriment of its customers and the public they serve. Moreover, in offering new contracts to customers, competitive LECs could in these circumstances be forced to raise their prices, so a switch to packet-based services could weaken the constraint competitive LECs place on incumbent LEC market power. These results would delay the positive effects of the technology transitions on competition and the economy. Thus, without our interim reasonably comparable wholesale access rule, the prices competitive LECs must pay for wholesale inputs could substantially increase, thereby substantially increasing the costs to their customers. We want to ensure that technology transitions continue to positively affect competition to the benefit of end-user retail customers and the economy at large. Therefore, we conclude we should limit potential temporary disruptions by requiring that wholesale inputs continue to be offered on reasonably comparable rates, terms, and conditions until the Commission develops longer-term policies for such services after a full analysis of the special access market.

137. The reasonably comparable wholesale access interim rule will ensure existing competition is not diminished by bridging the gap until the Commission's special access proceeding is complete. As stated above, data show that competitive LECs currently are the principal source of competition to incumbent LECs in the enterprise market. Competitive LECs provide broadband services that ''are vital inputs for small and medium business and enterprise users, including mobile carriers.'' The Commission recognizes the critical role that wholesale access to last-mile inputs plays in promoting competition and has emphasized the ''technology transitions should not be used as an excuse to limit competition that exists.'' In addition, the City of New York expressed concern about the cost of replacement services, ''both in its role as a consumer advocate and in its role as a large customer.'' Ad Hoc Telecommunications Users Committee also expresses concern about continued availability of competitive services from the perspective of retail customers. Moreover, Public Knowledge, NASUCA and state public service commissions also recognize that retail customers will be harmed if competitive LECs do not have sufficient access to wholesale inputs. We find these arguments persuasive that action is needed.

138. In the *NPRM,* we sought comment on whether an ''equivalent'' standard of wholesale access or a ''reasonably comparable'' standard would best achieve our goals. We now conclude that the ''reasonably comparable'' standard best comports with our goals of promoting technology transitions by all parties and maintaining competition-facilitating wholesale access to critical inputs as we continue our special access rulemaking proceeding. The approach that we adopt facilitates prompt transitions to IP by incumbent LECs because it removes issues that may otherwise pose barriers to transitions while the special access proceeding remains pending and provides as much flexibility as possible consistent with the goal of preserving competition. It also reflects our commitment to accelerated and seamless technology transitions by preserving the benefits of the competition that exists today. Because our goal is to accelerate carriers' transition to all-IP infrastructure through creating clear rules of the road, we recognize the importance of balancing the goals of preserving current levels of competition through interim wholesale access requirements pending resolution of the special access proceeding, with avoiding unduly costly impediments to competition in innovation and the technology transition. We agree with CenturyLink that the Commission's role in facilitating the transitions should not be to ''perpetuate the specific characteristics (and costs)'' associated with the legacy TDM-based services, but instead should be focused on ''facilitating a shift to the services and features that actual customers demand.'' Our reasonably comparable standard is consistent with this goal. We do not require incumbent LECs to maintain multiple networks or to forego the advantages of new technologies or services to fulfill these requirements; indeed, these competition-preserving requirements are necessary precisely because we anticipate that incumbent LECs will continue to have incentives to transition. Accordingly, and for the reasons stated herein, we reject arguments that we should adopt an ''equivalent'' wholesale access standard out of concern that it would impose potentially unnecessarily high costs on incumbent LECs that could unduly deter the pace of transitions and thereby diminish the supply or quality of replacement services.

139. We agree with CenturyLink that incumbent LECs should be required to provide no more than a ''reasonably comparable'' alternative.'' Our interim rule adopts such an approach. We recognize concerns that temporarily basing rates for higher speed IP-based services that replace discontinued TDM wholesale inputs on legacy rates, terms, and conditions may create disincentives for innovation, and we find that a moderated ''reasonably comparable'' approach best balances ensuring ongoing competition with minimizing disincentives for incumbent LECs.

140. As stated above, the record convinces us that there is a substantial risk that competition could be lost in the absence of the interim wholesale access condition that we adopt. However, we recognize that we are

acting based on the best information available at present while we are separately conducting a related in-depth analysis, and we adopt a time-limited interim measure for this reason. We will be able to evaluate the state of competition and need for regulation with far greater certainty and granularity once we complete our evaluation of the special data collection. Incumbent LECs assert that they are subject to substantial competition in the provision of packet-based special access services and have every incentive to price competitively to retain the wholesale business. Verizon asserts that ''it is better for an ILEC if . . . consumer[s] take . . . retail service from one of the incumbent LEC's wholesale customers—and therefore generates wholesale revenues for the ILEC—instead of one of the many available intermodal options competitors offer.'' The reasonableness of the incumbent LEC arguments depends on the availability of competitive alternatives to constrain the discontinuing incumbent LEC's rates, terms, and conditions for packet-based special access services to just and reasonable levels. Whether and where such competitive alternatives exist is precisely the analysis we currently are conducting in the special access proceeding. The Commission is in the process of comprehensively evaluating its special access rules by analyzing data collected from both providers and users of special access services. The deadline for responding to the mandatory collection is currently September 25, 2015. Our review of such data will provide the objective foundation for a thorough analysis of competition in the special access service marketplace. Such analysis will support our adoption of the appropriate rules and policies to ensure access to critical wholesale inputs at just and reasonable rates, terms, and conditions over time and in connection with technology changes. Given that we do not yet have the benefit of evaluation of the special access data, we find that the flexible interim approach that we adopt strikes an appropriate middle course that avoids any unduly strong assumptions about the ultimate outcome of our evaluation.

141. If we were to fail to adopt any wholesale access requirement, we risk allowing the benefits of competition to be lost irrevocably. At the same time, we have come to the conclusion that adopting an ''equivalent wholesale access'' requirement would go too far in advance of determinations yet to be made in the special access proceeding by exporting in its entirety the complex tariffed framework currently applicable to incumbent LEC DS1 and DS3 services and applying it to replacement services. Given the factual disputes that underpin the parties' arguments, which we will examine in the special access policies. access proceeding, we find that the middle course that we adopt today strikes the correct balance between preserving competition and promoting transitions by all parties during the interim period of factual uncertainty before the resolution of the special access proceeding. We agree with the New York PSC that ''legacy policies regarding wholesale access and obligations should be reviewed so as not to burden ILEC investment in more reliable, robust and innovative networks.'' We find that the standard that we adopt accomplishes this goal. We also disagree with ITTA that our actions are ''premature'' in light of any actions the Commission may take as part of that proceeding. We do not attempt to prejudge any findings in the special access proceeding in this Order. Rather, by limiting the duration and stringency of the equivalent wholesale access requirement proposed in the *NPRM,* we are striking the right balance by taking interim measures to ensure that competition does not decrease as incumbent LECs discontinue their legacy services while facilitating such transitions as the Commission continues to consider long-term special access policies. The Commission expects to release a Report and Order addressing issues raised in the *Data Collection Reconsideration Order.* We reject as improperly prejudging the final outcome of the special access proceeding CenturyLink's proposal that we adopt a ''glide path'' pursuant to which ''[r]ates for existing circuits would gradually adjust to the market rate for the IP replacement product.''

142. We reject arguments that adopting a wholesale requirement is bad policy. These arguments misconstrue the modest, time-limited nature of the requirements we adopt and fail to take into account the ''reasonably comparable'' standard that we adopt. CenturyLink cautions that ''exit approval requirements are among the very most intrusive forms of regulation . . . [and] are only appropriate when retail customers will be left without any reasonably comparable alternative.'' Since our interim rule is specifically designed to ensure the availability of reasonably comparable offerings to retail customers by ensuring competitors maintain access to reasonably comparable wholesale inputs, we find it appropriate to avoid precisely the situation that CenturyLink describes as warranting action. As discussed above, it is not yet clear whether (or where) competitive alternatives exist that are sufficient to constrain a discontinuing incumbent LEC's rates, terms, and conditions for replacement services. Absent such alternatives, competitive LECs and their customers could be left with less choice and higher prices. To ensure technology transitions do not harm our core value of competition, prophylactic action is necessary to ensure that the competition that exists today is not undermined, at least until the Commission completes its full, data-driven evaluation of the special access market.

143. Some commenters further assert that a wholesale access condition will ''micromanage'' technology decisions or network upgrades. We disagree. As discussed herein, the interim rule the Commission has established is flexible in nature and avoids rigid prescriptions. It also is limited in duration and scope so as not to overburden the incumbent LECs or impede their technology transitions. Of note, the condition applies only when an incumbent LEC discontinues a TDM special access or commercial wholesale platform service used as a wholesale input (as opposed to when it offers that service alongside new IP-based services). And within those bounds, this rule will ensure that competitive LECs continue to access wholesale last-mile inputs at reasonably comparable rates, terms, and conditions during the technology transitions while the Commission continues its review of special access market.

144. Some commenters also claim that there is sufficient intermodal competition so an interim wholesale access condition is not necessary to ensure businesses, government, and other organizations have choice, competitive prices, and innovative service offerings. Verizon and USTelecom point to the growing broadband market share of mobile and cable providers as proof that competitors are successfully serving the enterprise market over their own last-mile facilities or wholesale arrangements and therefore no additional regulation is necessary. We are encouraged by the growth in intermodal competition; however, we do not wish to prejudge the special access proceeding's comprehensive data evaluation. As discussed above, competitive LECs are dependent on incumbent LEC last mile wholesale inputs to provide service to enterprise customers, governments, schools and libraries, and other organizations. Our goal, as reiterated throughout this Order,

is to encourage the accelerated technology transitions to IP while we continue to evaluate claims about competitiveness in the special access market. Our interim reasonably comparable wholesale access condition is a light-handed, temporary regulation to avoid transition delays due to diminished competition while the Commission conducts an analysis of the special access marketplace.

145. We also decline to adopt a presumption in favor of approving discontinuance of a retail service if at least one competitive alternative is available. Under our precedent, the Commission evaluates a range of factors to determine whether to grant a discontinuance application. In evaluating an application for discontinuance authority under Section 214(a), the Commission considers five factors that are intended to balance the interests of the carrier seeking discontinuance authority and the affected user community: (1) The financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations. As explained above, the reasonably comparable wholesale access interim rule applies as an interim condition in addition to and separate from the multifactor evaluation of whether to grant the application. We do not see a reason to deviate from these longstanding and clearly articulated criteria by which we evaluate Section 214(a) applications, which already take into account whether alternatives are available. Moreover, our existing criteria better capture and balance the public interest than would CenturyLink's proposal to give the availability of a competitive alternative new primacy. Thus, we are not convinced that this proposal is in the best interest of the public that consumes communications services, which must be our primary consideration. Further, at present we grant the vast majority of applications within 31 or 60 days of release of the Commission's public notice of the application filing, and we are not currently convinced that this process needs to be further expedited.

146. *Scope of Service Covered.* Because of our intent to prevent potential irrevocable loss of competition during the pendency of the special access proceeding, we apply the reasonably comparable wholesale access interim rule to special access services. However, we agree with Verizon that applying the reasonably comparable wholesale access condition to lower speed special access services is not consistent with our efforts to guide and accelerate the technological revolutions that are underway. Accordingly, we will only apply the reasonably comparable wholesale access condition to special access services at or above the DS1 level. While there is evidence in the record that there is a demand for commercial wholesale platform services that include voice grade circuits equivalent in speed to DS0 level special access service, there is no evidence of significant demand for stand-alone DS0 service. That is, competitive carriers have not asserted they will be unable to serve their retail customers at reasonably comparable rates, terms, and conditions without comparable access to incumbent LEC DS0 replacement services. We thus do not find on this record that competitive LEC will likely irrevocably lose business as a result of the technology transitions without access to DS0 special access wholesale services. We also note that Verizon asserts that ''the proposed equivalence standard would be particularly burdensome for providers seeking to grandfather or discontinue DS0 dedicated services'' and cites the example of its efforts to provide DS0 equivalent services over fiber in six wire centers where it has fully transitioned to a fiber network—noting that ''necessary equipment to provide a single fiber based DS0 equivalent at a customer location can cost more than $30,000.'' We accordingly conclude that the purpose of our wholesale access condition—to promote technology transitions by maintaining current competition—is satisfied if competitors can access replacement services for discontinued TDM-based special access service at or above a DS1 level.

147. While we categorically exclude special access DS0s from the reasonably comparable wholesale access interim rule, we recognize the importance of competition in basic voice service to businesses and other enterprises. If an incumbent LEC discontinues a TDM-based wholesale voice arrangement that includes DS0 local loops, switching, and transport in a commercial unbundled network element platform (UNE–P) replacement arrangement, such as AT&T's Local Service Complete and Verizon's Wholesale Advantage (commercial wholesale platform service), under the interim rule the incumbent LEC must offer the replacement service at reasonably comparable rates, terms, and conditions. AT&T argues that before the Commission can condition the withdrawal of commercial wholesale platform services on the availability of reasonably comparable replacement services, it must address the basis for its jurisdiction over wholesale voice platform services because they are local in nature, do not appear in any interstate tariffs, and are not classified as Section 251 unbundled network elements. However, the interim reasonably comparable condition will apply to commercial wholesale platform services only in the limited context of Section 214(a) discontinuances, thereby obviating AT&T's concern about our overall jurisdiction over such services. Large, well-known companies—including Starbucks, Sears, Bed Bath and Beyond, Panera, Tory Burch, Domino's, Simon, and Scholastic—and education, community, and governmental organizations—such as YMCA of San Francisco, Scholastic, and Washington Metropolitan Area Transit Authority—have filed letters with the Commission expressing concern about the lack of competitive options if competitive LECs lose access to commercial wholesale platform service. Based on the record, we conclude that these IP-replacements services should be subject to the reasonably comparable wholesale access condition so competitive LECs may continue to serve multi-location business customers that have modest demands for voice service.

148. Certain competitive LECs depend significantly on commercial wholesale platform services. These competitive LECs offer multi-location businesses voice services at each location by combining value-added services with underlying TDM-based telephone services purchased at wholesale from incumbent LECs. These competitors also argue that the combined platform services are necessary as a complete wholesale input to serve customers with lower bandwidth needs. We are persuaded by evidence in the record that competitive LECs are unable to offer their multi-location services without access to the wholesale platform replacement service pursuant to agreements that are reasonably comparable to the entire wholesale platform agreements for the discontinued service with incumbent LECs. Moreover, the information in the record does not suggest that the costs of providing this commercial wholesale platform replacement service are significantly different than those of the TDM-based service. However, with respect to the cost to provide DS0 service, Verizon claims ''that necessary

equipment to provide a single fiber based DS0 equivalent at a customer location can cost more than $30,000.'' That said, we reject a strict equivalency standard and deem the provision of a substitute on ''reasonably comparable'' rates, terms, and conditions most appropriate to ensure continued opportunities for competition while avoiding deterring transitions or adopting an unduly prescriptive rule. Moreover, we are not imposing any special access regulation on switching or transport elements, as they are not special access services. We also are not resurrecting any UNE–P-type regulation on these commercial offerings. Rather, we are imposing the interim reasonably comparable wholesale access condition on the commercial wholesale platform service, which includes not only switching and transport but also voice (*i.e.,* DS0 speed) loops. As such, an incumbent LEC's IP replacement for its commercial wholesale platform service must be offered at reasonably comparable rates, terms, and conditions during the pendency of the special access proceeding. This will protect against the loss of competition by multi-location enterprise customers that rely on low-bandwidth voice services during the pendency of the special access proceeding and the FNPRM.

149. This extension of our reasonably comparable wholesale access condition is necessary to further the technology transitions underway. Verizon argues that the fact that incumbent LECs offer on a ''voluntary'' basis commercial wholesale platform service ''is the best evidence these customers will continue to have options.'' We note that Section 214(a) requires carriers to obtain Commission authority to discontinue, reduce, or impair service to a community, or part of a community, without respect to whether the service was initially provided on a voluntary basis. We are encouraged by the availability of these TDM offerings in the marketplace. However, we note that Section 214(a) requires carriers to obtain Commission authority to discontinue, reduce, or impair service to a community, or part of a community, without respect to whether the service was initially provided on a voluntary basis. Our Section 214 authority addresses AT&T's assertion that before including commercial wholesale platform services under the revised Section 214 discontinuance regulations, the Commission must ''address the fact that the ILECs have been providing these services on a voluntary basis under commercially negotiated contracts since the obligation to provide the unbundled network element platform was struck down by the Courts.'' Pursuant to this Section 214 framework, we are persuaded that the temporary condition we adopt today for commercial wholesale platform services is warranted in order to provide certainty and clarity during these stages of the technology transitions, in which the perceived, looming sunset of TDM service raises questions as to whether end-user customers will continue to receive competitive options for their multi-location, low-bandwidth businesses.

150. In reaching these conclusions, we reject the argument that the interim reasonably comparable wholesale access condition ''must be limited to DS1 and DS3 special access services.'' With respect to special access, we include within the scope of the condition all special access services at or above DS1 speed to provide both competitive and incumbent LECs with greater flexibility than would be available if we limited speed intervals more rigidly. And for the reasons stated above, we reject the argument that we should exclude commercial wholesale platform services, which provide a crucial input for services on which many multi-location businesses depend.

151. *Timing.* We also reject the contention that we should establish a date certain by which the reasonably comparable wholesale access condition will sunset. Under such an approach, competition may be lost irrevocably due to the absence of workable wholesale inputs during any gap between the end of the condition and the effective date of special access rules and/or policies. Further, adoption of a date certain sunset increases uncertainty in the market by leaving all parties uncertain as to whether their rights and obligations will be altered substantially due to the passage of time in the interim of adoption of effective special access rules and/or policies. These results would be contrary to the purpose of the interim rule that we adopt herein. Additionally, adopting a date certain sunset would create an undesirable incentive for parties that benefit from the status quo in the absence of the condition to attempt to forestall completion of the special access proceeding. USTelecom argues that ''the Commission has always placed a premium on facilities-based competition over less-sustainable competition models'' and that ''competing providers would be well-served to focus on decreasing their dependence on incumbent local exchange carrier legacy facilities rather than slowing down the transition'' such that ''[a] hard deadline . . . would ultimately do more to ensure the success of the transition than would a wait-and-see approach.'' This argument presupposes that a less regulated special access market will be preferable for competition in the long run, an issue the Commission cannot resolve until it completes its review of the relevant data. In the interim, the reasonably comparable standard that we adopt best preserves the benefits of the status quo and best charts a course between the competing risks of (1) irrevocable loss of competition due to the elimination of potentially necessary inputs and (2) deterrence of transitions and facility construction due to overly prescriptive regulation. In contrast, the standard for termination that we adopt protects against the irrevocable loss of competition during the full interim period until completion of the special access proceeding and provides certainty to all parties regarding their rights and obligations until that time. We emphasize that we intend fully for the condition to be interim and short-term in nature, and consistent with that goal we have adopted a specific and foreseeable endpoint. We specifically reject arguments that we should adopt a purportedly ''interim'' standard that is unmoored from any specific and foreseeable endpoint. Moreover, the Commission and its staff is working hard to bring the special access proceeding to as rapid a conclusion as possible.

152. We seek comment in the FNPRM about whether or not the reasonably comparable wholesale access condition, as it applies to the commercial wholesale platform service, should be extended beyond the completion of the special access proceeding. Even though commercial wholesale platform services are not special access services, the timing we adopt is appropriate because the special access proceeding provides a foreseeable and definitive point in the future at which we can reassess the efficacy and necessity of the requirement that we adopt and will entail a comprehensive evaluation of competition pursuant to which the Commission intends to adopt a set of rules and/or policies that may have wide-ranging effects on telecommunications competition. We reject Granite's argument that we should not specify the term for the condition as to commercial wholesale platform services at this time and instead merely seek comment on the appropriate term. We find that this approach would leave a key aspect of our requirements too vague and that the lack of predictability inherent in this approach risks deterring

investment. We also reject Granite's argument that we should extend the condition ''until such time as the Commission adopts rules governing the economic regulations governing incumbent LEC wholesale voice services in the pending *IP-Enabled [Services]* proceeding'' in response to the Notice of Proposed Rulemaking issued in 2004 in that proceeding. In our view, the special access proceeding provides a more clearly foreseeable point at which to reevaluate appropriate duration of the reasonably comparable wholesale access interim rule as to commercial wholesale platform services.

153. *Legal Authority.* We find the Commission has authority under Section 214 to condition an incumbent LEC's authorization to discontinue TDM-based services by requiring the incumbent LEC to offer the IP replacement wholesale service on reasonably comparable rates, terms, and conditions and therefore disagree with arguments to the contrary. Section 214(c) states the Commission ''may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require.'' The Commission has the discretion to condition a 214 authorization and regularly does so when necessary to protect the public interest. Specifically, in the *December 2014 Connect America Fund Order,* we held the Commission ''has discretion to grant a discontinuance request in whole or in part, and may attach conditions as necessary to protect consumers and the public interest.'' Although the Commission could impose the reasonably comparable wholesale access condition on a case-by-case basis, we find it less administratively burdensome and clearer to the parties to include the condition as part of the Section 214 rules for a limited time until the Commission concludes the special access proceeding. We reject AT&T's claim that the Commission is obligated to consider the facts of each individual discontinuance application to apply the wholesale access condition. As stated above, we could adopt the condition on a case-by-case basis but find our approach here less administratively burdensome and clearer to parties. In a case-by-case analysis, we would find the condition necessary as to the class of applications that we identify here in order to ensure the technology transitions are successful and promote the public interest by maintaining currently levels of competition. Moreover, we find that an industry-wide rule is preferable to a case-by-case analysis as the reasonably comparable condition is time-limited and will only apply when (1) an incumbent LEC has determined that end-user customers will experience a discontinuance, reduction, or impairment of service; or (2) is unable to conclude that end-user customers will not experience a discontinuance, reduction, or impairment of service. In these limited circumstances where an incumbent LEC is seeking discontinuance authority under Section 214(a), a temporary, industry-wide reasonably comparable condition is warranted to encourage technology transitions and competitive choice.

154. Further, we find that our authority under Section 214(a) supports adoption of the reasonably comparable wholesale access interim rule. As discussed above, consistent with Section 214(a) and precedent, a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input when the carrier's actions will discontinue, reduce, or impair service to retail end users, including a carrier-customer's retail end users. We find that as incumbent LECs transition from TDM-based services to IP, competitive LECs may be unable to obtain wholesale replacement services at reasonably comparable rates, terms, and conditions, and lack of wholesale alternatives will adversely affect its retail customers and harm the public interest. And, as discussed above, as a matter of statutory interpretation, these retail customers are part of the community identified in Section 214(a) and thus it is consistent with precedent to address their needs through Section 214 when services are discontinued. This is the best interpretation of the relevant statutory language and helps us to ensure that technology transitions do not thwart the public policy objective, enshrined in the Telecommunications Act of 1996, to promote competition. The rule changes we adopt in this rulemaking process ensure that Section 214 of the Act continues to be implemented in an effective manner throughout the technology transitions process. For these reasons, we are not persuaded by the argument that the Commission's application of Section 214 conditions to wholesale services exceeds its statutory authority.

155. Some commenters claim that our interpretation of Section 214 cannot be squared with other provisions of the Act. That is, they claim that there are statutory provisions directed to competition between carriers, including Sections 201, 202, 251, and 252, and they claim that the Commission cannot impute competition provisions into Section 214. We are not persuaded by this argument. The mere fact that the Act contains provisions designed to open markets to competition does not preclude the Commission from considering competition in the wholesale last-mile input market as part of its Section 214 public interest analysis. The wholesale access condition and requirements we adopt in this Order ensure that Section 214 is implemented in a way that maintains its effectiveness in the technology transition context. Moreover, we consider the pro-competition provisions of the 1996 Act as a whole, and thus disagree that competition is considered as a factor in Sections 251, 201, and 203 but not 214, as competitive access to wholesale inputs ultimately affects end users. We further disagree with ITTA that ''established law'' prohibits the reasonably comparable wholesale access interim condition. The Commission's ''public convenience and necessity'' mandate includes pro-competition considerations more strongly now than prior to enactment of the Telecommunications Act of 1996.

156. It is not necessary for us to satisfy the substantive and procedural requirements of Section 205 to adopt the interim reasonably comparable wholesale access condition, contrary to AT&T's assertion otherwise. Sections 205 and 214 are distinct and independent sources of authority. The DC Circuit has confirmed that ''Section 214(c) does, in [the court's] judgment, authorize the Commission to restrict'' Section 214 applicants outside of the tariffing process ''in derogation of the legislative compromise embodied in Sections 203–205'' so long as ''it has affirmatively determined that 'the public convenience and necessity [so] require.' '' AT&T asserts that the 1977 *MCI* court ''did not address, and had no occasion to address, the much different situation presented here.'' But of course courts only address the facts in front of them. Nonetheless, the decision clearly stands for the proposition that Section 214(c) authorizes conditions ''in derogation'' of Sections 203–205 so long as the Commission determines that the public interest so requires. Indeed, on many occasions the Commission has granted Section 214 applications conditioned on obligations regarding pricing. The condition applies only if an incumbent LEC voluntarily discontinues a specified service and offers an IP service in the same geographic market(s). Thus, Commission precedent regarding ''voluntary transactions'' is relevant to understanding the scope of

our Section 214(c) authority here. For the reasons articulated herein, we affirmatively determine that the public convenience and necessity requires imposition of the interim reasonably comparable wholesale access condition when certain discontinuance applications are granted, and therefore our action comports with Section 214(c) and the Act as a whole.

157. It would be incongruous for Section 205 to restrict our authority under Section 214 given the different scope of the two provisions—while our Section 205 authority applies to ''any charge, classification, regulation, or practice of any carrier or carriers,'' the reasonably comparable wholesale access condition applies *only* if a carrier voluntarily discontinues a specified service during the interim period. Additionally, we note that a number of the cases cited by AT&T specifically support the Commission's authority to take action to preserve the status quo on a limited-term basis, and our action today preserves certain key aspects of the market status quo pending completion of the special access proceeding. AT&T's contentions rest on the idea that if we preserve a status quo, it must specifically be the ''status quo in the *Ethernet* market.'' But in light of the rapidly transitioning marketplace and given our goal of avoiding the irrevocable loss of competition, we find that the relevant status quo is that of the overall market, encompassing multiple transmission technologies. This unblinkered framework best comports with the direction in Section 214(a) and (c) to consider the public convenience and necessity. For the same reasons as articulated above with respect to Section 205, we reject AT&T's contention that the prior grant to AT&T of forbearance for certain non-TDM services poses an ''insurmountable legal bar[ ].'' Section 214(c) provides sufficient authority to condition the voluntary discontinuance of TDM-based special access and commercial wholesale platform services, and AT&T does not claim that the Commission granted forbearance as to these TDM services. Thus it simply is irrelevant whether forbearance has been granted as to IP service because the Commission has sufficient authority under Section 214 as to the discontinuance of TDM service. To conclude otherwise would improperly nullify Section 214(c) by suggesting that it must be supplemented by a second source of authority. AT&T's arguments presume that Section 205 regulation of IP would be, but for forbearance, the only permissible means to achieve the policy adopted herein. But it is not nor is it surprising that the Commission has available multiple sources of authority to implement a policy—the Commission regularly identifies multiple sources of authority to justify its actions.

158. *Enforcement.* We further find that to continue efficient network transitions and avoid possible delays, competitive LECs that believe an incumbent LEC has violated the reasonably comparable wholesale access condition must be able to seek enforcement action. We note the Commission's longstanding precedent that ''the Section 208(b)(1) deadline shall apply to . . . those matters that would have been included in tariffs but for the Commission's forbearance from tariff regulation.'' We thus agree with Windstream's argument and find that incumbent LECs should not preclude their wholesale customers that receive an IP replacement service under the Commission's reasonably comparable wholesale access condition from disclosing the rates, terms, and conditions to a regulator in the context of an action before the Enforcement Bureau. We further agree that an enforcement action subject to this prohibition would include formal complaints, informal complaints, and any mediation processes, provided the wholesale customer seeks confidential treatment of such rates, terms, and conditions.

(i) Totality of the Circumstances Evaluation for Reasonably Comparable Wholesale Access

159. Because of the flexible nature of our reasonably comparable wholesale access standard, we recognize the need for a similarly flexible case-by-case approach to evaluating the reasonable comparability of rates, terms, and conditions. This approach also is beneficial because it recognizes that circumstances in each market will vary, as will the rates, terms, and conditions associated with the discontinued service and the replacement service. We therefore adopt a ''totality of the circumstances'' test for evaluating compliance with the ''reasonably comparable wholesale access'' condition. Notwithstanding the flexible approach that we adopt, we are cognizant of the importance of providing guidance to parties. In the *NPRM,* we sought comment on six specific ground rules to facilitate the IP transition by establishing objective standards and clear criteria for applying the proposed ''equivalent wholesale access'' standard. Specifically, the *NPRM* sought comment on six principles proposed by Windstream to apply as the specific conditions of the proposed ''equivalent wholesale access'' standard when an incumbent LEC is discontinuing a legacy service. Given our adoption of a ''reasonably comparable'' standard, we find that Windstream's specific proposals—which focus on ensuring equivalency—are inappropriate for adoption verbatim. However, for the reasons stated below, in evaluating whether the reasonably comparable wholesale access requirement is fulfilled, we will consider the following questions, adapted from five of Windstream's proposals, as well as any other relevant evidence:

- *Will Price per Mbps Increase?* Will the price per Mbps of the IP replacement product exceed the price per Mbps of the TDM product that otherwise would have been used to provide comparable special access service at 50 Mbps or below? Providing reasonably comparable pricing, terms, and conditions should be reasonably achievable by the incumbent LECs, as the record is replete with references to the efficiencies inherent in IP-based networks and services and the cost savings that the incumbent LECs should realize from transitioning away from TDM networks and services.
- *Will A Provider's Wholesale Rates Exceed Its Retail Rates?* Will an incumbent's wholesale charges for the replacement product exceed its retail rates for the corresponding offering?
- *Will Reasonably Comparable Basic Wholesale Voice and Data Services Be Available?* Will the price (net of any and all discounts) of wholesale voice service purchased under a commercial wholesale platform service be higher than the price of the existing TDM wholesale voice service it replaces, and the price (net of any and all discounts) for the lowest capacity level of special access service at or above the capacity of a DS1 increase?
- *Will Bandwidth Options Be Reduced?* Will wholesale bandwidth options include the same services retail business service customers receive from the incumbent LEC?
- *Will Service Delivery or Quality Be Impaired?* Will service functionality and quality, OSS efficiency, and other elements affecting service quality be equivalent or superior compared to what is provided for TDM inputs today? Will installation intervals and other elements affecting service delivery be equivalent or superior compared to what the incumbent delivers for its own or its affiliates' operations?

160. We adopt these specific questions to provide guidance as to what constitutes reasonably comparable

wholesale access and provide additional guidance on their meaning below. We will examine responses to these questions holistically, including the evidence concerning the motivation for an incumbent LEC's actions. We emphasize that no one question is dispositive, and we will evaluate each situation individually based on the totality of the circumstances, including but not limited to consideration of these questions.

(a) Will price per Mbps increase?

161. For the reasons set forth below, as part of any evaluation of compliance with the reasonably comparable wholesale access condition, we would inquire, ''Will the price per Mbps of the IP replacement product exceed the price per Mbps of the TDM product that otherwise would have been used to provide comparable special access service at 50 Mbps or below?'' A positive response would weigh toward a conclusion that reasonably comparable rates, terms, and conditions are not being offered, particularly if there is not a sound reason for a given rate increase.

162. Competitive LECs argue that this inquiry (framed as a requirement by Windstream) is necessary to ensure the continued availability of wholesale access to last-mile inputs at a cost to competitive LECs that will enable them to remain effective competitors. In addition, Windstream and Birch et al. assert that many small- and medium-sized businesses and multi-location businesses benefit from the availability of TDM-based special access services. As discussed above, incumbent LECs and other commenters object to a wholesale access condition as a whole, but do not address this specific issue. They argue that pricing conditions attached to a Section 214 discontinuance application are unlawful and would impede deployment of next generation services. However, as discussed above, we find that requiring reasonably comparable levels of wholesale access to services when incumbent LECs transition their legacy networks is necessary to preserve the Commission's core value of competition during the pendency of the special access proceeding. This specific question that we will ask goes to the price relationship between TDM and IP products that is the heart of the interim reasonably comparable wholesale access condition that we adopt.

163. We ask this question on a ''price per Mbps'' basis to emphasize flexibility for both incumbent and competitive LECs. Unlike DS1s, Ethernet services do not have to be offered in 1.5 Mbps increments. We agree with CenturyLink and other incumbent LECs that IP-based technologies allow greater flexibility in speed offerings compared to TDM. We wish to preserve this flexibility for incumbent LECs so that they can respond to market demands in deciding speeds for their Ethernet service offerings. But to preserve this flexibility and to avoid rendering the reasonably comparable wholesale access condition toothless, it is necessary to ask whether price comparability is available across the speeds that the incumbent LEC offers. This specific question that we will ask goes to the price relationship between TDM and IP products that is the heart of the interim reasonably comparable wholesale access condition that we adopt. Moreover, because we recognize speed offerings between TDM and IP may vary, incumbent LECs are able to offer IP speeds that have no TDM predecessor offering at exactly equal speeds. Because it is not possible to calculate rates solely on a ''one-to-one'' basis, it is necessary to inquire about the rate to be calculated based on a ''per Mbps'' speed of service denominator.

164. We will generally limit our inquiry regarding price per Mbps to replacement services at or below 50 Mbps. Based on the record, 50 Mbps appears to be the closest standard speed offering to a DS3 offering of 44.736 Mbps. In doing so, we reject arguments by the Wholesale DS–0 Coalition, Granite, and others that this inquiry (framed as a requirement in the *NPRM*) should not have a maximum speed. The underlying purpose of our reasonably comparable wholesale access condition is to preserve for a limited time the opportunities for competition that exist today. Inquiring about rate equivalency at any speed would go too far because it would create obligations regarding price for speeds that are not offered as TDM services and thus not related to the discontinuance of TDM services. The vast majority of the special access inputs used by competitive LECs are at or below the DS3 speed level of 44.736 Mbps. The 50 Mbps figure, as the nearest ''round number'' above the DS3 speed, is a sensible dividing line that allows incumbent LECs to offer tomorrow's speeds without price limitation while we inquire as to whether substitutes and near-substitutes for today's services remain available to competitive LECs at reasonably comparable rates. We find that this bright-line cutoff strikes the best balance between preserving the competition that exists and leaving incumbent LECs flexibility to invest in and deploy service improvements. However, if the only replacement service for a DS3 special access service available to competitive LECs is higher than 50 Mbps, then we will inquire about the next-highest-speed offering so that DS3 replacement services, which are important for competitive LECs to serve their end-user customers, are not excluded from our inquiry.

165. With respect to special access services, we believe that the incumbent LECs' DS1and DS3 generally available tariffed rates at the time of discontinuance, including discounts associated with three- and five-year term and volume discount plans, are the appropriate interim benchmark for measuring the rate relationship between IP-based replacement service and the discontinued service during our inquiry and will provide an efficient and objective measure for both incumbent LECs and their wholesale customers to determine rate comparability. We specifically will inquire about the rates, terms, and conditions associated with three- and five-year term and term-and-volume discount plans as a pricing benchmark given the fact that a significant share of special access purchases takes place at those terms and that they therefore function as reasonably representative interim pricing arrangements. We acknowledge that these pricing options still encompass a variety of different pricing arrangements. Rather than attempt to address all aspects of these varied arrangements, we will evaluate these issues as they arise and leave it to the parties to resolve these details in good faith in their negotiations. We expect that, other things being equal, we would deem it to be reasonably comparable and thus compliant with the wholesale access condition for parties to treat existing pricing arrangements as a default setting for rates for replacement services. This approach will facilitate technology transitions in the interim until the Commission completes its current review of special access regulation. To ensure that current levels of competition are not curtailed as we facilitate technology transitions, we also include within the scope of our reasonably comparable wholesale access requirement new customers and existing customers who wish to purchase additional services; reasonably comparable rates, terms, and conditions must be offered to such entities and not only to existing customers as to existing services. Finally, we will inquire whether purchasers that make volume commitments under tariffed special access discounts are being penalized through loss of a discount or through shortfall or early termination penalties

for purposes of services discontinued as a result of an incumbent LEC's technology transition. Similarly, we will inquire whether replacement services are counted toward fulfillment of a purchaser's volume commitment where TDM services have been discontinued. In both instances, it would be inconsistent with the purpose of the reasonably comparable wholesale access standard that we articulate if competitors suffer changes that are not reasonably comparable because of an incumbent LEC's unilateral decision to transition technologies. We find that anchoring our evaluation of this question concerning IP rates to DS1 and DS3 rates creates predictability, simplicity, and clarity due to the prevalence of DS1 and DS3 services on the market today. Specifically, under this inquiry, for IP services at or below 12 Mbps, we will calculate the TDM benchmark per Mbps rate based on the DS1 TDM service it offered in the area; for IP services above 12 Mbps and at or below 50 Mbps, we will calculate the TDM benchmark per Mbps based on the DS3 service it offered in the area. We adopt a 12 Mbps threshold for calculating comparable rates for replacement services based on DS1 pricing because it most closely replicates the options that exist today since it is technologically infeasible to bond DS1 special access services to provide more than 12 Mbps in capacity. We inquire about replacement services above 12 Mbps based on comparisons to DS3 prices since the only viable TDM special access option for delivering more than 12 Mbps service to a customer location is a DS3 service. We recognize that 12 Mbps is an approximate figure but nonetheless use it for convenience.

166. *Wholesale Platform Services Approach.* We recognize that this initial inquiry, which is evaluated on a per Mbps basis, is not directly relevant to commercial wholesale platform services. Thus, with respect to pricing for such services, we will focus on the inquiries below and not this first inquiry. Nevertheless, for clarity and parallelism we set forth here our benchmarking approach for such services. In contrast to our inquiry for special access services, we adopt an individualized approach to the interim benchmark for our inquiry with respect to commercial wholesale platform services. Under this approach, we will ask whether the competitive LEC is able to take the IP-replacement service at reasonably comparable rates, terms, and conditions to the service taken before discontinuance. We agree with Granite that, ''[p]arties to wholesale TDM-based voice agreements know the prices in their agreements.'' Unlike the special access services discussed above that are offered on tariffed rates, commercial wholesale platform services are non-tariffed commercial offerings. Thus, we adopt an inquiry for these services that is based on market-negotiated rates, terms, and conditions, as such an inquiry is administratively more straightforward to implement.

(b) Will a provider's wholesale rates exceed its retail rates?

167. For the reasons set forth below, as part of any evaluation of compliance with the reasonably comparable wholesale access condition, we would inquire, ''Will an incumbent's wholesale charges for the IP replacement product exceed its retail rates for the corresponding offering?'' A positive response would weigh toward a conclusion that reasonably comparable rates, terms, and conditions are not being offered, particularly if the rate disparity is significant or if there is not a sound reason for any differences in offerings. It remains an open question whether there are suburban, remote, rural and other areas not served by cable or other modes of service where the only competition that exists at the retail level is between an incumbent LEC and a competitive LEC that needs wholesale access from the incumbent LEC in order to compete at the retail level. We recognize that competitive LECs continue to play the most significant role in competing with incumbent LECs for enterprise telecommunications business. As a result, depending on the competitive state of various markets, there may be an incentive for the incumbent to charge higher rates at the wholesale level in order to prevent or disadvantage competition at the retail level. Whether and where such competitive alternatives exist is precisely the analysis we are conducting in the special access proceeding. Absent such alternatives, competitive LECs and their customers will likely be left with less choice and higher prices.

168. We find that this inquiry is necessary to verify the offering of reasonably comparable wholesale access, which ensures that competitive LECs are able to compete. We further find that this inquiry concerning discrimination includes related costs such as the imposition of special construction charges and timing of provisioning. The guarantee of competitive wholesale access free of unreasonable discrimination has played a bedrock role in facilitating the market competition that exists today. Until we are able to reach appropriate long-term conclusions about the state of the wholesale access market in the special access proceeding, we find it necessary, as an interim measure, to inquire whether and to what degree discrimination exists between retail and wholesale customers to determine whether reasonably comparable rates, terms, and conditions are being offered.

(c) Will reasonably comparable basic wholesale voice and data services be available?

169. For the reasons set forth below, as part of any evaluation of compliance with the reasonably comparable wholesale access condition, we would inquire, ''Will the price (net of any and all discounts) of wholesale voice service purchased under a commercial wholesale platform service be higher than the price of the existing TDM wholesale voice service it replaces, and the price (net of any and all discounts) for the lowest capacity level of special access service at or above the capacity of a DS1 increase?'' A positive response to any of these questions would weigh toward a conclusion that reasonably comparable rates, terms, and conditions are not being offered, particularly if there is not a sound reason for a rate increase. We emphasize that this pricing-related factor—given that pricing is at the heart of commercial negotiations—will be extremely important in our analysis.

170. *Pricing for data services.* We will evaluate whether the incumbent LECs price their lowest capacity level of IP-based special access service providing speeds equal to or greater than a DS1 at wholesale rates that exceed the generally available tariffed rates for DS1 services at the time of discontinuance, including discounts associated with three and five year term and term and volume discount plans—and if there is a price discrepancy, we will evaluate its scope. We find that this inquiry is important to evaluate whether competitive LECs retain access to replacements for DS1 service at reasonably comparable rates, terms, and conditions. Incumbent LECs argue that imposing specific speed and rate requirements for next generation IP-based services in parity with TDM-based technology requirements interferes with their ability to innovate and compete. We agree for the reasons stated above. At the same time, there is significant evidence in the record demonstrating a significant continued reliance upon basic service levels at this time. Therefore, to evaluate whether reasonably comparable rates, terms, and conditions are being offered, we will

focus with particularity on whether competitive LECs are offered a replacement service priced comparably to DS1 service.

171. This question is distinct from the first question articulated above because it is not calculated on a per Mbps basis; we simply ask whether the lowest capacity level at or above DS1 to be offered is offered at the DS1 rate. This more stringent component of any evaluation will help to obviate the risk that an incumbent LEC would only offer higher speed services and thereby cutoff any replacement similar to DS1s because such a change would be unlikely to constitute reasonably comparable rates, terms, and conditions. Without any focus on the price relationship of the closest IP equivalent to the current pricing for basic service, incumbent LECs could avoid a rate standard ''by simply offering only high capacity (and therefore higher priced wholesale inputs).'' We expect the efficiencies inherent in the provision of IP service will ensure that even if incumbent LECs maintain rates equal to or below TDM rates for the DS1 replacement service, the resulting rates will allow incumbent LECs to recover their investment in marginally faster IP services.

172. *Pricing for wholesale voice services.* We further will evaluate whether incumbent LECs price their replacement wholesale voice service, purchased under a commercial agreement, net of any and all discounts, greater than the price of the existing TDM wholesale voice service it replaces, and if so to what degree. We agree with Granite that both the incumbent and competitive LECs know the prices of their commercial wholesale platform services, and those prices can be readily applied to replacement products. We find this is an appropriate evaluation to promote technology transitions by helping to ensure that competitive carriers can continue to provide multi-location enterprise services pursuant to commercial wholesale platform arrangements.

173. We find this additional inquiry to evaluate the comparability of rates, terms, and conditions for commercial wholesale platform arrangements builds on the other inquiries that we adopt and our proposals in the *NPRM.* This additional language to the third question emphasizes treatment of ''basic service'' for this important service used by competitive LECs to serve a large sector of enterprise customers in many locations with low bandwidth needs. The first question discussed above is not on point for commercial wholesale platform services, since that inquiry is based on a per Mbps offering at the DS1 level and above, not a platform offering that includes loops, switching and transport. We further clarify that we will ask our other specific questions, particularly the fifth question as to whether there will be impairment in service quality or delivery, as to these commercial wholesale platform services.

(d) Will bandwidth options be reduced?

174. For the reasons set forth below, as part of any evaluation of compliance with the reasonably comparable wholesale access condition, we would inquire, ''Will wholesale bandwidth options include the same services retail business service customers receive from the incumbent LEC?'' A negative response would weigh toward a conclusion that reasonably comparable rates, terms, and conditions are not being offered, particularly if the range of offerings is significantly more limited or if there is not a sound reason for any differences in offerings. We recognize that any wholesale access standard could be obviated ''by simply offering only high capacity (and therefore higher priced wholesale inputs).'' We will therefore ask this question as a part of our totality of the circumstances inquiry to facilitate a determination of whether rates, terms, and conditions of replacement services are reasonably comparable. We find that the existing services an incumbent LEC makes available to retail business service customers provides baseline from which to conduct our evaluation because incumbent LECs find it convenient to provide these services in the market. Sprint argues that an incumbent LEC, at a minimum, should be required to offer the same variety of speed offerings that it currently offers in TDM-based services, ''or the speed offerings of its retail IP services, whichever is greater.'' While we agree that we should evaluate the relationship between the speeds of IP offerings to retail business customers and to competitive LECs, we decline to focus our inquiry on whether incumbent LECs retain TDM-based speeds. Such an inquiry may improperly lock incumbent LECs into legacy speed offerings, which is contrary to the purpose of the flexible reasonably comparable wholesale access condition that we adopt.

(e) Will service delivery or quality be impaired?

175. For the reasons set forth below, as part of any evaluation of compliance with the reasonably comparable wholesale access condition, we will inquire, ''Will service functionality and quality, OSS efficiency, and other elements affecting service quality be equivalent or superior compared to what is provided for TDM inputs today? Will installation intervals and other elements affecting service delivery be equivalent or superior compared to what the incumbent LEC delivers for its own or its affiliates' operations?'' A negative response to either question would weigh toward a conclusion that reasonably comparable rates, terms, and conditions are not being offered, particularly if the level of difference is significant or if there is not a sound reason for any impairment. We are persuaded that quality of service and reliable installation and delivery are important so that wholesale customers can continue to compete. Therefore, in considering whether reasonably comparable rates, terms, and conditions are available, we will examine the factors identified by the question above. As discussed herein, competitive LECs are dependent on wholesale inputs to serve their retail customers and if the service delivery or quality of the IP replacement service is unduly impaired, these carriers likely will be unable to provide competitive services to their customers. We note the Commission addressed discrimination issues with respect to broadband Internet access service in its *Open Internet Order,* when it declined to forbear from Sections 201 and 202 of the Act for broadband Internet access service. The Commission found that broadband providers are ''gatekeepers'' to end-users of broadband Internet access service and antidiscrimination provisions are necessary to protect the public interest from harmful effects. We find a similar rationale applies in the context of the reasonably comparable wholesale access interim rule since incumbent LECs control the last-mile inputs competitive LECs need to serve their customers and technology transitions may create a predicate for discriminatory acts that could harm enterprise consumers and organizations.

176. We agree with competitive LECs and enterprise customers that at least in areas where incumbent LECs face competition only from their wholesale customers, the incumbent LECs may have an incentive to disadvantage their wholesale customers by degrading the quality of the wholesale service. Given the inherent efficiencies of IP-based service, we do not believe that this component of our inquiry—or the overall reasonably comparable wholesale access condition—will be unduly burdensome, and we anticipate that the costs of compliance generally will be lower than (or at a minimum

will not exceed) the costs of compliance with similar obligations as to TDM services. For instance, AT&T states that this technology transition ''will 'dramatically reduce network costs, allowing providers to serve customers with increased efficiencies that can lead to improved and innovative product offerings and lower prices.' ''

(f) Other

177. Although the Commission will consider the questions discussed above as part of the totality of the circumstances test, the Commission is not limited to these questions in its analysis and may consider other evidence. For example, in the 2011 *Data Roaming Order,* the Commission held that it would consider ''other relevant factors in determining the commercial reasonableness of the negotiations, providers' conduct, and the terms and conditions the proffered data roaming arrangements.'' Similarly, here we may consider evidence as to these and other issues provided by the incumbent LEC, competitive LEC, and other parties.

(ii) Inquiries and Requirements Not Adopted

178. *Backdoor Price Increases.* In the *NPRM,* we sought comment on whether, as a part of a wholesale access condition, to prohibit price hikes from being effectuated via significant changes to charges for network to network interface (NNI) or any other rate elements, lock-up provisions, early termination fees (ETFs), special construction charges, or any other measure. We agree that it would be a cause for concern if incumbent LECs evaded the interim wholesale access condition through improper workarounds, and emphasize that our ''reasonably comparable'' standard allows us to evaluate the totality of the circumstances, including any apparent attempts at evasion. However, given the complexity of these issues—which extend significantly beyond what otherwise was raised in the *NPRM*—and given that we are examining a number of them in other proceedings, we decline to take any additional specific actions on these issues at this time.

179. *Other Requests.* We decline to include any rate publication requirement in our evaluation of compliance with the reasonably comparable wholesale access condition. Birch proposes that the Commission require incumbent LECs to ''memorialize all of the rates terms, and conditions governing [the incumbent LEC's] Replacement Service offerings on its Web site.'' Moreover, Windstream also proposes that incumbent LECs publish the TDM rates for the services being discontinued. We do not find sufficient evidence to impose publication obligations on incumbent LECs. Given the interim nature of the reasonably comparable wholesale access condition, we are highly skeptical that a publication requirement would carry significant value despite its clear costs. In addition, we agree with CenturyLink that this requirement would go beyond merely preserving the essence of the status quo to create an obligation that does not presently exist for TDM services that are discontinued, and therefore is contrary to the overall framework and purpose of our reasonably comparable wholesale access obligation.

180. We also decline to include additional requirements to our evaluation of the reasonably comparable wholesale access condition. Specifically we decline to impose a certification requirement proposed by some commenters as it is unclear the timing of certification, and requiring certification is inherently backward-looking, *i.e.,* it is best suited to confirming that an entity has already complied with a regulatory obligation. We find that the condition we adopt to govern the discontinuance process is better suited to ensuring forward-looking, ongoing compliance on an interim basis. And we see no need at this time to adopt additional ''belt and suspenders'' methods to ensure compliance when doing so imposes costs—even if incrementally small—when it is not clear that doing so will result in any benefit. For the same reasons, we decline to include any audits or specific performance metrics. We note that in the FNPRM we seek comment on possible revisions to rule 63.71 to provide additional notice to customers that use the proposed discontinued TDM service as a wholesale input.

III. Order on Reconsideration

181. On December 23, 2014, the United States Telecom Association (USTelecom) filed a Petition for Reconsideration of the Declaratory Ruling (*Declaratory Ruling*) that accompanied the *NPRM.* For the reasons set forth below, we deny USTelecom's Petition.

A. Background

182. Along with the *NPRM,* the Commission adopted the *Declaratory Ruling,* which clarified that when analyzing whether network changes constitute a ''discontinuance, reduction, or impairment of service'' under Section 214, the Commission applies a ''functional test'' encompassing ''the totality of the circumstances.'' The Commission found this clarification was necessary in order to terminate an industry controversy that arose after Hurricane Sandy. In 2012, Hurricane Sandy destroyed much of the legacy network in the barrier islands of New York and New Jersey. The following year, Verizon proposed to serve affected customers with network facilities and services that differed in meaningful ways from those available prior to Sandy. Verizon subsequently decided to rebuild its network in Fire Island, New York with fiber. Verizon's discontinuance application relating to the NJ barrier islands currently is pending. Consumers complained the new network may not support certain third-party services and devices (fax machines, DVR services, credit card machines, medical devices, etc.) that functioned well on the legacy network. Verizon argued that because these services and devices were not described in its tariff, network changes resulting in their loss could not be considered a ''discontinuance, reduction, or impairment of service'' under Section 214(a). Verizon points out that ''[s]uch devices and services were not, however, offered by Verizon as a 'POTS feature or service capability' of its telecommunications services.''

183. In the *Declaratory Ruling,* the Commission found that ''[t]he purpose of a tariff is not to define the full scope of the service provided'' and that Congress did not intend Section 214(a) ''to allow the carrier to define the scope of 'service' via its tariff.'' The Commission further noted that ''[t]he value of communications networks derives in significant part from the ability of customers to use these networks as inputs for a wide range of productive activities,'' and ''[a]n important factor in this analysis is the extent to which the functionality [at issue] traditionally has been relied upon by the community.''

184. In its Petition, USTelecom first asserts that the *Declaratory Ruling* is procedurally infirm because the Commission's ''new'' definition of ''service'' constitutes a legislative rule for which a notice of proposed rulemaking and comment period is required under the Administrative Procedure Act. USTelecom argues that the Commission impermissibly expanded the definition of ''service'' because the Commission and several courts historically have equated tariff and contract terms with the ''service'' offered by providers. Second, USTelecom argues the ''new definition [of service] is impermissibly vague and,

instead of terminating a controversy or removing uncertainty, it creates unnecessary confusion.''

185. Several commenters support USTelecom's Petition, arguing that the *Declaratory Ruling* violates the Due Process Clause because it substantively changes the application of Section 214(a), and that therefore the Commission was required to give notice and an opportunity to comment. These commenters also agree with USTelecom's forecast that the *Declaratory Ruling* will result in a ''regulatory guessing game,'' and will create particular difficulties for small, high-cost carriers. Specifically, they argue carriers have no way of knowing every piece of third-party equipment used in connection with offered services, nor can carriers presage which third-party incompatibilities the Commission will deem requires an application.

186. Opposing commenters argue the *Declaratory Ruling* does not create a new substantive rule, but rather that the Commission declared its interpretation of an existing rule in order to provide necessary clarity. They assert that clarifications do not qualify as the type of substantive change for which a rulemaking is necessary. Several of these commenters note that USTelecom does not cite any instances where the Commission interpreted ''service'' differently from how it is defined in the *Declaratory Ruling.* They also assert that the cases relied upon by USTelecom are inapposite to its arguments. Finally, opposing commenters find USTelecom's concerns about vague and amorphous standards disingenuous, noting that the Commission articulated the specific concerns giving rise to the *Declaratory Ruling—i.e.,* the ability of devices and functionalities such as 9–1–1 location accuracy, alarm monitoring, medical alert capabilities, and fax machines to work on carriers' networks.

B. Discussion

187. We find that USTelecom's arguments are meritless. First, the *Declaratory Ruling* did not require a notice and comment period because it does not substantively change existing rules. The Commission's interpretation only clarified Section 214. Second, the *Declaratory Ruling* is not impermissibly vague. For the reasons set forth below, we deny USTelecom's Petition.

1. The Clarification in the Declaratory Ruling Is Not a Legislative Rule and Thus Did Not Require a Notice and Comment Period

188. USTelecom claims that the analysis set forth in the *Declaratory Ruling* is a new legislative rule requiring notice and comment under the APA. We disagree. The *Declaratory Ruling* clarified a misconception held by at least one incumbent LEC that an incumbent LEC's tariff is the sole source to which the Commission will look in determining what constitutes the ''service'' offered by the incumbent LEC. Per the Commission's rules, the Commission may issue declaratory rulings ''terminating a controversy or removing uncertainty''; therefore, its effort at eliminating confusion on this issue was entirely appropriate. The clarification in question comports with Section 214, with existing Commission regulations, and with Commission precedent. As explained in greater detail below, the *Declaratory Ruling* therefore does not constitute a legislative rule.

a. The Commission Has Never Used Tariffs To Exclusively Define the Scope of Service

189. As stated in the *Declaratory Ruling,* ''the purpose of a tariff is not to define the full scope of the service provided.'' Rather, a tariff's purpose is to provide ''schedules showing all charges for itself and its connecting carriers . . . and showing the classifications, practices, and regulations affecting such charges.'' The Commission has never stated that its evaluation of whether a ''service'' is discontinued *only* examines the service offering detailed within a tariff or contract. Nor is there anything in Section 214 or the Commission's rules establishing such limited parameters. As stated in the *Declaratory Ruling,* tariffs cannot define the scope of a ''service'' under Section 214(a) given that there are circumstances in which the Commission has forborne from tariffing requirements but in which Section 214 obligations remain intact. For example, when AT&T, Embarq, and Frontier were granted forbearance from tariffing requirements, the Commission stated, in no uncertain terms, that the services at issue remained subject to Section 214. USTelecom's preference to tether our Section 214 analysis to tariff language would yield potentially absurd results. For example, under USTelecom's view, any rate increase could be construed as a discontinuance and would therefore trigger Section 214's approval process. Such an outcome would be inconsistent with Section 214(a) and Commission precedent and is precisely why the Commission does not limit its Section 214 evaluation to the four corners of the tariff.

b. USTelecom's Reliance on Other Sources Is Misplaced

190. *The Brand X Case is Inapposite.* Given that Section 214 contains no ''clear'' law stating that service is solely defined by what a provider offers its customers, USTelecom attempts to find it elsewhere. These attempts are unavailing. For example, USTelecom cites the *Brand X* case to support its conclusion that services are strictly ''defined by the terms of its federal tariff, or in the case of telecommunications services that have been detariffed, in its contracts with its customers.'' However, in *Brand X,* neither the Court nor the Commission focused on the carrier's tariff or other contractual language in defining the service; instead, the Commission (and later the Court) explicitly relied on the consumer's point of view when determining how to classify the types of services customers receive from Internet service providers and whether consumers truly had been ''offered'' certain services at all. Therefore, *Brand X* does not support USTelecom's argument that the Commission strictly relies upon tariff language when defining services.

191. *Filed Tariff Doctrine Is Also Inapplicable.* USTelecom next turns to the filed tariff doctrine to contend that the tariff '' '*conclusively and exclusively* enumerate[s] the rights and liabilities' of the carrier and its customer.'' But it cannot show that the filed rate doctrine somehow controls the scope of Section 214(a). First, the filed rate doctrine only applies to tariffed offerings. Therefore, it is irrelevant to detariffed services under contract. Moreover, it is not clear how the filed rate doctrine could ''conclusively and exclusively'' control the meaning of Section 214(a) when the Commission has forborne from tariffing requirements in circumstances in which Section 214(a) still applies. Second, nothing in Section 214 references Section 203 or otherwise indicates Section 214 defines ''service'' to only include the written terms of a carrier's offering. As stated in the *Declaratory Ruling,* such an interpretation would be contrary to Commission precedent. Third, it is reasonable to define ''service'' differently for purposes of the filed rate doctrine and the market exit framework in Section 214 because they serve different purposes. The filed rate doctrine is intended to prevent price discrimination against end users by guaranteeing providers offer similarly situated customers equivalent terms and conditions. In that context, a rigid focus on the specific terms and conditions of the tariff is wholly appropriate.

However, Section 214 broadly directs the Commission to ensure that ''neither the present nor future public convenience and necessity will be adversely affected'' by discontinuance of service. As one commenter noted, the ''totality of circumstances'' standard detailed in the *Declaratory Ruling* does not compromise the filed tariff doctrine's non-discrimination principle. However, limiting the meaning of the term ''service'' under Section 214(a) to only what is contained in a provider's tariff could cause the public to lose services upon which it has come to rely, directly affecting the public convenience and necessity so central to Section 214. The two statutes serve distinct purposes within the Act, and USTelecom's direct comparisons are unconvincing.

c. The Declaratory Ruling Does Not Rise to the Level of Legislative Rule Under Longstanding Precedent

192. USTelecom argues that the Supreme Court's decision in *Shalala* v. *Guernsey Memorial Hospital* demonstrates that notice and comment were required for the *Declaratory Ruling.* However, the Court in *Shalala* held interpretive rules only require a notice and comment period when they adopt positions inconsistent with existing regulations. Because it merely confirms and clarifies existing precedent, the *Declaratory Ruling* does not require notice and comment under *Shalala.* USTelecom does not cite a single Commission rule or adjudication adopting a definition of ''service'' contradicted by or inconsistent with the *Declaratory Ruling.* Furthermore, much of the precedent USTelecom relies upon confirms that the *Declaratory Ruling* merely removed uncertainty and does not rise to the level of a legislative rule.

193. For example, USTelecom references several D.C. Circuit cases where the court distinguishes between interpretative rules and legislative rules. Yet in each case USTelecom cites, the court found the agency in question departed from previous rules that were well-defined. In each case, the court found the agency's shift in policy was the critical factor transforming what was ostensibly an interpretation into a legislative rule. However, in this matter, USTelecom has not identified the prior rule or decision that is purportedly inconsistent with the *Declaratory Ruling* because no such rule or decision exists. Moreover, the Supreme Court recently held that notice and comment is not required even for subsequent updates to interpretative rules. This effectively overturned much of the DC Circuit precedent upon which USTelecom relies.

194. The *Declaratory Ruling* does not contradict any existing regulations, nor does it create any new obligations for providers. It simply clarifies how the Commission analyzes discontinuance under Section 214. USTelecom's inability to identify any rule the Commission diverted from distinguishes this matter significantly from the cases USTelecom cites and is fatal to the Petition. Indeed, the only changes USTelecom identifies are speculative, including ''increase[d] delays'' and the prospect of having to seek pre-determinations from the Commission regarding what constitutes discontinuance. We conclude these concerns are overstated and that the *Declaratory* Ruling ultimately creates less work and eliminates confusion for providers in the midst of technology transitions by clarifying the circumstances in which an application is required.

195. As we have explained, USTelecom identified no previous Commission rules, interpretations, or adjudications from which the *Declaratory Ruling* deviates so substantively as to require resort to the rulemaking process. The *Declaratory Ruling* did nothing more than amplify the meaning of an existing rule. We reject USTelecom's assertion that the *Declaratory Ruling* was procedurally improper.

2. The Clarification Set Forth in the Declaratory Ruling Is Not Impermissibly Vague or Ambiguous

196. We also disagree with USTelecom's contention that the *Declaratory Ruling* is obscure. To the contrary, as explained below, the standard set forth in the *Declaratory Ruling* is straightforward, consistent with the statutory language, and consistent with Commission precedent. Additionally, for the reasons stated below, we find that USTelecom exaggerates carriers' supposed inability to identify the relevant products and services subject to Section 214.

197. *Role of Tariff Clear.* The *Declaratory Ruling* clarifies the non-dispositive role that a tariff plays in the functional test that it articulates. The *Declaratory Ruling* clearly states this standard: ''Thus, while a carrier's tariff definition of its own service is important evidence of the 'service provided,' . . . [a]lso relevant is what the 'community or part of a community' reasonably would view as the service provided by the carrier.'' The functional test in the *Declaratory Ruling* simply clarifies that if relevant evidence indicates the ''service provided'' includes features outside of the carrier's definition in the tariff, then these features are relevant to the evaluation of whether a ''service'' has been discontinued. It bears repeating that the *Declaratory Ruling* does not simply dispense with the provider's service description. Tariffs remain a relevant data point in the discontinuance analysis. The *Declaratory Ruling* does not mean ''every prior feature no matter how little-used or old-fashioned, must be maintained in perpetuity'' or that ''every functionality supported by a network is de facto a part of a carrier's 'service.' '' Finally, it does not, as USTelecom fears, mean that the community's perception ''trump[s] the language of a tariff including any limitations therein.'' To the contrary, the *Declaratory Ruling* only clarifies that a tariff is not the end of the inquiry; the community and its traditional reliance on a given functionality plays a relevant part in the analysis—along with the tariffs.

198. *Consistent With Section 214 Language.* The functional test articulated by the *Declaratory Ruling* directly stems from the terms of the statute. Congress' regard for the community is clear from Section 214's statutory language given that: (1) What triggers the prior approval provision of Section 214(a) is the discontinuance, reduction, or impairment of service ''*to a community or part of a community'';* and (2) the statute is designed to prevent harm to present and future ''*public convenience and necessity.''* Thus, rather than being solely fixated on the service provider's viewpoint, the statute itself is actually largely centered on impact on the public. While nothing in Section 214 indicates Congress intended ''service'' to mean ''as defined by the carrier,'' Congress' focus on community perception and effects is baked into the text of the statute. Therefore, the Commission's incorporation of consumer impact into the discontinuance analysis is entirely consistent with and necessary to accomplish the purposes of Section 214 and should not present a point of confusion for affected parties.

199. *Consistent With Past Commission Actions.* Furthermore, the *Declaratory Ruling's* commitment to incorporating community perception and community effects into its analysis is consistent with prior Commission actions. For example, regarding Section 214, the Commission has repeatedly stated: ''In determining the need for prior authority to discontinue, reduce, or impair service under Section 214(a), *the primary focus should be on the end*

service provided by a carrier to a community or part of a community, i.e., the using public.'' Additionally, the community-focused discontinuance analysis in Section 214 is supported by the Commission's approach to common carrier services in other contexts. There have been several incidents where the Commission looked beyond the scope of the service as defined by the carrier in its tariff to other possible uses; therefore, the *Declaratory Ruling's* focus on the community rather than just the tariff language is consistent with past Commission decisions. This precedent provides guidance to carriers on when an application must be filed.

200. *USTelecom Exaggerates Carriers' Inability To Identify Relevant Services and Devices.* USTelecom argues that it will be unable to determine which relevant services and devices constitute the ''service'' provided to consumers. However, as one commenter notes, the services identified in the *Declaratory Ruling* are the very services for which carriers frequently market and sell additional lines to customers. The *Declaratory Ruling* specifically details the kinds of concerns that gave rise to it, including loss of 9–1–1 location accuracy and inability to use existing home security, medical monitoring, fax machines, credit card billing, DVRs, and other services. Finally, as noted in the *Declaratory Ruling,* Section 68.110(b) of the Commission's rules currently requires carriers to provide notice to customers when changes in the providers' facilities, equipment, operations, or procedures ''can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider . . . or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance . . . to allow the customer an opportunity to maintain uninterrupted service.'' Carriers, including USTelecom's members, have access to a database of terminal equipment certified as compliant with part 68's requirement that terminal equipment not harm carriers' networks. Carriers are therefore well aware of many of the forms of terminal equipment in use by their customers on TDM networks. They also are well aware of the technical specifications of that equipment and whether changes to their facilities, etc. will affect the ability of that terminal equipment to effectively connect to the carriers' networks. Considering all of this, we do not find USTelecom's claims that carriers will be unable to navigate the thicket of devices they ''may not even know exist'' to be credible.

201. In sum, the standard for discontinuance review set forth in the *Declaratory Ruling* is clear, consistent with the Commission's past actions, and consistent with current provider obligations. We therefore reject USTelecom's claims about the supposed vagueness and inscrutability of the *Declaratory Ruling.*

IV. Procedural Matters

A. Ex Parte Presentations

202. This proceeding shall continue to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Paperwork Reduction Act Analysis

203. The *Report and Order* contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that 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 the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, we require incumbent LECs to: (1) Include in their copper retirement notices to interconnecting carriers the information currently required by Section 51.327(a) and a description of any changes in prices, terms, or conditions that will accompany the planned changes; (2) provide direct notice of planned copper retirements to interconnecting entities within the affected service area at least 180 days prior to the planned implementation date, except when the facilities to be retired are no longer being used to serve customers in the affected service area, in which case notice must be provided at least 90 days prior to the planned implementation date; (3) provide notice of planned copper retirements to the public utility commission and to the governor of the state in which the network change is proposed, to the Tribal entity with authority over the Tribal lands in which the network change is proposed, and to the Secretary of Defense, with such notice to be provided at least 180 days prior to the planned implementation date, but only 90 days prior to the planned implementation date when the facilities to be retired are no longer being used to serve customers in the affected service area; (4) work in good faith with interconnecting entities to provide information necessary to assist them in accommodating planned copper retirements without disruption of service to their customers; (5) provide clear and conspicuous direct notice via electronic mail or postal mail to retail customers of planned copper retirements where the retail customer is within the service area of the retired copper and only where the retirement will result in the involuntary retirement of copper loops, with such notice to be

provided at least 180 days prior to the planned implementation date for non-residential retail customers and at least 90 days prior to the planned implementation date for residential retail customers; (6) include in notice to retail customers information to enable the retail customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including (i) the information required by Section 51.327(a) other than Section 51.327(a)(5), (ii) a statement that the customer will still be able to purchase the existing service with the same functionalities and features, except that if the statement would be untrue, then the incumbent LEC must include a statement identifying any changes to the service(s) and the functionality and features thereof, and (iii) a neutral statement of the various service options that the incumbent LEC makes available to retail customers affected by the planned copper retirement; and (7) file a certificate of service within 90 days before a retirement certifying their compliance with the requirements imposed by our network change disclosure rules pertaining to copper retirement. We have assessed the effects of these requirements and find that any burden on small businesses will be minimal because: (1) The rules remain notice-based; (2) incumbent LECs already must provide direct notice of planned copper retirements to many interconnecting entities; (3) the method of transmission of the notice required by the rules matches previously existing requirements for notice to interconnecting telephone exchange service providers; (4) the expanded content requirement for notices to interconnecting entities is a narrow and targeted extension of the existing requirement to provide notice of the ''reasonably foreseeable impact of the planned changes'' already required by Section 51.327(a) of the Commission's rules; (5) incumbent LEC commenters, including small, rural LECs, assert that they already engage in significant outreach to their retail customers when implementing copper retirements; (6) the rules require incumbent LECs to include in their direct notices to retail customers one neutral statement of the various service options that the incumbent LEC makes available to retail customers affected by the planned copper retirement, with no other consumer education or outreach requirements; (7) limit the requirement of direct notice to retail customers within the service area of the retired copper and only where the retirement will result in the involuntary retirement of copper loops; and (8) the rules do not require direct notice to retail customers when the copper facilities being retired are no longer in use in the affected service area.

C. Congressional Review Act

204. The Commission will send a copy of this *Report & Order* and *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

D. Final Regulatory Flexibility Analysis

205. As required by the Regulatory Flexibility Act of 1980 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *NPRM.* The Commission sought written public comment on the possible significant economic impact on small entities regarding the proposals addressed in the *NPRM,* including comments on the IRFA. The Commission did not receive any comments on the *NPRM* IRFA. Pursuant to the RFA, a Final Regulatory Flexibility Analysis is set forth below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

E. Need for, and Objectives of, the Final Rules

206. The fixed communications networks in this country are undergoing several technology transitions that are rapidly bringing innovative and improved services to consumers and the marketplace. As a nation, we are steadily moving from voice networks based on time-division multiplexed (TDM) services running on copper, to all-Internet Protocol (IP) multimedia networks running on a range of physical infrastructures. At the same time, the success of these technology transitions depends on the technologically-neutral preservation of longstanding principles embodied in the Communications Act, including those of competition and consumer protection. Towards that end, this Order adopts rules and policies to preserve our pro-consumer and pro-competition policies as communications facilities and services change. In addition to ensuring that interconnecting carriers and consumers are adequately informed when copper facilities are retired and that carriers comply with Section 214(a) and obtain Commission approval prior to discontinuing service used by carrier-customers as a wholesale input if the carrier's actions will discontinue, reduce, or impair service to a community or part of a community, this Order revises the Commission's Section 214 discontinuance rules to preserve competitive access to wholesale inputs during the pendency of our special access proceeding.

207. *Copper Retirement.* The *Order* finds that the pace of copper retirement has accelerated over the last few years and that this rapid pace of retirements, combined with the deterioration of copper networks that have not been formally retired, has necessitated changes to ensure that our rules governing copper retirement promote competition, which will in turn serve the public interest. Thus, the foreseeable and increasing impact that copper retirement is exerting on competition and consumers warrants revisions to the Commission's network change disclosure rules to allow for greater transparency, opportunities for participation, and consumer protection. The *Order* revises these rules to require incumbent LECs planning copper retirements to provide direct notice to all entities within the affected service area that directly interconnect with their network and to include in their network change disclosures not only the information already required by Section 51.327(a) of the Commission's rules, but also a description of any changes in prices, terms, or conditions that will accompany the planned changes. Additionally, incumbent LECs must provide the notice to interconnecting entities—or each entity that directly interconnects with the incumbent LEC's network—at least 180 days prior to the planned implementation date, except when the facilities to be retired are no longer being used to serve customers in the affected service area. In instances where facilities are no longer in use, the Order instead adopts the baseline 90-day period of the Commission's prior rules as the applicable notice period. After the Commission receives notice of the planned copper retirement from the incumbent LEC, it will issue a public notice of the retirement. It is at that point that the 180-day period begins to run. We find that receipt of the additional information and the extended notice period adopted in the Order will allow interconnecting entities to work more closely with their customers to ensure minimal disruption to service as a result of any planned copper retirements. These rules will also help ensure that competitive LECs are fully informed about the impact that copper retirements will have on their businesses. We further believe that by retaining a time-limited notice-based process, we can better ensure that our rules strike a sensible balance between meeting the needs of interconnecting

carriers and allowing incumbent LECs to manage their networks.

208. In light of the extended notice period adopted in the *Order,* we discard the objection procedures. However, we find that incumbent LECs should be required to act in good faith to provide additional information to interconnecting entities upon request when such information is necessary to accommodate the copper retirement without disruption of service to the interconnecting entity's customers. When an entity that directly interconnects with an incumbent LEC's network requests that the incumbent LEC provide additional information where necessary to allow the interconnecting entity to accommodate the incumbent LEC's changes with no disruption of service to the interconnecting entity's end user customers, we require incumbent LECs to work with such requesting interconnecting entities in good faith to provide such additional information. This good faith communication requirement will ensure that interconnecting entities still may obtain the information they need in order to accommodate the planned copper retirement without disruption of service to their customers that they would have been entitled to seek through the objection procedures. We further believe that this requirement strikes an appropriate balance between the needs of interconnecting carriers for sufficient information to allow for a seamless transition and the need to not impose overly burdensome notice requirements on incumbent LECs.

209. The *Order* also revises Section 51.331 of our rules by deleting paragraph (c), which provides that competing service providers may object to planned copper retirements by using the procedures set forth in Section 51.333(c). The *Order* further revises Section 51.333 to remove those provisions and phrases applicable to copper retirement. We find that consolidation of all notice requirements and rights of competing providers pertaining to copper retirements in one comprehensive rule provides clarity to industry and customers alike when seeking to inform themselves of their respective rights and obligations.

210. The *Order* modifies our network change disclosure rules to require direct notice to retail customers of planned copper retirements. Copper retirements often affect consumers, and consumers need to understand how they will be affected. We believe that the network change disclosure rules adopted in the Order will help to safeguard the most vulnerable populations of consumers against any confusion and will ensure that they are informed about how they will be impacted by any copper retirements. Thus, under the updated rules adopted in the Order, incumbent LECs will be required to provide direct notice of planned copper retirements to all of their retail customers within the affected service area(s), but only where the copper to the customer's premises is to be removed (*e.g.,* where a customer is required to receive service via fiber-to-the-premises). We believe limiting the notice requirement to retirements involving involuntary replacement of copper to the customer's premises limits notice to circumstances in which customers are most likely to be affected, thereby avoiding confusion and minimizing the costs of compliance. We find that modifying the proposed class of recipients in this way will make it easier for incumbent LECs to comply with their notice obligations by removing the need for them to make an independent determination regarding whether particular customers will require new or modified CPE or whether particular customers will be negatively impacted by the planned network change. We believe that the adopted rule will provide customers with sufficient clarity and will ensure that none are inadvertently excluded from the pool of recipients. The modified rule extends copper retirement notice requirements not just to consumers, but also to non-residential end users such as businesses and anchor institutions.

211. The *NPRM* proposed requiring that copper retirement notices to retail customers provide sufficient information to enable the customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including the information required by Section 51.327(a), as well as statements notifying customers that they can still purchase existing services and that they have a right to comment, and advising them regarding timing and the Commission's process. In this Order, we modify the proposal in the *NPRM* in four ways. First, we adopt the additional requirement that the mandatory statements in the notice must be made in a clear and conspicuous manner. As stated above, the record reflects that a number of consumers are confused when copper retirements occur, so clear and conspicuous provision of information will help to remedy that issue. To provide additional guidance, we clarify that a statement is ''clear and conspicuous'' if it is disclosed in such size, color, contrast, and/or location that it is readily noticeable, readable, and understandable. In addition, the statement may not contradict or be inconsistent with any other information with which it is presented; if a statement materially modifies, explains or clarifies other information with which it is presented, then the statement must be presented in proximity to the information it modifies, explains or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner; and hyperlinks included as part of the message must be clearly labeled or described. We adopt this detailed definition of ''clear and conspicuous'' to provide guidance to help ensure that customers will understand the required notice and to provide certainty to industry about our requirements. And to streamline the filing and reduce the burden on incumbent LECs, we decline to require that the notice include: (1) Information required by Section 51.327(a)(5), because that primarily requires provision of technical specifications that are unlikely to be of use to most retail customers; (2) a statement regarding the customer's right to comment on the planned network change, because, as discussed below, we decline to include in the updated rule we adopt today a provision regarding the opportunity to comment on planned network changes; and (3) a statement that ''[t]his notice of planned network change will become effective'' a certain number of days after the Federal Communications Commission (FCC) releases a public notice of the planned change on its Web site'' because this statement is likely to be unnecessarily confusing and because 47 CFR 51.327(a)(3), which we incorporate as to customer copper retirement notices, already requires disclosure of the implementation date of the planned changes.

212. The *Order* further requires LECs to include in copper retirement notices to retail customers a neutral statement of the various service options that the LEC makes available to retail customers affected by the planned copper retirement and that incumbent LECs are not subject to any additional obligations. There is a risk that without a clear, neutral message explaining what copper retirement does and does not mean, some consumers will easily fall prey to marketing that relies on confusion about the ability to keep existing services. The *Order* also requires that the notice be free of any statement attempting to encourage a customer to purchase a service other

than the service to which the customer currently subscribes. However, this last prohibition applies only to copper retirement notices provided pursuant to the Commission's network change disclosure rules and not to any other communication. This neutral statement requirement and limited prohibition will better enable retail consumers to make informed choices regarding their services and will give them the necessary tools to determine what services to purchase without swaying them towards new or different offerings.

213. The rules adopted in the Order allow incumbent LECs to use written or electronic notice such as postal mail or email to provide notice to retail customers of a planned copper retirement. This requirement should be sufficient to ensure that retail customers receive notice, without imposing unnecessary additional burdens on carriers. The rules adopted in the *Order* also require that incumbent LECs provide notice to non-residential retail customers at least 180 days prior to the planned implementation date. This should allow non-residential retail customers sufficient time to evaluate the impact of the planned network change on the service they would continue to receive and whether they need to seek out alternatives. Moreover, the rules require that incumbent LECs provide residential retail customers at least ninety-days' notice of planned copper retirements. We conclude that this notice period is appropriate for residential retail customers, to whom earlier notice may be confusing and potentially forgotten over a long period of time.

214. The *Order* requires carriers to send notice of proposed copper retirements to state authorities (the governor and the state PUC), federally recognized Tribal nations within their Tribal lands, and the Secretary of the Department of Defense, and that this notice occur contemporaneously with notice to interconnecting entities. This rule will help ensure that states and Tribal governments are fully informed of copper retirements occurring within their respective borders. Given the increased cybersecurity risks posed by IP-based networks, the Department of Defense should also be kept informed of copper retirements.

215. The *Order* further requires that no later than ninety (90) days before the date that the notices of copper retirement are deemed approved, incumbent LECs must file a certification identifying the proposed changes, the name and address of each entity upon which written notification was served, and a copy of the written notice provided to affected retail customers, among other information. Monitoring compliance with the rules adopted in the *Order* would be difficult without incumbent LECs confirming that they have complied. Thus, requiring this information is necessary to ensure compliance with our rules and will assist greatly with enforcement.

216. Given the frequency and scope of copper network retirement, it is essential that industry participants and stakeholders alike have a clear understanding of what retirement entails so that the public is properly informed of network changes. To the end, the Order expands the definition of copper retirement to encompass the ''removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops, or the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops.'' Copper retirement also includes *de facto* retirement, *i.e.,* failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling.

217. *Service Discontinuance.* Section 214(a) of the Act mandates that the Commission ensure that the public is not adversely affected when carriers discontinue, reduce, or impair services on which communities rely. To that end, the *Order* clarifies that a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input when the carrier's actions will discontinue, reduce, or impair service to end users, including a carrier-customer's retail end users. The *Order* also clarifies that a carrier should not discontinue a service used as a wholesale input until it is able to determine that there will be no discontinuance, reduction, or impairment of service to end users, including carrier-customers' end users, or until it obtains Commission approval. We find that this clarification is necessary to fortify the Commission's ability to fulfill its critical statutory role in overseeing service discontinuances under Section 214 of the Act. This clarification is thus designed to protect retail customers from the adverse impacts associated with discontinuances of service, and to ensure that service to communities will not be discontinued without advance notice to affected customers and Commission authorization. The *Order* clarifies that carriers must assess the impact of their actions on end user customers to prevent the discontinuance of service to a community without adequate public interest safeguards, including notice to affected customers and Commission consideration of the effect on the public convenience and necessity. This clarification is necessary to ensure that carriers meet their Section 214(a) obligations to obtain approval for a discontinuance. Absent such clarification, the Commission may not be informed prior to carriers' actions that discontinue, reduce, or impair service to retail end users, actions that potentially adversely affect the present or future public convenience and necessity. Moreover, without such clarification, carrier-customers and retail end users might not receive adequate notice or opportunity to object when such actions will discontinue service to carrier-customers' retail end users.

218. The *Order* also adopts an interim rule that incumbent LECs that seek Section 214 authority prior to the resolution of the special access proceeding to discontinue, reduce, or impair a TDM-based service that is currently used as a wholesale input by competitive carriers must as a condition to obtaining discontinuance authority provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions. The interim condition to which incumbent LECs must commit to obtain discontinuance authority for a TDM-based service will remain in place only until the Commission will have adopted and implemented the rules and policies that end the reasonably comparable wholesale access interim rule when (1) it identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable; (2) it provides notice such rules are effective in the **Federal Register**; and (3) such rules and/or policies become effective. The Commission will evaluate whether a carrier provides reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions based on the totality of the circumstances, and its evaluation includes specifically whether the carrier is complying with five specific questions articulated in the *Order.* The reasonably comparable wholesale access condition that we adopt applies to two categories of service: (1) Special access services at DS1 speed and above and (2) commercial wholesale platform services such as AT&T's Local Service Complete and Verizon's Wholesale Advantage.

219. Establishing the reasonably comparable wholesale access requirement is necessary to protect the competition that exists today for the provision of telecommunications services to small-and medium-sized

businesses, schools, libraries, and other enterprise customers. This requirement is carefully tailored to preserve incentives for investment for incumbent LECs while maintaining opportunities for competitive LECs to provide the services that customers demand on a limited-term basis until the Commission completes its evaluation of the special access market or markets for TDM and IP based services and adopts rules and policies to ensure services are available at just and reasonable rates, terms, and conditions. An interim rule that provides both providers and their wholesale customers with a balanced approach will facilitate transitions and preserve the benefits of competition during the pendency of the special access proceeding.

220. Service by competitive carriers that depend on wholesale inputs offers the benefits of additional competitive choice to an enormous number of small and medium-sized businesses, schools, government entities, healthcare facilities, libraries, and other enterprise customers. The *Order* takes these actions to preserve such competition and ensure that this competition continues to thrive as the ongoing technology transitions occur.

F. Summary of Significant Issues Raised by Public Comments To Response to the IRFA

221. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA. To the extent we received comments raising general small business concerns during this proceeding, those comments are addressed throughout the *Order.*

G. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

222. 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 adopted rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

223. The majority of the rules and policies adopted in the *Order* will affect obligations on incumbent LECs and, in some cases, competitive LECs. Other entities, however, that choose to object to network change notifications for copper retirement under our new rules may be economically impacted by the regulations adopted in this *Order.*

1. Total Small Businesses

224. A small business is an independent business having less than 500 employees. Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. Affected small entities as defined by industry are as follows.

2. Wireline Providers

225. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

226. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules adopted in the *Order.*

227. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the *Order.*

228. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

229. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities that may be affected by rules adopted pursuant to the *Order.*

230. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the

category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by rules adopted pursuant to the Order.

231. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the *Report and Order*.

3. Wireline Providers

232. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

233. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

4. Cable Service Providers

234. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 3,188 firms in this category that operated for the entire year. Of this total, 2,684 firms had annual receipts of under $10 million, and 504 firms had receipts of $10 million or more. Thus, the majority of these firms can be considered small and may be affected by rules adopted pursuant to the *Order*.

235. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data shows that there are 660 cable operators in the country. Of this total, all but eleven cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

5. All Other Telecommunications

236. The Census Bureau defines this industry as including ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for this category; that size standard is $32.5 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,383 firms in this category that operated for the entire year. Of these, 2,346 firms had annual receipts of under $25 million and 37 firms had annual receipts of $25 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

H. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

237. The *Order* proposes a number of rules and policies that will affect reporting, recordkeeping, and other compliance requirements.

238. *Copper Retirement.* The *Order* revises our network change rules to require incumbent LECS planning copper retirements to include in their network change disclosures not only the information already required by Section 51.327(a) of the Commission's rules, but also a description of any changes in prices, terms, or conditions that will accompany the planned changes. Additionally, these providers must provide direct notice to interconnecting entities within the affected service area at least 180 days prior to the planned implementation date, except when the facilities to be retired are no longer

being used to serve customers in the affected service area. In instances where facilities are no longer in use, the *Order* adopts a 90-day period as the applicable notice period.

239. The *Order* also requires that an entity that directly interconnects with an incumbent LEC's network may request that the incumbent LEC provide additional information where necessary to allow the interconnecting entity to accommodate the incumbent LEC's changes with no disruption of service to the interconnecting entity's end user customers. Incumbent LECs are required to work with such requesting interconnecting entities in good faith to provide such additional information.

240. The *Order* further modifies our network change disclosure rules to require direct notice to retail customers of planned copper retirements. Under the updated rules adopted in the *Order,* incumbent LECs will be required to provide direct notice of planned copper retirements to all of their retail customers within the affected service area(s). The modified rule extends copper retirement notice requirements not just to consumers, but also to non-residential end users such as businesses and anchor institutions.

241. The *Order* requires that copper retirement notices to retail customers provide sufficient information to enable the customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including the information required by Section 51.327(a)—with the exception of the information required by Section 51.327(a)(5)—as well as statements notifying customers that they can still purchase existing services.

242. The *Order* further requires LECs to include in copper retirement notices to retail customers a neutral statement of the various service options that the LEC makes available to retail customers affected by the planned copper retirement. The *Order* also requires that the notice be free of any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes. However, this last prohibition applies only to copper retirement notices provided pursuant to the Commission's network change disclosure rules and not to any other communication. The rules adopted in the Order allow incumbent LECs to use written or electronic notice such as postal mail or email to provide notice to retail customers of a planned copper retirement.

243. The *Order* also requires carriers to send notice of proposed copper retirements to state authorities (the state governor and PUC) and the Secretary of the Department of Defense, as well as affected Tribal entities.

244. In tandem with their public notice, incumbent LECs must file a certification identifying the proposed changes, the name and address of each entity upon which written notification was served, and a copy of the written notice provided to affected retail customers, among other information.

245. The *Order* also expands the definition of copper retirement to encompass the ''removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops, or the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops.'' Copper retirement also includes de facto retirement, *i.e.,* failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling.

246. *Service Discontinuance.* The *Order* clarifies that a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input when the carrier's actions will discontinue, reduce, or impair service to end users, including a carrier-customer's retail end users. The Order also clarifies that a carrier should not discontinue a service used as a wholesale input until it is able to determine that there will be no discontinuance, reduction, or impairment of service to end users, including carrier-customers' end users, or until it obtains Commission approval.

247. The *Order* clarifies that carriers must assess the impact of their actions on end user customers to prevent the discontinuance of service to a community without adequate public interest safeguards, including notice to affected customers and Commission consideration of the effect on the public convenience and necessity. Specifically, carriers must undertake a meaningful evaluation of the impact of actions that will discontinue, reduce, or impair services used as wholesale inputs, using all information available, including information obtained from carrier-customers, and assess the impact of these actions on end user customers, including carrier-customers' end users. If their actions will discontinue service to any such end users, Commission approval is required.

I. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

248. The *Order* also adopts an interim rule that incumbent LECs that seek Section 214 authority prior to the resolution of the special access proceeding to discontinue, reduce, or impair a TDM-based service that is currently used as a wholesale input by competitive carriers must as a condition to obtaining discontinuance authority provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions. The interim condition to which incumbent LECs must commit to obtain discontinuance authority for a TDM-based service will remain in place only until the Commission will have adopted and implemented the rules and policies that end the reasonably comparable wholesale access interim rule when: (1) It identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable; (2) it provides notice such rules are effective in the **Federal Register**; and (3) such rules and/or policies become effective. The Commission will evaluate whether a carrier provides reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions based on the totality of the circumstances, and its evaluation includes specifically whether the carrier is complying with five specific questions articulated in the Order. The reasonably comparable wholesale access condition that we adopt applies to two categories of service: (1) Special access services at DS1 speed and above and (2) commercial wholesale platform services such as AT&T's Local Service Complete and Verizon's Wholesale Advantage.

249. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (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 and reporting requirements under the rules for such 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 such small entities.

250. The Commission is aware that some of the rules adopted in this Order will impact small entities by imposing costs and administrative burdens. For this reason, in reaching its final conclusions and taking action in this proceeding, the Commission has taken a number of measures to minimize or eliminate the costs and burdens generated by compliance with the adopted regulations.

251. Although the *Order* adopted new requirements for the copper retirement notice process, the Commission declined to require that the descriptions of the potential impact of the planning changes be specific to each interconnecting carrier to whom an incumbent LEC must give notice. Such a requirement would impose an unreasonable burden on incumbent LECs, as would the requirement that copper retirement notices include information regarding impacted circuits and wholesale alternatives, another alternative step that we considered before eventually discarding. The requirements in new Section 51.332 of our rules are sufficient protection to interconnecting carriers without the need for further regulation. The Commission also declined to adopt a particular required format for copper retirement notices, since such a specified format runs the risk of not covering all aspects of each provider's copper retirement plans.

252. In light of the extended notice period adopted in the *Order,* the Commission eliminated the objection procedures. The *Order* also consolidates all notice requirements and rights of competing providers pertaining to copper retirements within one comprehensive rule in order to provide clarity to small entities when seeking to inform themselves of their rights and obligations.

253. Although we considered a proposal that, for a network change to qualify as a copper retirement as opposed to a service discontinuance, a carrier must present the same standardized interface to the end user as it did when it used copper, we ultimately concluded that this requirement was unnecessary. We find that this proposal would go far beyond the mandate of Section 68.110(b) of the Commission's rules, which speaks to the effect of changes in facilities, equipment, operations, or procedures on customer's terminal equipment.

254. We similarly declined to require incumbent LECs to provide competitive providers with an annual forecast of copper retirements. This type of information can constitute some of an incumbent LEC's most competitively sensitive information, and such an advance disclosure requirement may risk putting them at a competitive disadvantage. Moreover, the information contained in a forecast can change over time as circumstances change, and we are thus skeptical of the value of such a requirement. We also declined to adopt a requirement that incumbent LECs establish and maintain a publicly available and searchable database of all their copper plant. It is not clear based on the record that such a database would be feasible or cost-effective, and such a requirement could impose an expensive and potentially duplicative burden.

255. The *Order* also modified the notice to retail customers rules proposed in the NPRM in order to minimize the burden they impose on incumbent LECs, primarily by eliminating a requirement that incumbent LECs undertake consumer education efforts in connection with planned copper retirements, among several other requirements proposed as part of the *NPRM.* Under the rules adopted by the *Order,* incumbent LECs are required to provide only one neutral statement to consumers and will not be subject to any additional obligations with regards to the notice to retail customers requirement.

256. While the *NPRM* proposed requiring direct notice to all retail customers affected by the planned network change, the rules adopted in the *Order* require incumbent LECs to provide direct notice of planned copper retirements to all of their retail customers within the affected service area(s). We believe that modifying the class of recipients in this way will make it easier for incumbent LECs to comply with their notice obligations by removing the need for them to make an independent determination regarding whether particular customers will require new or modified CPE or whether particular customers will be negatively impacted by the planned network change.

257. While incumbent LECs are required to provide direct notice of planned copper retirements to all of their retail customers within the affected service area(s), this notice need not include the information required by Section 51.327(a)(5) of our rules, nor a provision regarding the opportunity for customers to comment on planned network changes. Section 51.327(a)(5) requires provision of technical specifications that are unlikely to be of use to most retail customers. Aside from the neutral statement requirement, we decline to adopt any further content requirements with regards to the direct notice of planned copper retirements. We do not believe it is necessary or appropriate to require more than this in the context of a copper retirement that does not rise to the level of a discontinuance, reduction, or impairment of service for which a carrier would need to seek Commission authorization.

258. The *Order* allows incumbent LECs to use written or electronic notice such as postal mail or email to provide notice to retail customers of a planned copper retirement. We find that this requirement should be sufficient to ensure that retail customers receive such notice without imposing unnecessary additional burdens on carriers. And because we retain the notice-based process for copper retirement network change disclosures, we find that there is little reason to require incumbent LECs to allow customers to reply directly to any email notices.

259. We decline to adopt a rural exemption to the notice rule. While the rules necessarily impose some burden on carriers, that burden is not greater for rural LECs. We also decline to impose different notice requirements for network upgrades, network downgrades, and the complete abandonment of facilities. We do not believe such differentiation is necessary, and would impose a greater burden on incumbent LECs. We also refuse to require proof of notice to be acknowledged by individual customers before allowing changes. Such a requirement would unfairly penalize incumbent LECs for the failure of their customers to act.

260. We also decline to adopt a proposal to revise the network change disclosure rules to provide the public with the opportunity to comment on planned network changes. We find that avenues to communicate with the Commission are sufficient and formalizing a right to comment is not needed. And while the *Order* requires notice of copper retirements to be given to state authorities and the Department of Defense, as well as Tribal entities with proposed copper retirements within their borders, it declines to adopt this same notice requirement for other network change notifications. There is a lack of sufficient support in the record to support such a requirement, which would place an increased regulatory burden on incumbent LECs and other small entities.

261. We decline to establish a process for situations where a network is damaged after a natural disaster and a carrier decides to permanently replace that network with a new technology. The discontinuance and network change notification requirements proposed in the FNPRM and adopted in the *Order* are responsive to this concern without the need for additional regulation. Additionally, such a process would require incumbent LEC submission of service metrics with the Commission that are beyond the scope of this proceeding.

262. The *Order* also reduces the regulatory burden on small entities by

declining to mandate the sale of copper facilities that an incumbent LEC intends to retire and/or establish for ourselves a supervisory role in the sale process (although the sale of such facilities is encouraged). Commission oversight of sales could be intrusive, costly, and a potential barrier to technology transitions.

263. While the *Order* requires carriers to undertake a meaningful evaluation of the impact of actions that will discontinue, reduce, or impair services used as wholesale inputs and to obtain Commission approval if their actions will discontinue service to end users, Commission approval is not required for a planned discontinuance, reduction, or impairment of service (1) when the action will not discontinue, reduce, or impair service to a community or part of a community, or (2) for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

264. The *Order* declines to adopt requirements to ensure that carriers have properly rebutted the proposed presumption, including a requirement that the carrier submit documentation or a certification to the Commission identifying and providing the basis for its conclusion that the carrier has adequately rebutted the presumption, among other proposed obligations. The burdens of such an obligation would exceed the benefits. Thus, the adopted rules and policies will be less burdensome for carriers than the proposed rebuttable presumption, and we allow carriers to determine through their own internal processes whether Commission approval of their actions is necessary. We have also sought to minimize burdens and cost by not requiring carriers to submit information to the Commission when they determine that a Section 214 application is not needed because their actions do not discontinue, reduce, or impair service to the community or part of the community.

265. We further decline to adopt an irrebuttable presumption that discontinuance of a wholesale service necessarily results in a discontinuance, reduction, or impairment to end users. Such an approach would be highly burdensome for carriers. We also decline to adopt a presumption in favor of approving discontinuance of a retail service if at least one competitive alternative is available. We see no reason to deviate from our longstanding and clearly articulated criteria by which we evaluate Section 214(a) applications, which already take into account whether alternatives are available.

266. To ensure clarity and assist small entities with regulatory compliance, we codify the reasonably comparable wholesale access condition adopted in the *Order* in a new subsection to Section 63.71 of our rules.

267. Although we considered obligating carriers to provide ''equivalent'' wholesale access on ''equivalent'' rates, terms, and conditions, we ultimately found it preferable to impose a more flexible ''reasonably comparable'' standard. We also imposed a time limit on the requirement that we adopted. This flexible standard and time-limited approach minimizes the regulatory burden on incumbent LECs while advancing the Commission's goal of preserving competition and promoting technology transitions. We also declined to adopt as mandatory requirements any of the six objective requirements for which we sought comment in the *NPRM.* Rather, we adopt a flexible ''totality of the circumstances'' approach that takes into account versions of five of these six factors as questions but does not prescribe hard rules. We adopt this balanced approach to provide parties necessary flexibility.

268. Although the *NPRM* sought comment on whether, as a part of a wholesale access condition, to prohibit price hikes from being effectuated via significant changes to charges for network to network interface (NNI) or any other rate elements, lock-up provisions, early termination fees (ETFs), special construction charges, or any other measure, we decline to adopt such a prohibition in the *Order.* We find that the steps taken are sufficient without necessitating adoption of this further restriction. We also decline to adopt any rate publication requirement. We do not find sufficient evidence to impose publication obligations on incumbent LECs. Moreover, this requirement would go beyond merely preserving competition to create an obligation that does not presently exist for TDM services that are discontinued, and would therefore be contrary to the overall framework and purpose of our wholesale access obligation. The *Order* also declines to adopt additional requirements to the reasonably comparable wholesale access condition, specifically a certification requirement proposed by some commenters, since it is unclear the timing of such certification and requiring certification is inherently backward-looking, *i.e.,* is best suited to confirming that an entity has already complied with a regulatory obligation. We find that the conditions we adopt to govern the discontinuance process is better suited to ensuring forward-looking, ongoing compliance on an interim basis. We see no need at this juncture to adopt additional methods to ensure compliance when doing so would impose costs on small entities without any attendant clear benefit. The Order declines to impose any audits or specific metric requirements on incumbent or competitive LECs for the same reasons.

J. Report to Congress

269. The Commission will send a copy of the *Order,* including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

270. Accordingly, *it is ordered* that, pursuant to Sections 1–4, 201, 214, 251, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 214, 251, 303(r), this Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking *are adopted*.

271. *It is further ordered* that parts 51 and 63 of the Commission's rules *are amended* as set forth in Appendix A, and that any such rule amendments that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act *shall be effective* after announcement in the **Federal Register** of Office of Management and Budget approval of the rules, and on the effective date announced therein.

272. *It is further ordered* that this Report and Order and Order on Reconsideration *shall be* effective 30 days after publication in the **Federal Register**, except for 47 CFR 51.325(a)(4) and (e), 51.332, and 51.333(b) and (c), which contain information collection requirements that have not been approved by OMB. Additionally, the removal of 47 CFR 51.331(c) and 51.333(f), resulting in the removal of information collection requirements previously approved by OMB, has not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

273. *It is further ordered* that the Petition for Reconsideration filed by the United States Telecom Association *is denied*.

274. *It is further ordered* that the Motion of the California Public Utilities Commission for Acceptance of Late-Filed Comments *is granted*.

275. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order* and *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

276. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final and Initial Regulatory Flexibility Analyses, and this Order on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 51

Communications, Communications common carriers, Defense communications, Telecommunications, Telephone.

47 CFR Part 63

Cable television, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 51 and 63 as follows:

PART 51—INTERCONNECTION

■ 1. The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 *note,* unless otherwise noted.

■ 2. Section 51.325 is amended by revising paragraph (a)(4) and adding paragraph (e) to read as follows:

§ 51.325 Notice of network changes: Public notice requirement.

(a) * * *

(4) Will result in the retirement of copper, as defined in § 51.332.

* * * * *

(e) Notices of network changes involving the retirement of copper, as defined in § 51.332, are subject only to the requirements set forth in this section and §§ 51.329(c), 51.332, and 51.335.

§ 51.331 [Amended]

■ 3. Section 51.331 is amended by removing paragraph (c).

■ 4. Add § 51.332 to read as follows:

§ 51.332 Notice of network changes: Copper retirement.

(a) *Definition.* For purposes of this section, the retirement of copper is defined as:

(1) Removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops;

(2) The replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops, as those terms are defined in § 51.319(a)(3); or

(3) The failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling.

(b) *Methods for providing public notice.* In providing the required notice to the public of network changes under this section, an incumbent LEC must comply with the following requirements:

(1) The incumbent LEC must file a notice with the Commission.

(2) The incumbent LEC must provide each entity within the affected service area that directly interconnects with the incumbent LEC's network with a copy of the notice filed with the Commission pursuant to paragraph (b)(1) of this section.

(3) If the copper retirement will result in the retirement of copper loops to the premises, the incumbent LEC must directly provide notice through electronic mail or postal mail to all retail customers within the affected service area who have not consented to the retirement; *except* that the incumbent LEC is not required to provide notice of the copper retirement to retail customers where:

(i) The copper facilities being retired under the terms of paragraph (a) of this section are no longer in use in the affected service area; or

(ii) The retirement of facilities pursuant to paragraph (a)(3) of this section is undertaken to resolve a service quality concern raised by the customer to the incumbent LEC.

(iii) The contents of any such notice must comply with the requirements of paragraph (c)(2) of this section.

(iv) Notice to each retail customer to whom notice is required shall be in writing unless the Commission authorizes in advance, for good cause shown, another form of notice. If an incumbent LEC uses email to provide notice to retail customers, it must comply with the following requirements in addition to the requirements generally applicable to the notice:

(A) The incumbent LEC must have previously obtained express, verifiable, prior approval from retail customers to send notices via email regarding their service in general, or planned network changes in particular;

(B) Email notices that are returned to the carrier as undeliverable must be sent to the retail customer in another form before carriers may consider the retail customer to have received notice; and

(C) An incumbent LEC must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email.

(4) The incumbent LEC shall notify and submit a copy of its notice pursuant to paragraph (b)(1) of this section to the public utility commission and to the Governor of the State in which the network change is proposed, to the Tribal entity with authority over the Tribal lands in which the network change is proposed, and to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon, Washington, DC 20301.

(c) *Content of notice*—(1) *Non-retail.* The notices required by paragraphs (b)(1), (2), and (4) of this section must set forth the information required by § 51.327. In addition, the notices required by paragraphs (b)(1), (2), and (4) of this section must include a description of any changes in prices, terms, or conditions that will accompany the planned changes.

(2) *Retail.* (i) The notice to retail customers required by paragraph (b)(3) of this section must provide sufficient information to enable the retail customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including but not limited to the following provided in a manner that is clear and conspicuous to the average consumer:

(A) The information required by § 51.327(a)(1) through (4) and (a)(6);

(B) A statement that the retail customer will still be able to purchase the existing service(s) to which he or she subscribes with the same functionalities and features as the service he or she currently purchases from the incumbent LEC, *except that* if this statement would be inaccurate, the incumbent LEC must include a

statement identifying any changes to the service(s) and the functionality and features thereof; and

(C) A neutral statement of the services available to the retail customers from the incumbent LEC, which shall include a toll-free number for a customer service help line, a URL for a related Web page on the provider's Web site with relevant information, contact information for the Federal Communications Commission including the URL for the Federal Communications Commission's consumer complaint portal, and contact information for the relevant state public utility commission.

(ii) If any portion of a notice is translated into another language, then all portions of the notice must be translated into that language.

(iii) An incumbent LEC may not include in the notice required by paragraph (b)(3) of this section any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes.

(iv) For purposes of this section, a statement is ''clear and conspicuous'' if it is disclosed in such size, color, contrast, and/or location that it is readily noticeable, readable, and understandable. In addition:

(A) The statement may not contradict or be inconsistent with any other information with which it is presented.

(B) If a statement materially modifies, explains or clarifies other information with which it is presented, then the statement must be presented in proximity to the information it modifies, explains or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner.

(C) Hyperlinks included as part of the message must be clearly labeled or described.

(d) *Certification.* No later than ninety (90) days after the Commission's release of the public notice identified in paragraph (f) of this section, an incumbent LEC must file with the Commission a certification that is executed by an officer or other authorized representative of the applicant and meets the requirements of § 1.16 of this chapter. This certification shall include:

(1) A statement that identifies the proposed changes;

(2) A statement that notice has been given in compliance with paragraph (b)(1) of this section;

(3) A statement that the incumbent LEC timely served a copy of its notice filed pursuant to paragraph (b)(1) of this section upon each entity within the affected service area that directly interconnects with the incumbent LEC's network;

(4) The name and address of each entity referred to in paragraph (d)(3) of this section upon which written notice was served;

(5) A statement that the incumbent LEC timely notified and submitted a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, to any federally recognized Tribal Nations with authority over the Tribal lands in which the network change is proposed, and to the Secretary of Defense in compliance with paragraph (b)(4) of this section;

(6) If customer notice is required by paragraph (b)(3) of this section, a statement that the incumbent LEC timely served the customer notice required by paragraph (b)(3) of this section upon all retail customers to whom notice is required;

(7) If a customer notice is required by paragraph (b)(3) of this section, a copy of the written notice provided to retail customers;

(8) A statement that the incumbent LEC has complied with the notification requirements of § 68.110(b) of this chapter or that the notification requirements of § 68.110(b) do not apply;

(9) A statement that the incumbent LEC has complied with the good faith communication requirements of paragraph (g) of this section and that it will continue to do so until implementation of the planned copper retirement is complete; and

(10) The docket number and NCD number assigned by the Commission to the incumbent LEC's notice provided pursuant to paragraph (b)(1) of this section.

(e) *Timing of notice.* (1) Except pursuant to paragraph (e)(2) of this section, an incumbent LEC must provide the notices required by paragraphs (b)(2) and (4) of this section no later than the same date on which it files the notice required by paragraph (b)(1) of this section.

(2) Where the copper facilities being retired under the terms of paragraph (a) of this section are no longer being used to serve any customers, whether wholesale or retail, in the affected service area, an incumbent LEC must provide the notices required by paragraphs (b)(2) and (4) of this section no later than ninety (90) days after the Commission's release of the public notice identified in paragraph (f) of this section.

(3) An incumbent LEC must provide any notice required by paragraph (b)(3) of this section to all non-residential customers to whom notice must be provided no later than the same date on which it files the notice required by paragraph (b)(1) of this section.

(4) An incumbent LEC must provide any notice required by paragraph (b)(3) of this section to all residential customers to whom notice must be provided no later than ninety (90) days after the Commission's release of the public notice identified in paragraph (f) of this section.

(f) *Implementation date.* The Commission will release a public notice of filings of the notice of copper retirement pursuant to paragraph (b)(1) of this section. The public notice will set forth the docket number and NCD number assigned by the Commission to the incumbent LEC's notice. The notices of copper retirement required by paragraph (b) of this section shall be deemed approved on the 180th day after the release of the Commission's public notice of the filing.

(g) *Good faith requirement.* An entity within the affected service area that directly interconnects with the incumbent LEC's network may request that the incumbent LEC provide additional information to allow the interconnecting entity where necessary to accommodate the incumbent LEC's changes with no disruption of service to the interconnecting entity's end user customers. Incumbent LECs must work with such requesting interconnecting entities in good faith to provide such additional information.

■ 5. Section 51.333 is amended by revising the section heading and paragraphs (b) and (c) and removing paragraph (f) to read as follows:

§ 51.333 Notice of network changes: Short term notice, objections thereto.

* * * * *

(b) *Implementation date.* The Commission will release a public notice of filings of such short term notices. The public notice will set forth the docket number assigned by the Commission to the incumbent LEC's notice. The effective date of the network changes referenced in those filings shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed pursuant to paragraph (c) of this section.

(c) *Objection procedures for short term notice.* An objection to an incumbent LEC's short term notice may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the

incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

(1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;

(2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;

(3) State the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (c)(1) of this section;

(4) Provide any other information relevant to the objection; and

(5) Provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

''I, (name and title), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (objector) and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection.''

* * * * *

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 6. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 7. Amend § 63.71 by redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), and adding paragraph (c) to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

* * * * *

(c)(1) If an incumbent LEC, as that term is defined in § 51.5 of this chapter, obtains authority to discontinue, reduce, or impair a time-division multiplexing (TDM) service listed in this paragraph (c)(1) and if the incumbent LEC offers an Internet Protocol (IP) service in the same geographic market(s) as the TDM service following the discontinuance, reduction, or impairment of such TDM service, then as a condition on such authority, the incumbent LEC shall provide any requesting telecommunications carrier wholesale access reasonably comparable to the level of wholesale access it previously provided on reasonably comparable rates, terms, and conditions. This condition shall expire when all of the following have occurred:

(i) The Commission identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable;

(ii) The Commission provides notice such rules are effective in the **Federal Register**; and (iii) Such rules and/or policies become effective.

(2) The requirements of this paragraph apply to:

(i) A special access service that is used as a wholesale input by one or more telecommunications carriers; and

(ii) A service that is used as a wholesale input by one or more telecommunications carriers to provide end users with voice service and that includes last-mile service, local circuit switching, and shared transport.

* * * * *

[FR Doc. 2015–24505 Filed 10–16–15; 8:45 am]

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Part IV

Department of Homeland Security

8 CFR Parts 214 and 274a
Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 274a

[DHS Docket No. ICEB–2015–0002]

RIN 1653–AA72

Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students

AGENCY: Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) proposes to amend its F–1 nonimmigrant student visa regulations on optional practical training (OPT) for certain students with degrees in science, technology, engineering, or mathematics (STEM) from U.S. institutions of higher education. Specifically, the proposal would allow such F–1 STEM students who have elected to pursue 12 months of OPT in the United States to extend the OPT period by 24 months (STEM OPT extension). This 24-month extension would effectively replace the 17-month STEM OPT extension currently available to certain STEM students. The rule also improves and increases oversight over STEM OPT extensions by, among other things, requiring the implementation of formal mentoring and training plans by employers, adding wage and other protections for STEM OPT students and U.S. workers, and allowing extensions only to students with degrees from accredited schools.

As with the current 17-month STEM OPT extension, the proposed rule would authorize STEM OPT extensions only for students employed by employers enrolled in U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment eligibility verification program. The proposal also includes the ''Cap-Gap'' relief first introduced in 2008 for any F–1 student with a timely filed H–1B petition and request for change of status. This Cap-Gap relief allows such students to automatically extend the duration of F–1 status and any current employment authorization until October 1 of the fiscal year for which such H–1B visa is being requested.

In addition to improving the integrity and value of the STEM OPT program, this proposed rule also responds to a court decision that vacated a 2008 DHS regulation on procedural grounds. The proposed rule includes changes to the policies announced in the 2008 rule to further enhance the academic benefit provided by STEM OPT extensions and increase oversight, which will better ensure that students gain valuable practical STEM experience that supplements knowledge gained through their academic studies, while preventing adverse effects to U.S. workers. By earning a functional understanding of how to apply their academic knowledge in a work setting, students will be better positioned to begin careers in their fields of study. These on-the-job educational experiences would be obtained only with those employers that commit to developing students' knowledge and skills through practical application. The proposed changes would also help ensure that the nation's colleges and universities remain globally competitive in attracting international STEM students to study and lawfully remain in the United States.

DATES: Comments must be received by DHS on or before November 18, 2015. Comments on the information collection provisions proposed in this rule must be received by DHS and the Office of Management and Budget (OMB) on or before November 18, 2015.

ADDRESSES: You may submit comments, identified by the DHS docket number to this rulemaking, Docket No. ICEB–2015–0002, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, by one of the following methods:

- *Electronically:* Submit comments to the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Address your written comments to the individual in the **FOR FURTHER INFORMATION CONTACT** section below. DHS docket staff, which maintains and processes U.S. Immigration and Customs Enforcement's (ICE's) official regulatory dockets, will scan the submission and post it to FDMS.

Collection of information. You must submit comments on the collection of information discussed in this notice of proposed rulemaking both to DHS's docket and to OMB's Office of Information and Regulatory Affairs (OIRA). OIRA submissions can be made using one of the listed methods.

- *Electronically (preferred): OIRA_submission@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for U.S. Immigration and Customs Enforcement, DHS'' in the subject line of the email).
- *Fax:* 202–395–6566.
- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Immigration and Customs Enforcement, DHS.

See the Public Participation portion of the **SUPPLEMENTARY INFORMATION** section below for additional instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Katherine Westerlund, Policy Chief (Acting), Student and Exchange Visitor Program, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Washington, DC 20536; telephone (703) 603–3400; email *sevp@ice.dhs.gov.*

SUPPLEMENTARY INFORMATION:

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I. Public Participation

We encourage you to participate in this rulemaking by submitting

comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide unless you request that your personally identifiable information be redacted. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See the **ADDRESSES** section above for methods to submit comments.

A. Submitting Comments

If you submit comments, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and materials online or by mail, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. ICE will file all comments sent to our docket address, as well as items sent to the address or email under the **FOR FURTHER INFORMATION CONTACT** section above, in the public docket, except for comments containing marked confidential information. If you submit a comment, it will be considered received by ICE when it is received at the Docket Management Facility.

To submit your comments online, go to *http://www.regulations.gov,* and insert the complete Docket number starting with ''ICEB'' in the ''Search'' box. Click on the ''Comment Now!'' box and input your comment in the text box provided. Click the ''Continue'' box, and if you are satisfied with your comment, follow the prompts to submit it. If you submit your comments by mail, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic scanning and filing. Mailed submissions may be on paper, electronic disk, or CD–ROM. If you would like us to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard or envelope on which the docket number appears. We will stamp the date of receipt on the postcard and mail it to you.

We will consider all comments and materials received during the comment period and may change this proposed rule based on your comments. The docket is available for public inspection before and after the comment closing date.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the complete Docket number starting with ''ICEB'' in the ''Search'' box. Click on the ''Open Docket Folder,'' and you can click on ''View Comment'' or ''View All'' under the ''Comments'' section of the page. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting ICE through the **FOR FURTHER INFORMATION CONTACT** section above.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

D. Public Meeting

We do not currently plan to hold a public meeting, but you may submit a request for one on or before November 18, 2015 using one of the methods specified under the **ADDRESSES** section above. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

CIP Classification of Instructional Program
CFR Code of Federal Regulations
DHS Department of Homeland Security
DOS Department of State
DSO Designated School Official
EBSVERA Enhanced Border Security and Visa Entry Reform Act of 2002
FDMS Federal Document Management System
ICE U.S. Immigration and Customs Enforcement
IIRIRA Illegal Immigration Reform and Immigrant Responsibility Act of 1996
IFR Interim Final Rule
OPT Optional Practical Training
RIA Regulatory Impact Analysis
IRFA Initial Regulatory Flexibility Analysis
SEVP Student and Exchange Visitor Program
SEVIS Student and Exchange Visitor Information System
STEM Science, Technology, Engineering, or Mathematics
U.S.C. United States Code
USCIS U.S. Citizenship and Immigration Services

III. Executive Summary

A. Purpose of the Regulatory Action

This proposed rule would affect F–1 nonimmigrant students who seek to obtain a STEM OPT extension, as well as F–1 nonimmigrant students who seek so-called Cap-Gap relief. The F–1 nonimmigrant classification is available to certain academic students seeking temporary admission to the United States as full-time students at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program. To obtain F–1 nonimmigrant classification, the student must be enrolled in a full course of study at a qualifying institution and have sufficient funds to self-support during the entire proposed course of study. Such course of study must occur at a school authorized by the U.S. government to accept international students.

OPT is a form of temporary employment available to F–1 students (except those in English language training programs) that directly relates to and complements a student's study in the United States. A student can apply to engage in OPT during their academic program, known as ''pre-completion OPT,'' or after completing the academic program, known as ''post-completion OPT.'' A student can apply for 12 months of OPT at each education level (*e.g.,* one 12-month OPT period at the bachelor's level and another 12-month period at the master's level). While school is in session, the student may work up to 20 hours per week pursuant to OPT.

This notice of proposed rulemaking (NPRM) would make changes to the current OPT program by lengthening the extension of the OPT period for certain F–1 students who have earned STEM degrees. DHS first introduced an extension of OPT for STEM graduates in a 2008 interim final rule (2008 IFR). *See* 73 FR 18944. Under the 2008 IFR, an F–1 student with a STEM degree from a U.S. institution of higher education may be eligible for an additional 17 months of OPT (17-Month STEM OPT Extension), provided that the employer from which the student sought employment was enrolled in USCIS's E-Verify employment eligibility verification program. As discussed in

further detail below, on August 12, 2015, the U.S. District Court for the District of Columbia ordered the vacatur of the 2008 IFR for procedural deficiencies in its promulgation, and remanded the issue to DHS. DHS is proposing this rule to reinstate the STEM OPT extension, with changes intended to enhance the academic benefit afforded by the extension and increase program oversight, including safeguards to protect U.S. workers.[1]

B. Summary of the Major Provisions of the Regulatory Action

The proposal would again provide for an extension of OPT for certain F–1 students with STEM degrees. As compared to the 2008 IFR, the proposed rule includes the following changes:

- *Lengthened STEM Extension Period for OPT.* The proposal would increase the OPT extension period for STEM OPT students from the 2008 IFR's 17 months to 24 months. The proposal would also make F–1 students who subsequently enroll in a new academic program and earn another qualifying STEM degree at a higher educational level eligible for one additional 24-month STEM OPT extension.
- *STEM Definition and CIP Categories for STEM OPT Extension.* The proposed rule would more clearly define which fields of study (more specifically, which Department of Education Classification of Instructional Program (CIP) categories) may serve as the basis for a STEM OPT extension. The proposal also sets forth a process for public notification in the **Federal Register** when DHS updates the list of eligible STEM fields on the Student and Exchange Visitor Program's (SEVP's) Web site.
- *Mentoring and Training Plan.* The proposal would require employers to implement formal mentoring and training programs to augment students' academic learning through practical experience, intended to equip students with a more comprehensive understanding of their selected area of study and broader functionality within that field.
- *Previously Obtained STEM Degrees.* The proposal would permit an F–1 student participating in post-completion OPT to use a prior eligible STEM degree from a U.S. institution of higher education as a basis to apply for a STEM OPT extension, as long as the student's most recent degree was also received from an accredited educational institution. Additionally, in order for such a student to be eligible for the STEM OPT extension, the employment opportunity must be directly related to the previously obtained STEM degree.
- *Safeguards for U.S. Workers in Related Fields.* To guard against adverse effects on U.S. workers, this proposal would require terms and conditions of a STEM practical training opportunity (including duties, hours, and compensation) to be commensurate with those applicable to similarly situated U.S. workers. In addition to requiring a related attestation in the Mentoring and Training Plan, an employer would also be required to attest that: (1) The employer has sufficient resources and trained personnel available to provide appropriate mentoring and training in connection with the specified opportunity; (2) the employer will not terminate, lay off, or furlough any full- or part-time, temporary or permanent U.S. workers as a result of providing the STEM OPT to the student; and (3) the student's opportunity assists the student in attaining his or her training objectives.
- *School Accreditation and Employer Site Visits.* The proposal would enhance the academic benefit and oversight of STEM OPT extensions by (1) generally limiting eligibility to students with degrees from schools that are accredited by an accrediting agency recognized by the Department of Education; and (2) clarifying DHS discretion to conduct employer on-site reviews at worksites to verify whether employers are meeting program requirements, including that they possess and maintain the ability and resources to provide structured and guided work-based learning experiences.
- *Compliance Requirements.* In addition to reinstating the 2008 IFR's reporting and compliance requirements, the proposal would revise the number of days that an F–1 student may remain unemployed during the practical training period. The current program allows a student to be unemployed up to 90 days during his or her initial period of post-completion OPT, and up to an additional 30 days (for an aggregate of 120 days) if the student receives a 17-month STEM OPT extension. The proposed rule would retain the 90-day maximum period of unemployment during the initial period of post-completion OPT, but allow an additional 60 days (for an aggregate of 150 days) for students who obtain a 24-month STEM OPT extension.

In addition to these changes (as compared to the 2008 IFR), the proposal would retain other provisions of the 2008 IFR, as follows:

- *E-Verify and Reporting Requirements for STEM OPT Employers.* The proposal would require STEM OPT employers to be enrolled in USCIS' E-Verify program and to report certain changes in the STEM OPT student's employment.
- *Reporting Requirements for STEM OPT Students.* The proposal would require STEM OPT students to report to DHS any changes to their names or addresses, as well as any changes to their employers' names or addresses. Students would also be required to periodically verify the accuracy of this reporting information.
- *Cap-Gap Extension for F–1 Nonimmigrants with Timely Filed H–1B Petitions and Requests for Change of Status.* The proposal would include the 2008 IFR's ''Cap-Gap'' provision, under which DHS would temporarily extend an F–1 student's duration of status and any current employment authorization if the student is the beneficiary of a timely filed H–1B petition and requests a change of status. The Cap-Gap extension would extend the OPT period until October 1 of the fiscal year for which the H–1B visa is being requested.

C. Costs and Benefits

The anticipated costs of compliance with the proposed rule, as well as the benefits, are discussed at length in section VI, entitled ''Statutory and Regulatory Requirements—Executive Orders 12866 and 13563.'' A combined Regulatory Impact Analysis (RIA) and an Initial Regulatory Flexibility Analysis (IRFA) are available in the docket as indicated under the Public Participation section of this preamble. A summary of the analysis follows.

As shown in the Summary Table below, DHS estimates that the costs of the standards proposed in this rule would be approximately $503.3 million over the period 2016–2025, discounted at 7 percent, or $71.7 million per year when annualized at a 7 percent discount rate.

With respect to benefits, making the STEM OPT extension available to additional students and extending the current 17-month extension will enhance students' ability to achieve the objectives of their courses of study by gaining valuable knowledge and skills through on-the-job training that is often unavailable in their home countries. The proposed changes will also benefit

[1] These changes are consistent with the direction provided in the Secretary of Homeland Security's November 20, 2014 memorandum entitled, ''Policies Supporting U.S. High Skilled Businesses and Workers.'' DHS recognizes the nation's need to evaluate, strengthen, and improve practical training as part of an overall strategy to enhance our nation's economic, scientific, and technological competitiveness. Highly skilled persons educated in the United States contribute significantly to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which correlate highly with overall economic growth and job creation.

the U.S. educational system, U.S. employers, and the United States. The rule will benefit the U.S. educational system by helping ensure that the nation's colleges and universities remain globally competitive in attracting international students in STEM fields. U.S. employers will benefit from the increased ability to rely on the skills acquired by STEM OPT students while studying in the United States, as well as their knowledge of markets in their home countries. And the nation will benefit from the increased retention of such students in the United States, including through increased research, innovation, and other forms of productivity that enhance the nation's economic, scientific, and technological competitiveness.

Furthermore, strengthening the STEM OPT extension by implementing requirements for training and mentoring, tracking objectives, reporting on program compliance, and accreditation of participating schools would further prevent abuse of the limited on-the-job training opportunities provided by this program. These and other proposals would also improve program oversight, strengthen the requirements for program participation, and better ensure that U.S. workers are protected.

The Summary Table below presents a summary of the benefits and costs of the proposed rule. The costs are discounted at seven percent. Students will incur costs for completing application forms and paying application fees; reporting to designated school officials (DSOs); preparing, with their employers, the Mentoring and Training Plan required by this rule; and periodically submitting updates to employers and DSOs. DSOs will incur costs for reviewing information and forms submitted by students, inputting required information into the Student and Exchange Visitor Information System (SEVIS), and complying with other oversight requirements related to prospective and participating STEM OPT students. Employers of STEM OPT students will incur burdens for preparing the Mentoring and Training Plan with students, evaluating whether the students are receiving on-the-job learning experiences as outlined in the Mentoring and Training Plan, enrolling in (if not previously enrolled) and using the E-Verify system to verify employment eligibility for all new hires, and complying with additional requirements related to the E-Verify system.

SUMMARY TABLE—ESTIMATED COSTS AND BENEFITS OF NPRM, ($2014 MILLIONS)

	STEM OPT	E-Verify	Total
10-Year Cost Annualized at 7 Percent Discount Rate	$64.9	$6.8	$71.7
10-Year Cost Annualized at 3 Percent Discount Rate	$66.9	$7.2	$74
Qualitative Costs	• Cost to students and schools resulting from proposed accreditation requirement; • Cost to employers from the proposed requirement to provide STEM OPT students commensurate compensation to similarly situated U.S. workers; and • Decreased practical training opportunities for students no longer eligible for the program due to proposed improvements to the STEM OPT extension.		
Monetized Benefits	N/A		N/A
Non-monetized Benefits	• Increased ability of students to gain valuable knowledge and skills through on-the-job training in their field that is often unavailable in their home countries; • Increased global attractiveness of U.S. colleges and universities; and • Increased program oversight and strengthened requirements for program participation, and new protections for U.S. workers.		
Net Benefits	N/A	N/A	N/A

IV. Background and Purpose

A. Authority, Regulatory History, and Recent Litigation

The Secretary of Homeland Security (Secretary) has broad authority to administer and enforce the nation's immigration laws. *See generally* 6 U.S.C. 202; Immigration and Nationality Act of 1952, as amended, (INA) section 103, 8 U.S.C. 1103. Section 101(a)(15)(F)(i) of the INA establishes the F–1 nonimmigrant classification for individuals who wish to come to the United States temporarily to enroll in a full course of study at an academic or language training school certified by ICE's SEVP. 8 U.S.C. 1101(a)(15)(F)(i). The INA provides the Secretary with broad authority to determine the time and conditions under which nonimmigrants, including F–1 students, may be admitted to the United States. 8 U.S.C. 1184(a)(1), INA section 214(a)(1). The Secretary also has broad authority to determine which individuals are ''authorized'' for employment in the United States. 8 U.S.C. 1324a(h)(3).

Federal agencies dealing with immigration have long interpreted section 101(a)(15)(F)(i) of the INA and related authorities to encompass on-the-job-training that supplements classroom training. *See, e.g.,* 12 FR 5355, 5357 (Aug. 7, 1947) (authorizing employment for practical training under certain conditions, pursuant to statutory authority substantially similar to current INA section 101(a)(15)(F)(i)); 38 FR 35425, 35426 (Dec. 28, 1973) (also authorizing, pursuant to the INA, employment for practical training under certain conditions).[2]

ICE manages and oversees significant elements of the F–1 nonimmigrant student process, including the certification of schools and institutions in the United States that enroll nonimmigrant students. In overseeing these institutions, ICE uses SEVIS to track and monitor foreign students, and communicate with the schools that enroll them, while they are in the United States and participating in educational opportunities. This tracking

[2] During a brief period following the Immigration Act of 1990, Congress expanded employment authorization for foreign students by allowing for a three-year pilot program in which students could be employed off-campus in positions *unrelated* to the student's field of study. Pub. L. 101–649, sec. 221(a), 104 Stat. 4978, 5027 (Nov. 29, 1990). In general, however, practical training has historically been limited to the student's field of study.

and monitoring program is required and supported by additional statutory and other authority.[3]

OPT Background

A student in F–1 status may remain in the United States for the duration of his or her education if otherwise meeting the requirements for the maintenance of status. 8 CFR 214.2(f)(5)(i). Once an F–1 student has completed his or her academic program and any subsequent period of OPT, the student must generally leave the United States unless he or she: enrolls in another academic program, either at the same school or at another SEVP-certified school; changes to a different nonimmigrant status; or otherwise legally extends his or her period of authorized stay in the United States. As noted, DHS regulations have long defined an F–1 student's duration of status to include a foreign student's practical training. *See, e.g.,* 48 FR 14575, 14583 (Apr. 5, 1983).[4] An F–1 student is allowed a 60-day ''grace period'' after the completion of the academic program or OPT to prepare for departure from the United States. 8 CFR 214.2(f)(5)(iv).

Unless an F–1 student meets certain limited exceptions, he or she may not be employed in the United States during the term of his or her F–1 status. DHS permits an F–1 student who has been enrolled on a full-time basis for at least one full academic year in a college, university, conservatory, or seminary certified by SEVP, and who has otherwise maintained his or her status, to apply for practical training to work for a U.S. employer in a job directly related to his or her major area of study. 8 CFR 214.2(f)(10). DHS had previously limited the duration of OPT to a period of up to 12 months at a given educational level. An F–1 student may seek employment through OPT either during his or her academic program (pre-completion OPT) or immediately after graduation (post-completion OPT). The student remains in F–1 nonimmigrant status throughout the OPT period. Thus, an F–1 student in post-completion OPT does not have to leave the United States within 60 days after graduation, but instead has authorization to remain for the entire post-completion OPT period. 8 CFR 214.2(f)(5)(i). This initial post-completion OPT period (*i.e.,* a period of practical training immediately following completion of an academic program) can be up to 12 months, except in certain circumstances involving students who engaged in either pre-completion OPT or what is known as ''curricular practical training'' (CPT).[5]

On April 8, 2008, DHS published an interim final rule in the **Federal Register** (73 FR 18944) that, in part, extended the maximum period of OPT from 12 to 29 months (through a 17-month ''STEM OPT extension'') for an F–1 student who obtained a degree in a designated STEM field from a U.S. institution of higher education and who was engaged in practical training with an employer enrolled in the E-Verify employment eligibility verification program. As a result of that rule, F–1 students granted STEM OPT extensions were required to report to their DSOs any changes in their names or addresses, as well as any changes in their employer's information (including name or address), and periodically validate the accuracy of this information. The rule further required employers of such students to report to the relevant DSO within two business days if a student was terminated from or otherwise left employment prior to the end of the authorized period of OPT. The rule allowed an F–1 student to apply for post-completion OPT within the 60-day grace period at the conclusion of his or her academic program. The rule also limited the total period in which students on initial post-completion OPT could be unemployed to 90 days. Students granted 17-month STEM OPT extensions were provided an additional 30 days in which they could be unemployed, for an aggregate period of 120 days.

The 2008 IFR also addressed the so-called ''Cap-Gap'' problem, which resulted when the expiration of an F–1 student's OPT authorization occurred prior to the commencement of the validity of an H–1B petition filed on his or her behalf. Specifically, F–1 students on initial post-completion OPT frequently complete their period of authorized practical training in June or July of the year following graduation. If such students are beneficiaries of H–1B petitions and requests for change of status for H–1B classification commencing in the following fiscal year (beginning on October 1), they will be unable to obtain their H–1B status before their OPT period expires. Prior to the 2008 IFR, such students were often required to leave the country for a few months until they were able to obtain their H–1B status on October 1. The 2008 IFR addressed this problem through a Cap-Gap provision that briefly extended the F–1 nonimmigrant's authorized period of stay and employment authorization to enable the student to remain in the United States until they could obtain their H–1B status.

DHS received over 900 comments in response to the 2008 IFR. Such comments were submitted by a range of entities and individuals, including schools and universities, students, professional associations, labor organizations, advocacy groups, and businesses. In addition, DHS engaged the public and affected schools in a series of meetings held across the

[3] DHS derives its authority to manage these programs from several sources, including, in addition to the authorities cited above, section 641 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, 110 Stat. 3009–546, 3009–704 (Sep. 30, 1996) (codified as amended at 8 U.S.C. 1372), which authorizes the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F and other nonimmigrants during the course of their stays in the United States, using electronic reporting technology where practicable. Consistent with this statutory authority, DHS manages these programs pursuant to Homeland Security Presidential Directive—2 (HSPD—2) (Combating Terrorism Through Immigration Policies, Oct. 29, 2001, as amended by HSPD—5 (Management of Domestic Incidents, Feb. 28, 2003, Compilation of HSPDs (updated through Dec. 31, 2007) available at *http://www.gpo.gov/fdsys/pkg/CPRT-110HPRT39618/pdf/CPRT-110HPRT39618.pdf*), which requires the Secretary of Homeland Security to conduct periodic, ongoing reviews of institutions certified to accept F nonimmigrants, and to include checks for compliance with recordkeeping and reporting requirements, *see* Weekly Comp. Pres. Docs., 37 WCPD 1570, *http://www.gpo.gov/fdsys/granule/WCPD-2001-11-05/WCPD-2001-11-05-Pg1570/content-detail.html;* and Section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA), Pub. L. 107–173, 116 Stat. 543, 563 (May 14, 2002), which directs the Secretary to review the compliance with recordkeeping and reporting requirements under 8 U.S.C. 1101(a)(15)(F) and 1372, and INA 101(a)(15)(F), of all schools approved for attendance by F students within two years of enactment, and every two years thereafter. Moreover, the programs discussed in this rule, as is the case with all DHS programs, are carried out in keeping with DHS's primary mission that includes the responsibility to ''ensure that the overall economic security of the United States is not diminished by the efforts, activities, and programs aimed at securing the homeland.'' 6 U.S.C. 111(b)(1)(F).

[4] See *Washington Alliance of Tech. Workers* v. *U.S. Dep't of Homeland Security,* No. 1:14–cv–00529, WL (D.D.C. Aug. 12, 2015) (slip op.), 25–26 (finding that DHS's interpretation permitting ''employment for training purposes without requiring school enrollment'' is '' 'longstanding' and entitled to [judicial] deference'').

[5] CPT provides a specially-designed program through which students can participate in an internship, alternative study, cooperative education, or similar programs. 52 FR 13223 (April 22, 1987). Currently defined to also include practicums, CPT allows sponsoring employers to train F–1 nonimmigrant students as part of the students' established curriculum within their schools. 8 CFR 214.2(f)(10)(i). CPT must relate to and be integral to a student's program of study. Unlike OPT and other training or employment, however, CPT can be full time even while a student is attending school that is in session. Schools have oversight of CPT through their DSOs, who are currently responsible for authorizing CPT that is directly related to the student's major area of study and reporting certain information, including the employer and location, the start and end dates, and whether the training is full time or part time. 8 CFR 214.2(f)(10)(i)(B).

country during the 2008 IFR's public comment period. DHS added transcripts of questions and comments from those meetings to the docket for the 2008 IFR.[6] Public comments received on the 2008 IFR, and other records, may be reviewed at the Docket for that rule, No. ICEB–2008–0002, available at *www.regulations.gov.*

As described immediately below, in light of the period of time that has elapsed since the 2008 IFR, and due to the *vacatur* of that rule, DHS has established a new docket for this rulemaking. DHS welcomes comments on all aspects of this new proposal. Comments submitted on the 2008 IFR will not be automatically incorporated into the docket for this rulemaking; commenters should resubmit those comments as necessary. DHS intends to respond to any significant comments submitted in connection with this proposed rule in the final rule for this proceeding.

Washington Alliance Litigation Regarding the 2008 IFR

On August 12, 2015, the U.S. District Court for the District of Columbia issued an order in the case of *Washington Alliance of Tech. Workers* v. *U.S. Dep't of Homeland Security,* No. 1:14–cv–00529,_____ WL _____ (D.D.C. Aug. 12, 2015) (*Washington Alliance*) (slip op.). Although the court held that the 2008 IFR rested upon a reasonable interpretation of the INA, the court also held that DHS violated the notice and comment provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, by promulgating the 2008 IFR without advance notice and opportunity for public comment.[7] In its order, the court invalidated the 2008 IFR as procedurally deficient, and remanded the issue to DHS.

With respect to DHS's interpretation of the F–1 student visa provisions in the INA, the court found ample support for DHS's longstanding practice of ''permit[ting F–1 student] employment for training purposes without requiring ongoing school enrollment.'' *Washington Alliance,* at *26–27. The court recognized the Secretary's broad authority under the INA ''to regulate the terms and conditions of a nonimmigrant's stay, including its duration.'' *Id.* at *29 (citing 8 U.S.C. 1103(a), 1184(a)(1)). The court also recognized the Secretary's authority to consider the potential economic contributions and labor market impacts that may result from particular regulatory decisions. *Id.* (citing 6 U.S.C. 111(b)(1)(F)).

As noted above, the court ultimately vacated the 2008 IFR on procedural grounds. Recognizing the disruption and uncertainty that an immediate *vacatur* might cause, however, the court stayed the *vacatur* until February 12, 2016, to provide time for DHS to correct the deficiency through notice-and-comment rulemaking. *Id.* at *37.[8] The court specifically explained that the stay was necessary to avoid ''substantial hardship for foreign students and a major labor disruption for the technology sector'' and that immediate *vacatur* of the STEM OPT extension would be ''seriously disruptive.'' *Id.* at *36.

Litigation in this matter is ongoing, as the plaintiff has appealed a portion of the court's August 12, 2015 decision. It is thus unclear what the final disposition of the case may be. Nevertheless, it is clear that if DHS does not act before the court's *vacatur* takes effect on February 12, 2016, a significant number of students may be unable to pursue valuable training opportunities that would otherwise be available to them.

With this proposed rule, DHS proposes to provide an extension of OPT for certain STEM students, but with significant revisions as compared to the 2008 IFR. DHS thanks the public for its helpful input and engagement during the public comment period related to the 2008 IFR. In light of the aforementioned developments, however, DHS has determined that it will replace the 2008 IFR in its entirety and seek a fresh round of public comment via this proposed rule. As described in more detail throughout this preamble, the revisions proposed by this rule are intended to continue and further enhance the academic benefit of the STEM OPT extension, while protecting STEM OPT students and U.S. workers. DHS welcomes public input on all aspects of this proposal and will consider and respond to comments on the newly proposed rule following the comment period.

B. ICE and SEVIS

As noted above, ICE's SEVP serves as the central liaison between the U.S. educational community and U.S. government agencies that have an interest in information regarding F and M nonimmigrants.[9] ICE directs and oversees the process by which schools interact with F and M students to obtain information relevant to their immigration status and relay that information to the U.S. Government. ICE uses the SEVIS system to certify schools and designate exchange visitor programs, and to monitor F, J,[10] and M nonimmigrants during their stay in the United States.[11]

ICE's SEVP carries out its programmatic responsibilities through SEVIS, a Web-based data entry, collection and reporting system. DHS, DOS, and other government agencies, as well as SEVP-certified schools and DOS-designated exchange visitor programs, use SEVIS data to monitor F, J, and M nonimmigrants for the duration of their admission in the United States. ICE and DOS require certified schools and designated exchange visitor programs to update information on their approved F, J, and M nonimmigrants regularly after their admission into the United States and throughout their stay. SEVIS data is also used to verify the eligibility of individuals applying for F, J, and M nonimmigrant status, to expedite port of entry screening by U.S. Customs and

[6] Many of the comments submitted to the docket for the 2008 IFR were requests for the addition of specific programs of study to the STEM Designated Degree Programs list. Other comments addressed a variety of key issues, including concerns about the potential impact of the extension of OPT, unemployment limits during the 17-month extension of STEM OPT, the E-Verify requirement for the 17-month extension of STEM OPT, the distinction between pre- and post-completion OPT, and student reporting requirements. As noted below, this rule proposes changes in a number of these areas, based in part on public input received in 2008.

[7] The court withheld judgment on the agency's substantive rationale for the 2008 IFR specifically. *See Washington Alliance,* at p. 29, n.9. As noted, however, the court found ample support for the Government's longstanding practice of granting F–1 students employment authorization for practical training.

[8] In an earlier preliminary ruling in the case regarding plaintiffs challenge to DHS's general OPT and STEM OPT program, the court held that plaintiff did not have standing to challenge the general OPT program on behalf of its members because it had not identified a member of its association who suffered any harm from the general OPT program. *See Washington Alliance of Tech. Workers* v. *U.S. Dep't of Homeland Security,* 74 F. Supp. 3d 247, 252 & n.3 (D.D.C. 2014). The court held in the alternative that the challenge to the general OPT program was barred by the applicable statute of limitations.

[9] A foreign student is admitted into the United States in F–1 nonimmigrant status to attend an academic or language training school or in M–1 status to attend a vocational education school. An accompanying spouse or minor child may be admitted as an F–2 or M–2 dependent.

[10] Under section 101(a)(15)(J) of the INA, 8 U.S.C. 1101(a)(15)(J), a foreign citizen may be admitted into the United States in nonimmigrant status as an exchange visitor (J visa). The Department of State (DOS) designates and manages exchange visitor programs.

[11] *See* IIRIRA sec. 641 (codified as amended at 8 U.S.C. 1372) (requiring the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F, J, or M nonimmigrants during the course of their stay in the United States, using electronic reporting technology where practicable). IIRIRA also authorized the Secretary, acting through SEVP, to certify schools to participate in F or M student enrollment.

Border Protection, to assist USCIS in processing immigration benefit applications, to monitor nonimmigrant status maintenance and, as needed, to facilitate timely removal.

C. Basis and Purpose of Regulatory Action

As noted above, this proposed rule would effectively reinstitute portions of the 2008 IFR, with significant modifications and enhancements. Public comments received on the 2008 IFR were overwhelmingly positive. Although, as described in more detail below, many commenters recommended specific changes to the STEM OPT extension and some commenters objected to the 2008 IFR altogether, the vast majority of commenters—including students, educational institutions, advocacy groups, and STEM employers—expressed strong support for the rule's main provisions. DHS continues to believe that practical training is frequently a key element of F–1 students' educational experience, and that STEM students in particular may benefit from an extended period of time in practical training. For the reasons discussed below, DHS also believes that attracting and retaining such students is in the short-term and long-term economic, cultural, and security interests of the nation.

DHS also recognizes that it must quickly address the imminent *vacatur* of the 2008 IFR, and the significant uncertainty surrounding the status of thousands of students in the United States. As of September 16, 2015, over 34,000 students were in the United States on a STEM OPT extension. In addition, hundreds of thousands of international students, most of whom are in F–1 status, have already chosen to enroll in U.S. educational institutions and are currently pursuing courses of study in fields that may provide eligibility for this program. Some of those students may have considered the opportunities offered by the STEM OPT extension when deciding whether to pursue their degree in the United States. DHS must therefore act swiftly to mitigate the uncertainty surrounding the 2008 IFR. Prompt action is particularly appropriate with respect to those students who have already committed to study in the United States, in part based on the possibility of furthering their education through an extended period of practical training in the world's leading STEM economy.[12]

1. Benefits of International Students in the United States

In proposing this rule, DHS recognizes the substantial economic, scientific, technological, and cultural benefits provided by the F–1 nonimmigrant program generally, and the STEM OPT extension in particular. As described below, international students have historically made significant contributions to the United States, both through the payment of tuition and other expenditures in the U.S. economy, as well as by significantly enhancing academic discourse and cultural exchange on campuses throughout the United States. In addition to these general benefits, STEM students further contribute through research, innovation, and the provision of knowledge and skills that help maintain and grow increasingly important sectors of the U.S. economy.

Foreign students, for example, regularly contribute a significant amount of money into the U.S. economy. According to statistics compiled by the Association of International Educators (NAFSA), foreign students made a net contribution of $26.8 billion to the U.S. economy in the 2013–2014 academic year.[13] This contribution included tuition ($19.8 billion) and living expenses for self and family ($16.7 billion), after adjusting for U.S. financial support ($9.7 billion).[14] And public colleges and universities particularly benefit from the payment of tuition by foreign students, especially in comparison to the tuition paid by in-state students.[15]

Foreign students also increase the benefits of academic exchange, while reinforcing ties with foreign countries and fostering increased understanding of American society.[16] International students, for example ''enrich U.S. universities and communities with unique perspectives and experiences that expand the horizons of American students and [make] U.S. institutions more competitive in the global economy.'' [17] At the same time, ''the international community in American colleges and universities has implications regarding global relationships, whether that is between nation-states, or global business and economic communities.'' [18] International education and exchange at the post-secondary level in the United States builds relationships that ''promote cultural understanding and dialogue,'' integrating a global dimension into the purpose and functions of higher education through the ''diversity in culture, politics, religions, ethnicity, and worldview'' brought by international students in the United States.[19]

Accordingly, foreign students provide substantial benefits to their U.S. colleges and universities, including beneficial economic and cultural impacts. A study by Duke University in 2013 analyzing 5,676 alumni surveys showed that ''substantial international interaction was positively correlated with U.S. students' perceived skill development in a wide range of areas across three cohorts.'' [20] Current research also suggests that international students contribute to the overall economy by building global connections between their hometowns and U.S. host cities.[21] Evidence links skilled migration to transnational business creation, trade,

[12] The National Science Foundation reports that the United States is the largest single science and engineering R&D-performing nation in the world, accounting for just under 30% of the global total. *See* Science and Engineering Indicators 2014 (NSF) at Chapter 4 (International Comparisons), at 4–17, available at *http://www.nsf.gov/statistics/seind14/index.cfm/chapter-4.* According to NSF, the United States expends $429 billion of the estimated $1.435 trillion in global science and engineering R&D (p. 4–17), and business, government, higher education, and non-profits in the United States expend more than double that of any other country (Table 4–5).

[13] NAFSA: Association of International Educators, ''The Economic Benefits of International Students: $26.8 billion Contributed; 340,000 U.S. Jobs Supported; Economic Analysis for Academic Year 2013–2014'', available at *http://www.nafsa.org/_/File/_/eis2014/USA.pdf.*

[14] *Id.*

[15] Washington Post, ''College Group Targets Incentive Payments for International Student Recruiters'' (June 2, 2011), available at *http://www.washingtonpost.com/local/education/college-group-targets-incentive-payments-for-international-student-recruiters/2011/05/31/AGvl5aHH_story.html.*

[16] *See* The White House, National Security Strategy 29 (May 2010), available at *https://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.*

[17] U.S. Department of State, ''Why Internationalize,'' available at *https://educationusa.state.gov/us-higher-education-professionals/why-internationalize* (last visited Sept. 29, 2015).

[18] Pamela Leong, ''Coming to America: Assessing the Patterns of Acculturation, Friendship Formation, and the Academic Experiences of International Students at a U.S. College,'' *Journal of International Students* Vol. 5 (4): 459–474 (2015) at p. 459.

[19] Hugo Garcia and Maria de Lourdes Villareal, ''The ''Redirecting'' of International Students: American Higher Education Policy Hindrances and Implications,'' *Journal of International Students* Vol. 4 (2): 126–136 (2014) at p. 132.

[20] Jiali Luo and David Jamieson-Drake, ''Examining the Educational Benefits of Interacting with International Students'' at 96 (June 2013), *available at https://jistudents.files.wordpress.com/2013/05/2013-volume-3-number-3-journal-of-international-students-published-in-june-1–2013.pdf.* The authors noted that U.S. educational institutions play an important role in ensuring U.S. students benefit as much as possible from this interaction.

[21] Brookings Institution, ''The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations'' (August 29, 2014), available at *http://www.brookings.edu/research/interactives/2014/geography-of-foreign-students#/M10420.*

and direct investment between the United States and a migrant's country of origin.[22]

Foreign STEM students, of course, contribute to the United States in all the ways mentioned above. But they also contribute more specifically to a number of advanced and innovative fields that are critical to national prosperity and security. By conducting scientific research, developing new technologies, advancing existing technologies, and creating new products and industries, for example, STEM workers diversify the economy and drive economic growth, while also producing increased employment opportunities and higher wages.[23] A premise supported by economic research is that Scientists, Technology professionals, Engineers, and Mathematicians (STEM workers) are fundamental inputs in scientific innovation and technological adoption, critical drivers of productivity growth in the United States.[24] For example, research has shown that foreign students who earn a degree and remain in the United States are more likely than native-born workers to engage in activities, such as patenting and the commercialization of patents, that increase U.S. labor productivity.[25] Similarly, other research has found that a one percentage-point increase in immigrant college graduates' population share increases patents per capita by 9 to 18 percent.[26] Research has also shown that foreign-born workers are particularly innovative, especially in research and development, and that they have positive spillover effects on native-born workers.[27] One paper, for example, shows that foreign-born workers patent at twice the rate of U.S.-born workers, and that U.S.-born workers patent at greater rates in areas with more immigration.[28] The quality of the nation's STEM workforce in particular has played a central role in ensuring national prosperity over the last century and helps bolster the nation's economic future.[29] This, in turn, has helped to enhance national security, which is dependent on the nation's ability to maintain a growing and innovative economy.[30] Innovation is crucial for economic growth, which in turn is vital to continued funding for defense and security.[31]

2. Increased Competition for International Students

DHS recognizes that the United States has long been a global leader in international education. The number of foreign students affiliated with U.S. colleges and universities grew by 72 percent between 1999 and 2013 to a total of 886,052.[32] However, although the overall number of foreign students increased over that period, the nation's share of such students decreased. In 2001, the United States received 28 percent of international students; by 2011 that share had decreased to 19 percent.[33] Countries such as Canada, the United Kingdom, New Zealand, Australia, Malaysia, Taiwan, and China are actively instituting new strategies to attract international students.[34]

For example, Canada also recognizes that educational institutions need international students to compete in the ''global race for research talent.'' [35] In April, 2008, Canada modified its Post-Graduation Work Permit Program to allow international students who have graduated from a recognized Canadian post-secondary institution to stay and gain valuable post-graduate work experience for a period equal to the length of the student's study program, up to a maximum of three years, with no restrictions on type of employment.[36] This change resulted in a 64% increase in the number of post-graduation work permits issued to international students in 2008.[37] By 2014, the number of international

[22] Sonia Plaza, *Diaspora resources and policies, in* International Handbook on the Economics of Migration, 505–529 (Amelie F. Constant and Klaus F. Zimmermann, eds., 2013).

[23] *See* Michael Greenstone and Adam Looney, ''A Dozen Economic Facts About Innovation'' 2–3, available at *http://www.brookings.edu/~/media/research/files/papers/2011/8/innovation-greenstone-looney/08_innovation_greenstone_looney.pdf [hereinafter Greenstone and Looney];* Bureau of Labor Statistics 2014 data show that employment in occupations related to STEM has been projected to grow more than 9 million, or 13 percent, during the period between 2012 and 2022, 2 percent faster than the rate of growth projected for all occupations. Bureau of Labor Statistics, Occupational Outlook Quarterly, Spring 2014, ''STEM 101: Intro to Tomorrow's Jobs'' 6, available at *http://www.stemedcoalition.org/wp-content/uploads/2010/05/BLS-STEM-Jobs-report-spring-2014.pdf. See also,* Australian Government, Strategic Review of the Student Visa Program 2011 Report, ix, 1 (June 30, 2011), available at *http://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/2011-knight-review.pdf#search=knight%20review* (concluding that the economic benefit of international masters and doctoral research students includes third-party job creation).

[24] *See e.g.,* Giovanni Peri, Kevin Shih, Chad Sparber, ''Foreign STEM Workers and Native Wages and Employment in U.S. Cities,'' (National Bureau of Economic Research, May 2014), available at *http://www.nber.org/papers/w20093.*

[25] Jennifer Hunt, ''Which Immigrants are Most Innovative and Entrepreneurial? Distinctions by Entry Visa,'' *Journal of Labor Economics* Vol 29 (3): 417–457 (2011).

[26] Jennifer Hunt and Marjolaine Gauthier-Loiselle, ''How Much Does Immigration Boost Innovation?'' *American Economic Journal: Macroeconomics* 2: 31–56 (2010).

[27] *Id.*

[28] *Id.*

[29] Greenstone and Looney, *supra* note 23, at 2–3.

[30] *See* Congressional Research Service, Economics and National Security: Issues and Implications for U.S. Policy 28, available at *https://www.fas.org/sgp/crs/natsec/R41589.pdf* [hereinafter Economics and National Security]; *see also* The White House, National Security Strategy 16 (Feb. 2015), available at *https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf* (''Scientific discovery and technological innovation empower American leadership with a competitive edge that secures our military advantage, propels our economy, and improves the human condition.'') [hereinafter 2015 National Security Strategy]; The White House, National Security Strategy 29 (May 2010), available at *https://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf* (''America's long-term leadership depends on educating and producing future scientists and innovators.'').

[31] The 2015 National Security Strategy concludes that ''the American economy is an engine for global growth and a source of stability for the international system. In addition to being a key measure of power and influence in its own right, it underwrites our military strength and diplomatic influence. A strong economy, combined with a prominent U.S. presence in the global financial system, creates opportunities to advance our security.'' 2015 National Security Strategy, *supra* note 30, at 15.

[32] Pew Research Center, ''Growth from Asia Drives Surge in U.S. Foreign Students'' (June 18, 2015), available at *http://www.pewresearch.org/fact-tank/2015/06/18/growth-from-asia-drives-surge-in-u-s-foreign-students/* (citing Institute for International Education, Open Doors Data: International Students: Enrollment Trends, available at *http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Enrollment-Trends/1948-2014).*

[33] Organization for Economic Co-operation and Development (OECD) 2014, ''Education at a Glance 2014: OECD Indicators,'' OECD Publishing at *http://dx.doi.org/10.1787/eag-2014-en* or *http://www.oecd.org/edu/eag.htm.*

[34] University World News Global Edition Issue 376, ''Schools are the New Battleground for Foreign Students'' (July 15, 2015), available at *http://www.universityworldnews.com/article.php?story=201507150915156.*

[35] Citizenship and Immigration Canada, ''Evaluation of the International Student Program'' 14 (July 2010) available at *http://www.cic.gc.ca/english/pdf/research-stats/2010-eval-isp-e.pdf* (citing Association of Universities and Colleges of Canada, Momentum: The 2008 report on university research and knowledge mobilization: A Primer: Driver 2: Global race for research talent, 3 (2008) [hereinafter Evaluation of the Int'l Student Program].

[36] Citizenship and Immigration Canada, Study permits: Post Graduation Work Permit Program, available at *http://www.cic.gc.ca/english/resources/tools/temp/students/post-grad.asp* [hereinafter Canadian Study permits]. Similarly, Australia, now offers international students who graduate with a higher education degree from an Australian education provider, regardless of their field of study, a post-study work visa for up to four years, depending on the student's qualification. Students who complete a bachelor's degree may receive a two-year post study work visa, research graduates with a master's degree are eligible for a three-year work visa, and doctoral graduates are eligible for a four-year work visa. *See* Australian Department of Immigration and Border Protection, Application for a Temporary Graduate visa, available at *http://www.border.gov.au/FormsAndDocuments/Documents/1409.pdf [hereinafter Australian Temporary Grad. visa].*

[37] Evaluation of the Int'l Student Program, *supra* note 29, at 9.

students in the program more than doubled its 2008 total.[38] In addition, Canada aims to double the number of international students in the country to 450,000 by 2022.[39]

In light of the United States' decrease in the percentage of international students received, and increased global efforts to attract them, DHS believes that the United States must take additional steps to improve these students' educational experience (both academic and practical) to ensure that we do not continue to lose ground. This is particularly true for foreign STEM students, who have comprised a significant portion of students in STEM degree programs in the United States, particularly at the graduate degree level.

The difference is particularly stark at the doctoral level, where foreign students earned 56.9 percent of all doctoral degrees in engineering; 52.5 percent of doctoral degrees in computer and information sciences; and approximately half the doctoral degrees in mathematics and statistics in the 2012–2013 academic year.[40] Recognizing that the international education programs for these students are increasingly competitive, DHS is committed to helping U.S. educational institutions contend with the expanded and diverse global opportunities for international study.

3. The Need to Improve the Existing STEM OPT Extension

With this proposed rule, DHS also recognizes the need to strengthen the existing STEM OPT extension to enhance the academic benefit of the program and maintain the nation's economic, scientific, and technological competitiveness. DHS is working to find new and innovative ways to encourage international STEM students to choose the United States as a destination for their studies. This proposal, in addition to including a modified version of the STEM OPT extension from the 2008 IFR, would increase the maximum training time period for STEM students, require a formal mentoring and training plan for each STEM OPT extension, and take steps to strengthen protections for F–1 nonimmigrant students and U.S. workers. Providing an on-the-job educational experience through a U.S. employer qualified to develop and enhance skills through practical application has been DHS's primary guiding objective.

Many of the elements of this proposed rule have been the result of public comment on the 2008 IFR, which contained input from a range of stakeholders, including students and the broader academic community. This proposal also incorporates recommendations from the Homeland Security Academic Advisory Committee (HSAAC).[41] Following an in-depth review of stakeholder feedback, DHS believes that the changes proposed by this rule to the existing STEM OPT extension would benefit both F–1 students and international study programs in the United States, while adding important protections.

The changes will help improve the ability of F–1 STEM students to gain valuable on-the-job training from employers qualified to develop and enhance skills through practical application. Maintaining and improving practical training for STEM students provides these students with an improved ability to absorb a full range of project-based practical skills and knowledge directly related to their study.

The proposed changes will also help the nation's colleges and universities remain globally competitive, including by improving their ability to attract foreign STEM students to study in the United States. As noted above, these students enrich the cultural and academic life of college and university campuses throughout the United States and make important contributions to the U.S. economy and academic sector. The changes proposed in this rule will help strengthen the overall F–1 program in the face of growing international competition for the world's most promising international students.

Additionally, safeguards such as employer attestations, requiring employers to enroll in E-Verify, providing for DHS site visits, and requiring that STEM training opportunities provide commensurate terms and conditions to those provided to U.S. workers will help protect both STEM OPT students and U.S. workers. Implementing the changes proposed in this rule thus will more effectively assist STEM OPT students with achieving the objectives of their courses of study while also benefiting U.S. academic institutions and guarding against adverse effects on U.S. workers.

Finally, DHS notes that the focus of this rule on the extension of OPT for STEM students also represents a step by the agency to improve a discrete portion of the practical training program.[42] DHS is not considering adding the requirements contained within this rulemaking to the general OPT program at this time. DHS may, however, consider the impacts of these proposed changes, once implemented, as a model for possible future changes to practical training programs more generally.

V. Discussion of Elements of the STEM OPT Extension

A. Including a STEM OPT Extension Within the OPT Program

As referenced above, DHS is taking this action to include a STEM OPT extension as part of the OPT program under the F–1 nonimmigrant classification in order to better ensure, among other important national interests, that the U.S. academic sector can remain competitive globally. Enabling continued extended OPT for qualifying students with experience in STEM fields is consistent with DHS's ''Study in the States'' initiative, announced after the 2008 IFR in September 2011 to encourage international students to study in the United States. That initiative particularly focused on enhancing our nation's economic, scientific and technological competitiveness by finding new ways to encourage talented international students to become involved in expanded post-graduate opportunities in the United States. The initiative has taken various steps to enhance and improve the Nation's nonimmigrant student programs.[43]

The proposed rule would enhance the ability of F–1 students to achieve the objectives of their courses of study while also benefiting the U.S. economy. More students will return home confident in their training, ready to begin a career in their field of study; others may take advantage of other provisions proposed herein to request to

[38] Citizenship and Immigration Canada, Quarterly Administrative Data Release, available at *http://www.cic.gc.ca/english/resources/statistics/data-release/2014-Q4/index.asp.*

[39] University World News Global Edition, *Schools are the New Battleground for Foreign Students,* July 15, 2015, Issue 376, available at *http://www.universityworldnews.com/article.php?story=20150715091515 6.*

[40] Pew Research Center, ''Growth from Asia Drives Surge in U.S. Foreign Students'' (June 18, 2015), available at *http://www.pewresearch.org/fact-tank/2015/06/18/growth-from-asia-drives-surge-in-u-s-foreign-students/.*

[41] The HSAAC provides advice and recommendations to the Secretary and senior leadership on matters related to homeland security and the academic community, including: student and recent graduate recruitment, international students, academic research and faculty exchanges, campus resilience, homeland security academic programs, and cybersecurity. *See* U.S. Department of Homeland Security, Homeland Security Academic Advisory Council Charter, available at *http://www.dhs.gov/publication/hsaac-charter.*

[42] During calendar year 2014, the number of students participating in a STEM OPT extension represented approximately 8.5 percent of all OPT participation.

[43] *See* ''Study in the States,'' U.S. Department of Homeland Security, *http://studyinthestates.dhs.gov.*

change status following a STEM OPT extension and help further drive economic growth and cultural exchange in the United States.

B. STEM Extension Period for OPT

As noted above, in the 2008 IFR, DHS implemented a 17-month STEM OPT extension to provide STEM students and employers with improved OPT opportunities beyond the initial year of practical training. The 17-month period was intended to allow STEM students to receive additional practical experience aligned with their educational degree, and it would generally terminate near the beginning of the fiscal year. Following seven years of experience with the STEM OPT extension, DHS has decided in this rule to re-evaluate its length. Consistent with the discussion above, DHS believes the STEM OPT extension should first and foremost be targeted to complement the student's academic experience. The length of any extension should aim to produce an optimal educational experience in the relevant field of study, particularly given the complex nature of STEM projects and associated skill-development that require relatively lengthy time frames. The length should be conditioned on full compliance with the other requirements set forth in this preamble.

DHS proposes in this rule to increase the STEM OPT extension period to 24 months for students meeting the qualifying requirements. This 24-month extension, when combined with the 12 months of initial post-completion OPT, would effectively allow STEM students up to 36 months of practical training. DHS would also provide, for students who subsequently attain another STEM degree at a higher educational level, the ability to participate in an additional 24-month extension of any post-completion OPT based upon that second STEM degree.[44] The duration of an extension would be set at 24 months, rather than limited to a shorter period, due to the complexity and typical durations of research, development, testing, and other projects commonly undertaken in STEM fields. Affording greater participation in STEM training through changes to the period of the STEM OPT extension would also help the nation and its academic institutions remain competitive in light of global efforts offering international students longer post-study training experience without restrictions on the type of work that may be performed.[45]

DHS considered many factors in determining the proposed length for an improved STEM OPT extension period. An important consideration was the general duration of projects to be pursued by students on STEM OPT extensions. DHS believes that students participating in practical training in STEM fields should be encouraged to pursue meaningful projects that contribute to a deeper understanding of their field of study and help develop the practical skills necessary to advance their careers. This type of significant project—often involving a grant or fellowship application, management of grant money, focused research, and publication of a report—typically requires several years to complete. Stakeholders have indicated, moreover, that this process often takes longer in the STEM community than in other academic or business areas. For example, the National Science Foundation (NSF) typically funds projects through grants that last for up to three years.[46] And in many fields such as mathematics, computer science, and the social sciences, NSF is the major source of federal funding.[47]

Fostering integration of research and education through the types of programs, projects, and activities described above will help recruit, train, and prepare a diverse STEM workforce to advance the frontiers of science and participate in the U.S. technology-based economy.[48] Combined with the initial 12-month OPT period, a maximum 24-month STEM OPT extension would provide students a sufficient opportunity to participate through the life of such a grant.[49] Accordingly, and following consultation with the Department of Education and the National Science Foundation (NSF), DHS believes that an appropriate benchmark for the maximum duration of OPT for STEM students is the standard duration of an NSF grant—approximately three years.

DHS anticipates that the 24-month extension would significantly enhance the academic benefit of a STEM student's OPT experience. As noted above, many research projects take years to complete, and under the new STEM OPT extension, a student would have increased opportunities to learn how to apply for a grant or fellowship, become a responsible steward of grant money, initiate a study or project, see the study or project through to conclusion, write a report and obtain peer review, and have the report published. *DHS requests public comment and the submission of empirical data in relation to this proposition. In addition, DHS requests public comment regarding the length of research, development, testing and other projects for which STEM graduates (regardless of nationality) from U.S. universities are typically assigned in the workplace.*

DHS also proposes to allow a student who has completed a STEM OPT extension pursuant to previous study in the United States and who obtains another qualifying degree at a higher degree level (or has a qualifying prior degree, as discussed in more detail below), to qualify for eligibility for a second 24-month STEM OPT extension upon the expiration of the general period of OPT based on that additional degree.

DHS requests public comment on the proposed 24-month STEM OPT extension and the ability for qualifying students to receive an additional such STEM OPT extension based on a second STEM degree. In particular, DHS requests comment from STEM students, educational institutions, and employers on the appropriate STEM OPT extension length to ensure that practical training

[44] DHS notes that, under this proposal, a student seeking to obtain a second STEM OPT extension during his or her lifetime will be unable to link this extension with his or her first extension. The student would need to complete a new initial post-completion practical training period and request a new STEM extension based on a different STEM degree. DHS welcomes comments on this aspect of the proposal.

[45] *See, e.g., Canadian Study permits* and *Australian Temporary Grad. visa, supra* note 36.

[46] *Id.* at sec. II.c.2.a.(4)(b) (''The proposed duration for which support is requested must be consistent with the nature and complexity of the proposed activity. Grants are normally awarded for up to three years but may be awarded for periods of up to five years.''). For instance, NSF funding rate data show that in fiscal years 2012–2014, grant awards for biology were provided for an average duration of 2.87, 2.88, and 2.81 years, respectively.

[47] ''About the National Science Foundation,'' NSF, *http://www.nsf.gov/about/*. Such grants are commonly solicited by and awarded to organizations similar to those in the STEM OPT employer community, including universities, colleges, and research laboratories having strong capabilities in scientific or engineering research or education, and cooperative projects that involve both universities and the private sector. *See* NSF, ''Grant Proposal Guide'' (December 2014), available at *http://www.nsf.gov/pubs/policydocs/pappguide/nsf15001/gpg_1.jsp#categories* (listing categories of organizations that are eligible to submit grant proposals). Based on SEVIS data, three of the top six employers offering STEM OPT opportunities and employing STEM OPT students that have begun over the past five years are either higher education institutions or entities conducting research affiliated with universities.

[48] *Id.,* available at *http://www.nsf.gov/pubs/policydocs/pappguide/nsf15001/gpg_2.jsp.*

[49] Although DHS has considered tailoring the length of the STEM OPT extension in this rule to individual student practical training proposals, DHS's initial assessment is that an across-the-board maximum period for such extensions would be significantly more straightforward to administer and would also be consistent with past administration of the general OPT program, as well as the existing STEM OPT extension.

for STEM students is most meaningfully educational and beneficial to them, and less disruptive for institutions and employers. DHS is particularly interested in public input regarding whether 24 months is the appropriate duration for STEM OPT extensions, or whether a shorter or longer duration (*e.g.,* 17 months or 36 months) is preferable, and why.

As a transitional measure, DHS is also proposing to allow a subset of students already on a 17-month extension to take advantage of the proposed 24-month program, consistent with the requirements set forth in this proposed rule. Qualifying students would be able to request the balance of the modified extension up to 120 days before the end of the student's 17-month period. Such requesting students would have to meet all requirements of the new STEM OPT extension proposal, including submission of the Mentoring and Training Plan described below.

With respect to applications for STEM OPT extension currently pending before DHS or submitted prior to the effective date of any final rule, DHS intends to adjudicate the application consistent with the regulations that existed at the time the application was submitted (*i.e.,* such applications, if approved, would result in a 17-month extension). Following the effective date of a final rule with a different STEM OPT extension duration, a student would then be able to request the balance of the modified extension up to 120 days before the end of the student's 17-month period, provided the student meets all requirements of the new STEM OPT extension proposal, including submission of the Mentoring and Training Plan. In the alternative, a student with a pending application for a 17-month extension may also choose to withdraw that application and file a new application for the proposed 24-month STEM OPT extension.

DHS is making every effort to have a final rule take effect prior to February 13, 2016, when the stay on the vacatur of the 2008 IFR is currently set to expire. In the event, however, that a final rule resulting from this rulemaking does not take effect before the vacatur of the 2008 IFR, DHS will lack clear regulatory authority to grant pending applications for STEM OPT extensions. In that case, DHS will evaluate options to address pending applications, such as returning such applications and requiring re-filing upon completion of a final rule. DHS seeks comments on these and other options for addressing pending applications if a final rule is not in place prior to the court's vacatur, including comments on the harm that such a gap may cause.

DHS welcomes comments regarding each of the proposed transition procedures described above, including alternatives to the potential courses of action identified here.

C. STEM Definition and CIP Categories for STEM OPT Extension

The 2008 IFR first introduced the STEM Designated Degree Program list, which includes all Department of Education CIP codes that are eligible for the current 17-month extension. The 2008 IFR noted that any future changes to the list would be posted on SEVP's Web site, but did not set forth a formal definition for ''STEM fields'' or a public notice process regarding updates to the list. Many commenters on the 2008 IFR indicated that the STEM OPT extension should be available to students in all fields of study, or that the list promulgated at that time be expanded to include various other degree programs. DHS has taken these concerns into consideration in crafting a proposed approach for this rule that seeks to strike a reasonable balance between the current understanding of STEM needs and potential future changes in these fields. The approach focuses on generally understood STEM degree fields that are of particular academic and practical demand for the U.S. and international community, while also ensuring flexibility for potential changes as fields of study in STEM sectors evolve with changes in technology, as well as in academic programs, interests and trends.

DHS proposes in this rulemaking a general definition of ''STEM fields'' and proposes a process for public notification in the **Federal Register** when DHS updates the Designated Degree Program list on SEVP's Web site. DHS would continue to produce a list identifying the groups within the Department of Education's CIP taxonomy that qualify as appropriate categories for the STEM OPT extension. DHS may from time to time revise the Designated Degree Program list based upon the dynamic nature of STEM fields and potential changes to the CIP taxonomy.

To provide a clear definition to guide changes to the STEM Designated Degree Program list, DHS proposes to utilize the description referenced by the Department of Education's National Center for Education Statistics (NCES), Institute of Education Services, to define ''STEM fields.'' DHS would define ''STEM field'' as a field included in the Department of Education's CIP taxonomy within the summary groups containing mathematics, natural sciences (including physical sciences and biological/agricultural sciences), engineering/engineering technologies, and computer/information sciences, and related fields. DHS believes the NCES definition provides a sound basis because it not only encompasses many of the fields already contained on the current STEM Designated Degree Program list, but draws on the Department of Education's expertise in the area of higher education and academic studies generally. ICE often defers to the Department of Education's definitions or processes in the area of higher education. DHS therefore proposes that the definition of STEM fields encompass mathematics, natural sciences (including physical sciences and biological/agricultural sciences), engineering/engineering technologies, and computer/information sciences, as well as related fields.[50] DHS believes that a clear definition of the types of degree fields eligible under the regulation would improve the process for altering categories contained within the STEM Designated Degree Program list.

DHS believes that its definition of STEM fields should be tailored to capture those STEM fields of study for which an extension of practical training is most beneficial. *DHS requests comment from the public on the academic benefit of the STEM OPT extension for STEM students generally as well as for specific STEM fields. DHS also requests comment on whether changes to the current content or structure of the list may be helpful or appropriate.*[51] Although DHS is not currently considering expanding the STEM OPT extension to non-STEM fields, commenters are encouraged to compare STEM and non-STEM fields of study for purposes of commenting on this definition. As is the current process, DHS envisions that, upon finalizing this proposed rule, the agency would continue to accept, for DHS review, suggested additions to the STEM Designated Degree Program list at *SEVP@ice.dhs.gov*

[50] U.S. Department of Education National Center for Education Statistics Institute of Education Sciences, ''Stats in Brief'' (July 2009), available at *http://nces.ed.gov/pubs2009/2009161.pdf.*

[51] The current list is available in the docket for this rulemaking. Future revisions may include additional degrees, including degrees listed within the summary groups for Agriculture, Agriculture Operations, and Related Sciences; Computer and Information Sciences and Support Services; Engineering; Engineering Technologies and Engineering-Related Fields; Biological and Biomedical Sciences; Mathematics and Statistics; and Physical Sciences.

D. Mentoring and Training Plan

Multiple commenters to the 2008 IFR highlighted the important academic benefits associated with OPT participation. Commenters emphasized that real-world experience is a vital part of the educational experience, and that the opportunity for OPT participation draws high-quality students to the United States from around the world. Other commenters noted that the 2008 IFR did not include an explicit mechanism to inform employers of the purpose of or requirements associated with practical training.

The proposed rule seeks to ensure that the STEM OPT extension more effectively enables STEM OPT students to obtain valuable practical work experience directly related to their fields of study. To achieve this aim, the proposed rule requires that employers incorporate a formal mentoring and training program for STEM OPT students. Mentoring is a time-tested and widely used strategic approach to developing professional skills. The mentor should be an experienced employee or group of employees who would teach and counsel the student. As part of this mentoring and training program, the employer would agree to take responsibility for the student's training and ensure that skill enhancement is the primary goal. The student would be required to prepare a formalized Mentoring and Training Plan with the employer and to submit the plan to the student's DSO before the DSO could recommend a STEM OPT extension in the student's SEVIS record. This would generally provide review of the Mentoring and Training Plan by the educational institution granting the degree related to the training. In cases where the student intends to use the newly proposed option of requesting an extension based on a previously-obtained degree, the review would come from the institution that provided the student's most recent degree (*i.e.,* the institution whose official is certifying, based on SEVIS or official transcripts, that a prior STEM degree enables the student to continue his or her eligibility for the practical training).[52]

To better ensure that the STEM OPT extension fulfills the specific practical training needs of STEM students, the employer that intends to provide a STEM OPT opportunity to a student would work with the student to design a customized training plan to enhance the practical skills and methods the student studied while attaining his or her degree. Such training plans would require specific training goals, as well as a description of how those goals will be achieved.

DHS also proposes that the student provide his or her DSO with an evaluation of his or her STEM OPT every six months, as well as a final evaluation at the conclusion of the OPT period. These evaluations would document the student's progress toward the agreed-upon training goals and thus better ensure that such goals are being met. The factors to be evaluated would be included on the Mentoring and Training Plan, which must be signed by both the student and the immediate supervisor at the student's workplace. The student's school of most recent enrollment would be responsible for ensuring ICE has access to records of student evaluations for a period of three years following completion of the student's STEM OPT training.

DHS plans to incorporate the submission of the Mentoring and Training Plan into SEVIS at a later date. Until that time DHS may require the submission of the Plan to ICE or USCIS, including to USCIS when the student seeks certain benefit requests from USCIS, such as an application for employment authorization. Under 8 CFR 103.2(b)(8)(iii), USCIS may issue a Request for Evidence or Notice of Intent to Deny if all required initial evidence has been submitted, but the evidence submitted does not establish eligibility. Accordingly, USCIS may request a copy of the Mentoring and Training Plan, in addition to other documentation, when such documentation is necessary to determine an applicant's eligibility for the benefit, including instances when there is suspected fraud in the application.

E. USCIS E-Verify Employment Verification Program

The 2008 IFR provided that the STEM OPT extension would only be available to those students seeking employment or seeking to maintain employment with employers that are enrolled and in good standing in USCIS' E-Verify program. A number of commenters to the 2008 IFR addressed this provision. Some commenters believed that this provision would unduly limit the opportunities available to STEM OPT students; others expressed concern about reported inaccuracies in E-Verify-related databases. Finally, some commenters stated that the E-Verify provision would not ensure electronic verification of all STEM OPT students, because the E-Verify program only applies to new hires and therefore would not apply to students who are using the STEM OPT extension to extend their employment with the same employer. A number of commenters acknowledged, however, that the program was improving and that participation in the E-Verify program was rapidly growing.

DHS continues to believe that the E-Verify program is an important measure to ensure the integrity of the STEM OPT extension. The E-Verify program is an Internet-based service operated by USCIS, in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers and is available in all 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. E-Verify electronically compares information contained on the Employment Eligibility Verification Form I–9 (herein Form I–9) with records contained in government databases to help employers verify the identity and employment eligibility of newly-hired employees. This program currently is the best means available for employers to determine employment eligibility of new hires and, in some cases, existing employees.

Before an employer can participate in the E-Verify program, the employer must enter into a Memorandum of Understanding (MOU) with DHS and SSA. This memorandum requires employers to agree to abide by current legal hiring procedures and to follow required procedures in the E-Verify process to ensure that E-Verify maximizes the reliability and ease of use of the system, while preventing unauthorized disclosure of personal information and unlawful discriminatory practices based on national origin or citizenship status. Violation of the terms of this agreement by the employer is grounds for immediate termination of its participation in the program.[53]

Employers participating in E-Verify must still complete a Form I–9 for each newly hired employee, as required under current law. Following completion of the Form I–9, the employer must enter the newly hired worker's information into the E-Verify system, which would then check that information against information

[52] The proposed rule clarifies the student's responsibility to present his or her Mentoring and Training Plan to the DSO of the school of most recent enrollment, so that the DSO who has been involved with the student most recently would be the DSO responsible regarding all ongoing OPT. This change is a necessary result of this rule also proposing changes that could enable a student to engage in a STEM OPT opportunity related to a previously obtained degree.

[53] *See* U.S. Citizenship and Immigration Services, The E-Verify Memorandum of Understanding for Employers, available at *http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/MOU_for_E-Verify_Employer.pdf.*

contained in government databases. For example, E-Verify compares employee information against more than 425 million records in the SSA database and more than 60 million records stored in the DHS database. At the start of 2015, over 98 percent of all employer queries were instantly verified as work authorized. Between 2008 (the year the 2008 IFR included the original E-Verify requirement for STEM OPT employers) and the beginning of 2015, E-Verify participation by employers has increased by over 500 percent.[54] E-Verify is now a well-established and important measure that would complement other oversight elements in this proposed rule, and it is the most efficient means available for employers to determine the employment eligibility of new hires, including students who are participating in the STEM OPT extension.

It is important to note that once an employer enrolls in E-Verify, that employer is responsible for verifying all new hires, including newly hired students with STEM OPT extensions, at the hiring site(s) identified in the MOU executed between the employer and DHS. The earliest an employer may use E-Verify with respect to an individual is after the individual accepts an offer of employment and the employee and employer complete the Form I–9. The verification must be made no later than the end of three business days after the new hire's first day of employment. If, however, an employer enrolls in E-Verify to retain a student already employed pursuant to an initial 12-month grant of OPT, the employer would reverify the student's STEM OPT extension on Form I–9 but may not verify the employment eligibility of the employee in E-Verify, as the MOU generally prohibits the use of E-Verify with respect to existing employees.

Additional information on enrollment and responsibilities under E-Verify can be found at *http://www.uscis.gov/E-Verify.* Employers can register for E-Verify on-line at *http://www.uscis.gov/E-Verify.* The site provides instructions for completing the MOU needed to officially register for the program. DHS believes that the E-Verify enrollment requirement would continue to provide an efficient and accurate manner of better ensuring that students participating in the STEM OPT extension are legally authorized to work. *DHS requests comment on this proposal, including from students and employers that have had experience with this requirement under the 2008 IFR.*

F. Previously Obtained STEM Degrees

Commenters to the 2008 IFR inquired about eligibility for a STEM OPT extension in instances where a student earns a bachelor's degree in a STEM field but a master's degree in a non-STEM field, or two degrees at the same education level, one of which is in a STEM field. Since the 2008 IFR, DHS has found that some F–1 students approved for OPT in STEM-related fields remain unable to extend their OPT, even if they have a prior STEM degree. This is because the regulations have effectively required that the OPT be directly related to the student's most recent major area of study and that the DSO certify that the student's degree that is the basis for his or her current period of OPT is a degree contained on the current STEM Designated Degree Program list. *See* 8 CFR 214.2(f)(10)(ii)(A) and (f)(11)(ii)(A). This limitation decreases the number of F–1 students with STEM degrees and STEM-related expertise available to participate in a STEM OPT extension.

Stakeholders, including the academic community and the HSAAC, have requested the elimination of this restriction, such that a STEM OPT extension would be available to a student with a prior qualifying STEM degree, even if the student's most recent degree would not qualify. Stakeholders assert that such a modification would broaden the educational and training benefits of the STEM OPT extension to additional students with STEM backgrounds and would further benefit the U.S. economy by enhancing our nation's ability to compete and innovate in these fields.

DHS agrees and is accordingly proposing to permit students to use a previously obtained and directly related STEM degree from an accredited school as a basis to apply for a STEM OPT extension. This previously obtained degree would make the STEM OPT extension available to students who have a prior background in STEM but who are currently engaging in OPT that has been authorized based on their study towards a different degree. Such an OPT extension, however, would be available only to such students who seek to develop and utilize STEM skills from their prior STEM degree during the extended OPT period.

Under this proposal, students would not be able to use a previously obtained degree to obtain a STEM OPT extension immediately subsequent to another STEM OPT extension. In other words, the proposed changes would not provide students the ability to obtain two immediately consecutive STEM OPT extensions. Under the proposed rule, the second extension would be available to students only upon completion of a new initial post-completion OPT period.

DHS proposes to permit DSOs at the student's school of most recent enrollment to certify prior STEM degrees, so long as the STEM degree was earned at a school accredited by an accrediting agency recognized by the Department of Education.[55] The degree would also need to be on the STEM Designated Degree Program list at the time of the student's application. For a student who is relying on a previously obtained degree for the STEM OPT extension, his or her most recent degree must also be from an accredited institution and the student's practical training opportunity must be directly related to the previously obtained STEM degree. For a previously obtained degree to qualify as the basis for a STEM OPT extension, the degree must have been conferred within the 10 years preceding the student's application date. This requirement is intended to ensure the degree was conferred recently enough that it would be relevant to a present-day STEM OPT opportunity.

Finally, due to the difficulty in determining the equivalency of a degree obtained at a foreign institution, and because the purpose of OPT is to further one's course of study in the United States, STEM degrees from foreign schools will not be permitted to qualify under the proposed program.

DHS requests comment on all aspects of this proposal.

G. Safeguarding U.S. Workers Through Measures Consistent With Labor Market Protections

Many commenters to the 2008 IFR agreed with the Department's assessment that the 17-month STEM OPT extension would benefit both students and the U.S. economy. Commenters noted that the STEM labor shortage described in the 2008 IFR was well documented and that the United States faced stiff competition from other countries for high-skilled STEM workers. One commenter stated that the IFR provided ''small, but helpful steps'' towards addressing a critical need for

[54] U.S. Citizenship and Immigration Services, E-Verify Overview 8, available at *http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/e-verify-presentation.pdf* (noting that 87,758 employers were enrolled as of fiscal year 2008 compared to 568,759 employers as of fiscal year 2015).

[55] A qualifying, previously obtained degree would provide eligibility for an extension so long as the educational institution that conferred the degree was accredited at the time the degree was granted.

qualified, highly-trained and well-educated STEM workers. Another commenter stated that the rule partially addressed the severe shortage of U.S. workers in science, engineering, mathematics and technology. Commenters highlighted the importance of the STEM OPT extension not only for research universities that seek to attract high-quality international students, but also for employers seeking to fill empty positions. Some commenters characterized the availability of meaningful practical training as a critical aspect of the educational experience. As noted elsewhere in this preamble, many commenters also stated that the impact of the rule was too limited, and requested that eligibility for the extension be expanded to students in additional degree programs, as well as to students employed by employers that do not use E-Verify.

A number of commenters, however, objected to the 17-month STEM OPT extension on the basis of potential negative impacts on U.S. workers in STEM fields. For instance, a commenter stated that demand for technical workers was very weak in engineering occupations and growing modestly in computing and mathematics occupations. The same commenter stated that, especially when combined with H–1B, L–1, and other skilled workers, the number of students taking advantage of the STEM OPT extension would distort the domestic labor market. Some commenters specifically stated that employers would prefer to hire F–1 students on STEM OPT extensions because these students would work for lower wages. Some commenters noted that some U.S. firms had previously advertised STEM positions as being available only to OPT students. Commenters requested that DHS consider written reports, testimony, and other sources describing the state of the U.S. STEM workforce. Commenters also questioned the veracity of studies and reports cited in the preamble to the 2008 IFR, and some questioned whether DHS had interpreted that information correctly in assessing the then-prevailing STEM labor market. Some commenters stated that the STEM OPT extension was contrary to the academic purpose of the F–1 statute. In general, commenters who made these and similar points requested that DHS eliminate the STEM OPT extension and the Cap Gap provision in their entirety.

DHS's initial assessment, consistent with many of the public comments and following consultation with the U.S. Departments of Education and Labor, is that the direct benefit to the academic experience resulting from the STEM OPT extension is significant, and that on the whole, positive indirect effects on educational institutions and academic exchange support the availability of a STEM OPT extension at this time. Nevertheless, DHS recognizes the concerns expressed above and proposes to modify the terms and conditions for employer participation in the STEM OPT extension in order to protect U.S. workers from possible employer abuses of these programs.

For instance, any employer wishing to hire a student participating in the STEM OPT extension would, as part of a newly required Mentoring and Training Plan, be required to sign a sworn attestation affirming that, among other things: (1) The employer has sufficient resources and personnel available and is prepared to provide appropriate mentoring and training in connection with the specified opportunity; (2) the employer will not terminate, lay off, or furlough a U.S. worker as a result of providing the STEM OPT to the student; and (3) the student's opportunity assists the student in attaining his or her training objectives. As with all affirmations contained in the Mentoring and Training Plan, the employer would attest that these commitments are true and correct to the best of the employer's knowledge, information and belief.

Additionally, the proposed rule would require that the terms and conditions of an employer's STEM practical training opportunity—including duties, hours and compensation [56]—be commensurate with those provided to the employer's similarly situated U.S. workers. Work duties must be designed to assist the student with continued learning and satisfy the existing ICE guidelines for work hours when participating in post-completion OPT, which are set at a minimum of 20 hours per week, and would be so defined under this proposed rule.[57] If the employer does not employ and has not recently employed more than two similarly situated U.S. workers, the employer would be required to ensure that the terms and conditions of a STEM practical training opportunity are commensurate with those for similarly situated U.S. workers in other employers of analogous size and industry and in the same geographic area of employment. ''Similarly situated U.S. workers'' would include U.S. workers performing similar duties and with similar educational backgrounds, employment experience, levels of responsibility, and skill sets as the STEM OPT student. The student's compensation would be reported on the Mentoring and Training Plan and the student would be responsible for reporting any adjustments. *DHS requests public comment, especially from employers and labor organizations, on all aspects of this provision, including the types of business factors employers would use to evaluate whether their workers are similarly situated.*

With regard to the requirement to provide commensurate compensation, DHS anticipates that employers would be able to show compliance through a variety of existing real-world practices. So long as the attestation is made in good faith and to the best of the employer's knowledge, information and belief, employers would be able to continue relying on many of the same resources they already use, such as local associations or national or local wage surveys, to set compensation for their U.S. workers. The rule would also permit employers to rely on other bases for establishing compensation levels. For example, employers hiring high-skilled STEM OPT students would be able to refer to prevailing wages provided by the Department of Labor's Office of Foreign Labor Certification for employees in the same occupation in the same area of employment.

To help gauge compliance, employers would be required to provide DHS with student compensation information, which would better situate the agency to monitor whether STEM OPT students are being compensated fairly. This would both protect such students and ensure the practical training has no appreciable adverse consequences on the U.S. labor market. Additionally, the proposed rule would authorize a recurrent evaluation process that would allow ICE to monitor student progress during the OPT period. These evaluations would ensure continuous focus on the student's development throughout the student's training period, consistent with the Mentoring and Training Plan.

With the added assurances that a student will be enhancing his or her course of study through training-based

[56] DHS interprets the proposed compensation element to encompass wages and any other non-employee-benefit remuneration, including housing allotments, stipends, or similar provisions that are typically provided to employed students.

[57] *See* U.S. Immigration and Customs Enforcement, Policy Guidance 1004–03—Update to Optional Practical Training: Policy Guidance For SEVP and DSOs of SEVP-Certified Schools with F–1 Students Eligible for or Pursuing Post-Completion OPT, 17 (April 23, 2010), available at *http://www.ice.gov/doclib/sevis/pdf/opt_policy_guidance_042010.pdf* (stating that a student, including those participating in the 17-month STEM OPT extension, must work at least 20 hours per week in a qualifying position to be considered employed).

learning experiences and mentoring, combined with the employer non-displacement assurance, the requirement that STEM OPT students receive terms and conditions of employment (including compensation) commensurate with those of similarly situated U.S. workers, and other related requirements, DHS is confident that practical training during the STEM OPT extension will be carried out in a manner that safeguards U.S. worker interests.

Some commenters to the 2008 IFR also expressed concern that the STEM OPT extension could be exploited by entities that hope to profit from the program but that may not have an actual STEM opportunity available for a student at the time of the student's application for the extension. To the extent that this comment refers to temporary placement agencies, DHS does not envision that such ''temp'' agencies will generally be able to provide eligible opportunities under the proposed STEM OPT extension, including by complying with the Mentoring and Training Plan process and requirements.

Moreover, under this rule, DSOs would be prohibited from recommending a student for a STEM OPT extension if the employer has not provided the assurances required by this rule or is otherwise not in compliance with the relevant reporting, evaluation and other requirements described in this rule. Additionally, DHS has the ability to deny STEM OPT extensions with employers that the agency determines have failed to comply with the regulatory requirements, including the requirement to formerly execute the student's Mentoring and Training Plan and the requirement to comply with the assurances contained therein. ICE may investigate an employer's compliance with these assurances, based on a complaint or otherwise, consistent with the proposed employer site visit provision discussed in the following section. These safeguards will more effectively ensure that STEM OPT students achieve the objectives of their courses of study, while benefiting U.S. academic institutions and protecting U.S. workers. *DHS requests comment on the feasibility and effectiveness of each of these provisions, including the obligations to confirm (1) that the terms and conditions of a STEM OPT student's employment are commensurate with those for similarly situated U.S. workers, and (2) that no U.S. worker will be terminated, laid off, or furloughed as a result of a STEM OPT opportunity.*

DHS recognizes that many university personnel submitted comments on the 2008 IFR highlighting the significant administrative burdens faced by DSOs in helping to coordinate participation in the F–1 program, including OPT. DHS acknowledges that the aforementioned proposals may impose additional resource burdens on DSOs, and may require universities to invest further in DSOs in order to take full advantage of the F–1 program.[58] *DHS requests comment from universities, DSOs, and other interested members of the public on how DHS can most effectively ensure an appropriate level of participation in this program by educational institutions.* In light of the passage of time since implementation of the 2008 IFR, DHS particularly welcomes the submission of specific data related to the cost of implementation for that rulemaking.

H. Oversight Through School Accreditation Requirements and Employer Site Visits

With this rule, DHS proposes that in order for a student to be eligible for a STEM OPT extension, the student's STEM degree must be received from an educational institution accredited by an accrediting agency recognized by the Department of Education.[59] The goal of accreditation is to ensure the quality of educational institutions and programs. Specifically, the accreditation process involves the periodic review of institutions and programs to determine whether they meet established standards in the profession and are achieving their stated educational objectives.[60] Given these safeguards, DHS believes that requiring qualified degrees to be from accredited institutions would strengthen and better ensure the proper use of STEM OPT extensions.

ICE's SEVP currently performs an examination and assessment of all schools applying for certification and re-certification to accept F–1 students. 8 CFR 214.3(b). Although SEVP has procedures ''in lieu of accreditation'' to establish the validity and quality of schools in certain cases, accreditation is preferred and given significant weight in the overall certification assessment. Increasingly, schools are choosing to obtain accreditation. In the past five years, less than one percent of students participating in a STEM OPT extension had graduated from non-accredited schools.[61] Thus, while accreditation may impose certain burdens, DHS does not expect the accreditation requirement to have broad impact on STEM OPT students.

DHS also proposes to clarify that ICE, at its discretion, may conduct ''on-site reviews'' to ensure that employers meet program requirements, including that they are complying with assurances and that they possess the ability and resources to provide structured and guided work-based learning experiences according to the individualized Mentoring and Training Plans. The combination of requiring school accreditation and conducting discretionary ICE inspections of employers will reduce the potential for any fraudulent use of F–1 nonimmigrant status during the period of STEM OPT training.

DHS requests comment from the public on all aspects of this proposal, including the feasibility and effectiveness of imposing a firm accreditation requirement as a condition of participation in the STEM OPT extension. DHS requests input specifically from non-accredited institutions that currently have or previously had F–1 students participating in a STEM OPT extension. DHS requests comment from such institutions and other members of the public on the availability and cost of accreditation, the practical significance of accreditation, and the potential that some student populations may lose eligibility for the STEM OPT extension.

I. Additional Compliance Requirements

This proposed rule includes additional requirements to track STEM OPT students, mitigate the potential for fraud, and ensure that students are truly furthering their course of study. As discussed in the 2008 IFR, DHS' ability to track nonimmigrant students in the United States relies on reporting by the students' DSOs, who obtain required information from the school's recordkeeping systems and through contact with the students. Students on OPT, however, are often away from the

[58] DHS notes, however, that it has implemented the Mentoring and Training Plan requirement in part to ensure that students and employers are fully aware of the requirements associated with this program.

[59] An accrediting agency is a private educational association of regional or national scope that develops evaluation criteria and conducts peer evaluations of educational institutions and academic programs. U.S. Department of Education Office of Postsecondary Education, ''The Database of Accredited Postsecondary Schools and Programs,'' available at *http://ope.ed.gov/accreditation.*

[60] U.S. Department of Education Office of Postsecondary Accreditation, ''FAQs about Accreditation'', available at *http://ope.ed.gov/accreditation/FAQAccr.aspx.*

[61] Based on data from 2010 to 2014, 0.56 percent of STEM OPT extensions were granted to students who graduated from non-accredited schools.

academic environment, making it difficult for DSOs to ensure proper and prompt reporting on student status to ICE. While DHS regulations currently require DSOs to update SEVIS, the current reporting requirements depend entirely on the student's timely compliance. And DSOs are not currently required to review and verify information reported by students on a recurring basis. This combination of factors hinders systematic reporting and ICE's ability to track F–1 students during OPT.

Accordingly, this proposed rule includes a number of compliance requirements established in the 2008 IFR for the current 17-month STEM OPT extension and adds additional measures that would supplement the goal of ensuring that the STEM OPT extension is directly related to a student's field of study. Requirements from the 2008 IFR that are proposed to be included in the STEM OPT extension under this rule include the following:

- The employer must report to the relevant DSO when an F–1 student on a STEM OPT extension terminates or otherwise leaves his or her employment prior to the end of the authorized period of OPT and must do so no later than 48 hours after the student leaves employment. Employers must report this information to the DSO unless DHS announces, through a **Federal Register** notice, another means to report such information. The contact information for the DSO is on the student's Form I–20. DHS will only extend OPT for STEM students employed by employers that agree in the Mentoring and Training Plan to report this information.
- Students who are granted the STEM OPT extension are required to report to their DSO every six months, confirming the validity of their SEVIS information, including legal name, residential or mailing address, employer name and address, and/or loss of employment.

These six-month requirements ensure adequate DHS oversight of the STEM OPT program by enhancing DHS's knowledge of the student's activities and whereabouts.

The proposed rule also includes several other requirements to provide additional oversight over the STEM OPT extension, consistent with the proposed change to the duration of the extension. The proposed rule would require any employer providing a STEM practical training opportunity to have an employer identification number (EIN) used for tax purposes. Access to this EIN will help DHS better ensure program compliance. The proposed rule would also require students who are granted the STEM OPT extension to provide, at six-month intervals, an evaluation on their training progress and an update on the extent that their training goals are being met.

The proposed rule would also limit the maximum period in which a student may be unemployed to 90 days during his or her initial period of post-completion OPT, and permit an additional 60 days, for an aggregate of 150 days, for students whose OPT includes a 24-month STEM OPT extension. The 90-day aggregate period during initial post-completion OPT would remain at the level proposed in the 2008 IFR. Such a safeguard prevents OPT students from taking improper advantage of the program by, for instance, remaining in the United States without attempting to complement their learning through training. DHS proposes to revise the aggregate maximum allowed period of unemployment to 150 days for an F–1 student having an approved STEM OPT extension consistent with the lengthened 24-month period for such an extension.

In comments received on the 2008 IFR, many commenters opposed, or requested revising, the limits on unemployment during OPT. Some commenters suggested that unemployment limits pose significant burdens and that students should be able to maintain their status by simply seeking employment. Other commenters offered suggestions for revising the unemployment limits by allowing 120, 150, or 180 days of unemployment during initial post-completion OPT and a longer period during any STEM OPT extension. DHS believes that removing unemployment limits would be inconsistent with the agency's role of overseeing and ensuring OPT program integrity. DHS also believes that the proposed 150 days for students granted a STEM OPT extension would provide additional flexibility when compared to the 120 days permitted under the current program's 17-month extension. With this change, DHS acknowledges the concerns of commenters who described the challenges that international students face in locating and obtaining training experiences in the United States. *DHS welcomes comments on this issue.*

An additional newly proposed aspect of the STEM OPT extension is that a student seeking an extension would be required to properly file his or her Application for Employment Authorization with USCIS within 60 days of the date the DSO enters the recommendation for the STEM OPT extension into the SEVIS record. Under the 2008 IFR, students were required to file their Application for Employment Authorization with USCIS within 30 days of the DSO recommendation. By expanding the application filing period, applicants would be afforded additional flexibility. Among other things, a longer application filing window would reduce: (1) The number of USCIS denials on Forms I–765 that result from expired Forms I–20, (2) the number of associated data corrections needed in SEVIS, and (3) the number of students who would otherwise need to ask DSOs for updated Forms I–20 to replace those that have expired.

Additionally, ICE is working toward technology that would allow students to update their basic information in SEVIS without gaining access to restricted areas of the system where student access would be inappropriate. Once this technology is implemented, students would have increased ability to maintain their own records. This would also decrease the workload on DSOs, who would no longer be required to update student information while students are participating in practical training.

J. Cap-Gap Extension for F–1 Students With Timely Filed H–1B Petitions and Change of Status Requests

As noted elsewhere in this preamble, the 2008 IFR included provisions, such as 8 CFR 214.2(f)(5)(vi) and 8 CFR 274a.12(b)(6)(v), that allowed for automatic extension of status and employment authorization for any F–1 student with a timely filed H–1B petition and request for change of status, if the student's petition has an employment start date of October 1 of the following fiscal year. The 2008 IFR made these extensions available only until the beginning of the succeeding fiscal year. The extensions were intended to avoid situations where F–1 students who are affected by the H–1B cap are required to leave the country or terminate employment at the end of their authorized period of stay, even though they have an approved H–1B petition that would again provide status to the student in a few months' time.

Many comments on the 2008 IFR were supportive of the ''Cap-Gap'' extension provided in that rule. Some commenters, however, objected to the Cap-Gap provision for reasons related to its potential impact on U.S. workers.

The ''Cap-Gap'' provision is intended to avoid the inconvenience of temporary gaps in status, which would normally require individuals to leave the country and thereby suffer significant disruption to their careers and family. With respect to comments requesting elimination of the provision, DHS continues to believe that the Cap-Gap provision is a

commonsense administrative measure fully consistent with the underlying purpose of the practical training program. The so-called ''Cap-Gap'' is a result of the misalignment of the academic year with the start of the fiscal year. The Cap-Gap relief measure avoids inconvenience to some F–1 students and U.S. employers through a straightforward administrative mechanism to bridge two periods of authorized legal status. DHS therefore proposes to include the 2008 IFR's Cap-Gap relief measure in this rule.

VI. Statutory and Regulatory Requirements

DHS developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. The below sections summarize our analyses based on a number of these statutes or executive orders.

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, as well as 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 is a ''significant regulatory action,'' and has been determined to be an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this regulation.

1. Summary of Proposed Rule

This proposed rule, if made final, would permit eligible STEM graduates to receive a maximum STEM OPT extension of 24 months; permit eligible STEM graduates who have obtained a second qualifying STEM degree to obtain a second STEM OPT extension of 24 months; permit eligibility for the extension based on a STEM degree that is not the student's most recently obtained degree; limit eligibility for STEM OPT extensions to students that graduate from accredited institutions; require that students on STEM OPT extensions receive conditions of employment, including compensation, commensurate with similarly situated U.S. workers; require the disclosure of additional information, such as the student's compensation, to ICE; implement a formal process to update the STEM Designated Degree Program list; implement a formal mentoring requirement for students on STEM OPT extensions; and require employers of students applying for STEM OPT extensions to enroll in and use E-Verify on all new hires.

The cost estimates set forth in this analysis represent the costs of compliance with, and implementation of, the proposed standards within the scope of the proposed rulemaking. The following quantified costs include time burdens for initial implementation of the student training and mentoring plan, six-month evaluations, reporting student information updates in SEVIS, eligibility verifications for new hires for employers of STEM OPT students using the E-Verify program, and filing Form I–675 applications. Additional quantified costs for students include fees for filing Form I–765, and some employers may incur implementation costs for the E-Verify program. Compared to the 2008 IFR criteria for STEM OPT, qualitative costs for the proposed rule include reduced opportunities for students due to proposed restrictions on unaccredited school programs and not allowing volunteer work to be eligible for the extension. Additionally, compared to the 2008 IFR requirements for employers, there would be employer costs for paying STEM OPT students commensurate compensation, if the employer previously did not pay such compensation. DHS does not have data to support a cost estimate for this proposed requirement.

2. Summary of Affected Population

The proposed rule would affect four categories of STEM OPT students: (1) Students who would have previously been eligible for participation in the 17-month STEM OPT extension under the 2008 IFR and would be, based on this NPRM, eligible for a 24-month extension; (2) students who would be eligible based upon a STEM degree earned prior to their most recent degree; (3) students who would be eligible based upon a second, and more advanced, qualifying STEM degree; and (4) students who would be eligible with a potential change to the current STEM-Designated Degree Program List. Additionally, students currently on 17-month extensions would be able to apply for the balance of the 24-month extension, depending on how much time remained in their current 17-month extension and the effective date of a final regulation. DHS estimates that the population of current 17-month STEM OPT students who could apply for the expanded extension is 18,210. DHS provided an explanation on the methodology and data for the population estimates in the accompanying RIA published on the NPRM docket folder.

TABLE 1—SUMMARY OF NEW STEM OPT STUDENT EXTENSION REQUEST

Year	Transitional population from 17 month to 24 month extension	New STEM OPT extension students from accredited schools	Increased CIP list eligibility	Prior STEM degrees	Second STEM degree	Total STEM OPT population impacted
1	18,210	29,100	2,910	459	285	50,964
2	.....	33,465	3,347	528	316	37,656
3	.....	38,485	3,848	607	351	43,291
4	.....	44,257	4,426	698	390	49,771
5	.....	50,896	5,090	803	433	57,221
6	.....	56,495	5,649	891	480	63,515
7	.....	62,709	6,271	989	533	70,502
8	.....	69,607	6,961	1,098	592	78,257
9	.....	77,264	7,726	1,219	657	86,866
10	.....	85,763	8,576	1,353	729	96,421

Estimates may not total due to rounding.

The proposed rule would also affect schools and employers of the students seeking STEM OPT extensions. A description of the impacts to schools and employers is included in the following section on the estimated costs of the proposed rule. The Regulatory Flexibility Analysis also provides a detailed description of the estimated number of schools and employers affected by the proposed rule.

Table 2 displays the estimated number of affected employers that could be impacted by the proposed E-verify enrollment and ongoing implementation requirements.

TABLE 2—SUMMARY OF STEM OPT NPRM EMPLOYERS E-VERIFY POPULATION

New STEM OPT employers	Previously enrolled STEM OPT employers impacted by proposed rule	Total STEM OPT employers with burden resulting from proposed rule
2,244	2,834	5,078
2,670	3,513	6,183
3,177	4,181	7,358
3,781	4,975	8,756
4,499	5,920	10,419
5,354	7,045	12,399
6,371	8,383	14,754
7,582	9,976	17,558
9,022	11,872	20,894
10,737	14,127	24,864

3. Estimated Costs of Proposed Rule

The cost estimates set forth in this analysis represent the costs of compliance with the proposed rule. This analysis concludes that compliance with the proposed requirements would be approximately $503.3 million, discounted at 7 percent, over the period 2016–2025, or $71.7 million per year when annualized at a 7 percent discount rate. The total cost, discounted at 7 percent, consists of $455.7 million for compliance with the STEM OPT program, and $47.6 million for compliance with E-Verify requirements. Table 3 below presents a 10-year summary of the estimated benefits and costs of the NPRM.

TABLE 3—TOTAL COST OF NPRM

[$millions]

Year	STEM OPT extensions	E-Verify requirement for STEM OPT employer	Total
1	$53.3	$3.0	$56.3
2	40.7	3.6	44.3
3	46.8	4.3	51.1
4	53.9	5.1	58.9
5	61.9	6.0	68.0
6	68.7	7.2	75.9
7	76.3	8.6	84.9
8	84.7	10.2	94.9
9	94.0	12.1	106.1
10	104.3	14.4	118.8
Total	684.8	74.5	759.3
Total (7%)	455.7	47.6	503.3
Total (3%)	570.4	61.0	631.5
Annual (7%)	64.9	6.8	71.7
Annual (3%)	66.9	7.2	74.0

4. Estimated Benefits of the Rule

Continuing the STEM OPT extension, making it available to additional students, and lengthening the current 17-month extension will enhance students' ability to achieve the objectives of their courses of study by gaining valuable knowledge and skills through on-the-job training that is often unavailable in their home countries. The proposed changes will also benefit the U.S. educational system, U.S. employers, and the United States. The rule will benefit the U.S. educational system by helping ensure that the nation's colleges and universities remain globally competitive in attracting international students in STEM fields. U.S. employers will benefit from the increased ability to rely on the skills acquired by STEM OPT students while studying in the United States, as well as their knowledge of markets in their home countries. Moreover, the nation will benefit from the increased retention of such students in the United States, including through increased research, innovation, and other forms of productivity that enhance the nation's economic, scientific, and technological competitiveness.

New safeguards for the STEM OPT program, including accreditation,

reporting, and tracking requirements, would decrease the opportunity for abuse and reduce any potential negative impact on U.S. workers. These improvements will increase program oversight and strengthen the requirements for program participation.

5. Alternatives

In preparing the preferred regulatory approach proposed in the NPRM, DHS examined three options:

1. Under the first option, DHS would take no regulatory action. The STEM OPT extension would no longer be available to F–1 STEM students after February 2016.

2. The second, and proposed, option would strengthen the 2008 IFR by establishing a program requiring employers and students to prepare Mentoring and Training Plans and to present those plans to the relevant DSOs. The program would require that the proposed practical training be directly related to the student's course of study. Employers would be required to provide certain information, including: Learning objectives for the employment, how those objectives will be achieved and measured, and place of employment. DSOs would be required to review submissions for the STEM OPT extension in SEVIS. DHS may require the submission of the Mentoring and Training Plan to ICE and/or USCIS. As noted elsewhere in this preamble, a STEM OPT extension would be available to a student with a prior qualifying STEM degree, even if the student's most recent degree would not qualify. And a second STEM OPT extension would be available to students who earn an additional advanced STEM degree.

3. The third option is similar to option two in all respects except for the duration of the STEM OPT extension, which would be limited to a one-time extension of 17 months, as in the 2008 IFR.

DHS provides an analysis of these alternatives in the accompanying RIA provided in the NPRM docket folder.

The following table summarizes the total monetized costs of each alternative regulatory option. Although the proposed rule option does have higher monetized costs than the third option, DHS has not quantified the benefits of the increased extension period under the proposed option because DHS does not have specific data to quantify the month-to-month economic benefits of the STEM OPT extension. DHS believes that the proposed option would have higher benefits to students and employers and increase attractiveness for U.S. academic programs.

TABLE 4—REGULATORY ALTERNATIVE COSTS COMPARISON

Year	Regulatory alternatives		
	1 No action	2 Proposed rule alternative	3 Maintain 17 Ext. STEM OPT length & 12 Ext. for second degree
1	$0.0	$56.3	$35.7
2	0.0	44.3	41.1
3	0.0	51.1	47.5
4	0.0	58.9	54.4
5	0.0	68.0	62.9
6	0.0	75.9	69.9
7	0.0	84.9	78.2
8	0.0	94.9	87
9	0.0	106.1	97.9
10	0.0	118.8	109.7
Total	0.0	759.3	684.8
Total (7%)	0.0	503.3	449.6
Total (3%)	0.0	631.5	567.3

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small business, 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.

DHS has published an IRFA, in the accompanying RIA, to aid the public in commenting on the small entity impact of the proposed requirements. The following discussion is a summary of the IRFA and a more detailed description of these findings is available in the RIA. DHS presents the number of estimated entities which would be impacted by the proposed rule, the number of small entities from a sample of the estimated impacted population, the estimated annual average cost impact per entity, and the estimated ratio of annual costs to revenue for sampled small entities.

During the period from 2010 through 2014, a total of 1,109 approved and accredited [62] schools recommended students for STEM OPT extensions.[63] Of this population, DHS sampled 293 schools, to estimate the proportion of governmental jurisdictions, not-for-profit organizations, and for-profit firms for the total population. DHS then determined whether the sampled entities were small entities based on size standards set by the Small Business Administration. DHS assumed not-for-profit organizations and entities with insufficient data were small entities in the IRFA. Table 5 below summarizes the number of schools by category.

[62] Accredited by a Department of Education-approved accrediting agency.

[63] ICE SEVIS data.

TABLE 5—ESTIMATED NUMBER OF SCHOOLS BY CATEGORY

Parameter	Quantity	Small entities (sample segment)	Comments
Population—Schools	1,109	N/A	Total number of accredited schools endorsing STEM–OPT Students between 2010–2014.
Sample:	293	N/A.	
Non-matched Sample Segment	2	Yes	Entities not found in online databases, assumed to be small entities.
Matched Sample Segment Non-Profit Schools	138	Yes	Entities determined to be private not-for-profit, assumed to be small entities.
Matched Sample Segment For-Profit Schools	1	Yes	Private for-profit, matched in online database with revenue lower than SBA size standard, assumed to be small entity.
Matched Sample Segment For-Profit Schools	3	No	Entities determined to be private for-profit, matched in online databases with revenue exceeding SBA size standard, assumed not small entities.
Matched Sample Segment Government Jurisdictions	149	No	Entities among the 293 sampled confirmed as large governmental jurisdictions.

During the period from 2010 through 2014, a total of 26,260 employers employed STEM OPT students.[64] Of this population, DHS sampled 659 employers, to estimate the proportion of governmental jurisdictions, not-for-profit organizations, and for-profit firms for the total population. DHS then determined whether the sampled entities were small entities based on size standards set by the Small Business Administration. DHS also found that three of the sampled entities were temporary placement agencies (temporary agencies) and removed these three from the analysis, as DHS assumed most temporary agencies would not be able to comply with the requirements of the Mentoring and Training Plan. DHS again assumed not-for-profit organizations and entities with insufficient data were small entities in the IRFA. Table 6 below summarizes the number of employers by category.

TABLE 6—ESTIMATED NUMBER OF EMPLOYERS BY CATEGORY

Parameter	Quantity	Small entities (sample segment)	Comments
Population—Employers	26,260	N/A	Total number of STEM–OPT employers between 2010–2014.
Sample:	659	N/A	Estimated sample needed to match 379 entities.
Non-matched Sample Segment	279	Yes	Entities not found in online databases, assumed to be small entities.
Matched Sample Segment For-Profit	214	Yes	For-profit entities matched in online databases that did not exceed SBA size standard.
Matched Sample Segment Not-For-Profit	7	Yes	Entities confirmed as private not-for-profit.
Matched Sample Segment For-Profit	140	No	For-profit entities matched in online databases that did exceed SBA size standard.
Temporary Agencies	3	No	Quantitative impact not analyzed.
Matched Sample Segment Government Jurisdictions	16	No	Entities that are large governmental jurisdictions.

Schools Costs

Schools would incur costs for providing oversight and reporting STEM OPT students' information as well as reviewing required documentation. DSOs would be required to ensure the form has been completed and signed prior to making a recommendation in SEVIS. Schools would be required to ensure that SEVP has access to student evaluations (electronic or hard copy) for a period of at least three years following the completion of each STEM practical training opportunity. The 2008 IFR previously required six-month student validation check-ins with DSOs, and this proposed rule would maintain the validation requirement. While the DSO would be in communication with the student during a six-month validation check-in, DHS proposes to add an additional requirement that DSOs would also check to ensure the six-month evaluation has been properly completed and retain a copy. The NPRM proposes to maintain the 2008 IFR requirements for periodic information reporting requirements on students, which would result in a burden for DSOs.

Unaccredited Schools

Schools not accredited by a Department of Education-recognized accrediting agency may incur unquantified costs from the proposed prohibition on participation in STEM OPT extensions by students attending unaccredited schools. A few schools may choose to seek accreditation, or may potentially lose future foreign students and associated revenue. DHS requests comment from unaccredited institutions on this provision, including the potential effect of the requirement on your school and any data associated with the impact, such as the cost of accreditation or potential revenue loss.

DHS summarizes the estimated annual first and second year costs for schools in the following table. DHS requests comments on burdens described below if additional data or

[64] ICE SEVIS data.

information is available. DHS acknowledges there may be additional regulatory costs [65] to the following quantified costs, and requests comments specifically addressing concerns on costs for entities of all sizes, including small entities.

TABLE 7—SCHOOLS—COST OF COMPLIANCE PER STEM OPT OPPORTUNITY

Proposed provision	Calculation of school cost per student	Cost in year 1 per student	Cost in year 2 per student
Initial Completion of Mentor & Train Plan	((0.25 hrs + 0.083 hrs) × $39.33)	$13.09	$0.00
6 Month Evaluations & Validation Check-Ins [1]	(0.333 hrs × 2 Evals × $39.33)	26.20	26.20
Additional Implementation Cost [2]	0.1 × Mentor & Train Plan Initial + Evals & Check-Ins Costs.	3.93	2.62
Student Info. Reporting Requirements	0.167 hrs × 2 rpts × $39.33	13.14	13.14
Total	Total	56.35	41.95

[1] Estimated based on 12 month period costs per extension, for students on a 12-month second extension such as those with prior degrees and second degrees, only Year 1 costs were applied.
[2] Mentoring and Training Plan initial costs are only in Year 1 per STEM OPT.

DHS estimates the annual impact to the schools based on the school cost of compliance as a percentage of annual revenue. Second year costs account for new additional STEM OPT extension students. For not-for-profit schools, DHS multiplied the tuition per full-time first-year student with total enrollment numbers to estimate their revenue.[66] While tuition revenue may underestimate the actual school revenue, this is the best information available to DHS. It is the most significant source of income for most schools, and DHS believes it is a reasonable approach to measuring the impact of this proposed rule. Based on the results of the sampled small-entity schools with sufficient data, all had first year annual impacts less than 1 percent, with the average annual impact being 0.006 percent. All sampled small-entity schools with sufficient data had second year annual impacts of less than 1 percent, with the average annual impact being 0.005 percent.

TABLE 8—SCHOOLS—ANNUAL IMPACT IN YEAR 1

Revenue impact range	Number of small entities for-profit with data	Number of non-profit entities with data	Percent of small entity schools
0% < Impact ≤ 1%	4	137	100
1 < Impact ≤ 3	0	0	0
3 < Impact ≤ 5	0	0	0
5 < Impact ≤ 10	0	0	0
Above 10	0	0	0
Total	141		100

TABLE 9—SCHOOLS—ANNUAL IMPACT IN YEAR 2

Revenue impact range	Number of small entities for-profit with data	Number of non-profit entities with data	Percent of small entity schools
0% < Impact ≤ 1%	4	137	100
1 < Impact ≤ 3	0	0	0
3 < Impact ≤ 5	0	0	0
5 < Impact ≤ 10	0	0	0
Above 10	0	0	0
Total	141		100

Employer Costs

Employers would be required to provide information for certain fields, review the completed form, and attest to the certifications on the form. The proposed rule also ensures that students would be unable to complete their STEM OPT extensions as volunteers by requiring commensurate compensation, and additionally requires that students work at least 20 hours per week while on their STEM OPT extension. DHS

[65] Such costs could be related to train DSOs on how to comply with the requirements, program changes within the school, and time to generally review and comprehend the requirements of the regulation and make determinations on how to best implement the requirements with the least negative impact to their ongoing operations.

[66] U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, ''Academic year prices for full-time, first-time undergraduate students'', (Total enrollment, including Undergraduate and Graduate) 2014–2015, available at *http://nces.ed.gov/globallocator/*.

does not have data on the number of STEM OPT students who may not currently receive compensation. In addition, DHS does not have data on the number of STEM OPT students who do not currently receive wages or other qualifying compensation that would be considered commensurate under the proposed rule. To the extent that employers are not currently compensating STEM OPT participants in accordance with the proposed rule, this proposal would create additional costs to these employers. However, DHS notes that employer participation in the STEM OPT program is entirely voluntary, and each employer would determine if the benefits of hiring the STEM OPT student exceed the costs of doing so when considering all of the costs and burdens of the proposed rule, including the requirement to pay commensurate compensation. DHS requests comments from employers on the effect of these proposed requirements. In the quantified costs, DHS does account for the possible additional burden of reviewing the employment terms of similarly situated U.S. workers in order to compare the terms and conditions of their employment to those of the STEM OPT student's practical training opportunity.

The proposed rule indicates that ICE, at its discretion, may conduct a site visit of an employer. The employer on-site review is intended to ensure that each employer meets program requirements, including that they are complying with assurances and that they possess the ability and resources to provide structured and guided work-based learning experiences outlined in students' Mentoring and Training Plans. Site visits would not be a requirement for each STEM OPT student employer or a regularly scheduled occurrence, but would rather be performed at the discretion of DHS either randomly or when DHS determines that such an action is needed. The length and depth of such a visit would be determined on a case-by-case basis. For law enforcement reasons, DHS does not include an estimate of the basis for initiating a site visit and is unable to estimate of the number of site visits that may be conducted, and thus is unable to provide a total annual estimated cost for such potential occurrences. However, based on on-site-reviews of schools, DHS estimates that an employer site visit may include review of records and questions for the supervisor, and would take two hours per employer. Therefore, DHS estimates that if an employer were to receive such an on-site review, it may cost the employer approximately $394.80 (5 hours × $78.96).

DHS summarizes the estimated annual first and second year costs for potential employers of STEM OPT students in the following table. DHS requests comments on burdens described below if additional data or information is available. DHS acknowledges there may be additional regulatory compliance implementation costs[67] to the following quantified costs, and requests comments specifically addressing concerns on implementation costs for entities of all sizes, including small entities.

TABLE 10—INDIVIDUAL EMPLOYER—COST OF COMPLIANCE

Proposed provision	Calculation of costs	Cost in Year 1	Cost in Year 2
Initial Completion of Mentor & Train Plan	(0.5 hrs × $80.12) + (0.5 hrs × $78.96)+ (1 hrs × $43.93).	$123.47	$0.00
6 Month Evaluations & Validation Check-Ins [1]	(0.25 hrs × 2 Evals × 78.96)	39.48	39.48
Additional Implementation Cost [2]	0.1 × Mentor & Train Plan Initial + Evals & Check-Ins Costs.	11.90	3.95
Employer STEM OPT Costs per Student =	Total	179.25	43.43
Cost per E-Verify per New Hire Case =	(0.16 hrs × 43.93)	7.03	7.03
E-Verify Enrollment	(80.12 × 2.26) + 100	281.07	0.00
E-Verify Annual Training & Maintenance Costs	(1 hrs × 43.93) + 398)	441.93	441.93
Compliance Site Visits	(5 hrs × 78.96)	0.00	394.80
E-Verify and Site Visit Employer Costs =	Total	723.00	836.73

DHS estimates the annual impact to employers based on the employer cost of compliance as a percentage of annual revenue. Second year costs include initial submission of Mentoring and Training Plans and evaluations for new STEM OPT students who would be hired in the second year. For not-for-profit school employers without revenue data, DHS multiplied the tuition per full-time first-year student with total enrollment numbers to estimate their revenue. Based on the results of the sampled small entities with sufficient data, almost all had first and second year annual impacts less than 1 percent, with the first-year average annual revenue impact being 0.13 percent and second-year annual revenue impact being 0.15 percent. Additionally, the cost impact per employer included a compliance site visit in year two; therefore, costs could be less for employers that do not receive a site visit. Employers of STEM OPT students would determine if the benefits of hiring such students exceed program requirements costs. To the extent that the benefits do not exceed costs, employers may choose not to hire STEM OPT students.

[67] Such costs could be related to train supervisors on how to comply with the requirements, program changes within the school, and time to generally review and comprehend the requirements of the regulation and make determinations on how to best implement the requirements with the least negative impact to their ongoing operations.

TABLE 11—EMPLOYERS—ANNUAL IMPACT IN YEAR 1

Revenue impact range	Number of small entities for-profit with data	Number of non-profit entities with data	Percent of small entities employers
0% < Impact ≤ 1%	211	7	99%
1 < Impact ≤ 3	2	0	1
3 < Impact ≤ 5	0	0	0
5 < Impact ≤ 10	0	0	0
Above 10	0	0	0
Total	220		100.0

TABLE 12—EMPLOYERS—ANNUAL IMPACT IN YEAR 2

Revenue impact range	Number of small entities for-profit with data	Number of non-profit entities with data	Percent of small entities employers
0% < Impact ≤ 1%	210	7	99%
1 < Impact ≤ 3	3	0	1
3 < Impact ≤ 5	0	0	0
5 < Impact ≤ 10	0	0	0
Above 10	0	0	0
Total	220		100.0

Current Employers That Do Not Continue To Participate

Due to additional employer requirements that must be met in order to receive the benefit of training STEM OPT extension opportunity, it may be possible that some employers (such as temporary employment agencies) would no longer participate in STEM OPT extensions. DHS does not present the quantitative burden or cost associated with this possible impact on employers due to lack of available information on employers that would fall under this category and the associated economic impacts. DHS will consider data or information provided by commenters to assess such an impact upon employers.

In particular, DHS requests information and data that would assist with better understanding the impact of this rule on small entities. DHS also seeks any alternatives that will accomplish the objectives of this rulemaking and minimize the proposed rule's economic impact on small entities. After receiving comments on small entity concerns, data and information on impacts, and suggestions that could reduce negative or cost impacts to small entities, DHS would consider possible alternatives in a final rule. After publication of a final rule, DHS would engage in outreach and provide small entity stakeholders assistance or clarification regarding how to implement the new proposed requirements. At this time, DHS is unable to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult ICE using the contact information provided in the **FOR FURTHER INFORMATION** section above.

D. 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 year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

E. The Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. If implemented as proposed, we may submit to Congress and the Comptroller General of the United States a report regarding the issuance of the Final Rule prior to its effective date, as required by 5 U.S.C. 801(a)(1).

F. Collection of Information

Federal agencies are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, as amended (PRA), Public Law 104–13, 109 Stat. 163 (1995), 44 U.S.C. 3501–3520. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DHS has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the review procedures of the PRA. The proposed information collection requirements are outlined in this proposed rule to obtain comments from the public and affected entities. The proposed rule would maintain the 2008 IFR revisions to previously approved information collections. The 2008 IFR impacted information collections for Form I–765, Application for Employment Authorization (OMB Control No. 1615–0040); Student and Exchange Visitor Information System (SEVIS) and Form I–20, Certificate of

Eligibility for Nonimmigrant Student Status (OMB Control No. 1653–0038); and the E-Verify Program (OMB Control No. 1615–0092). These four approved information collections corresponding to the 2008 IFR have included the number of respondents, responses and burden hours resulting from the 2008 IFR requirements, which are also burdens DHS is proposing to maintain. Therefore DHS is not revising the burden estimates for these four information collections. Additional responses tied to new changes to STEM OPT eligibility will minimally increase the number of responses and burden for Form I–765 and E-Verify information collections, as the two collections cover a significantly broader population of respondents and responses than those impacted by the proposed rule and already account for growth in the number of responses in their respective published information collection notices burden estimates.

As part of this NPRM, DHS is creating a new information collection instrument for the Mentoring and Training Plan. This information collection is necessary to enable reporting of and attesting to specified information relating to STEM OPT extensions, to be executed by STEM OPT students and their employers. Such reporting would include goals and objectives, progress, hours, and compensation. Assurances would ensure proper training opportunities for students and safeguard interests of U.S. workers in related fields.

Additionally, DHS will require some minor changes to the Application for Employment Authorization, Form I–765, instructions to reflect proposed changes to the F–1 regulations allowing for: (a) a longer period of F–1 OPT STEM extension, and (b) an applicant to file an Application for Employment Authorization, Form I–765, with USCIS within 60 days (rather than 30 days) from the date the DSO endorses his/her F–1 OPT STEM extension. Accordingly, USCIS will be submitting an OMB 83–C, Correction Worksheet, to OMB for review and approval of the minor edits to the Application for Employment Authorization, Form I–765, instructions during the final rule stage. USCIS seeks comments on whether Form I–765 should be modified as a direct result of the changes in the proposed rule. See the **ADDRESSES** section above for instructions on how to submit comments to DHS and OMB on the information collection provisions of this rulemaking. Written comments and suggestions from the public and affected agencies concerning the collection of information are encouraged. Your comments on the information collection-related aspects of this rule should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). In particular, DHS requests comments on the recordkeeping cost burden imposed by this rule and will use the information gained through such comments to assist in calculating the cost burden.

Overview of This Information Collection—Mentoring and Training Plan

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* STEM OPT Extension Mentoring and Training Plan.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* Immigration and Customs Enforcement Form I–910;

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

- *Primary:* State governments, local governments, and businesses, or other for-profit and not-for-profit organizations.
- *Other:* None.
- *Abstract:* DHS is publishing a notice of proposed rulemaking (NPRM) that would make certain changes to the STEM OPT extension first introduced by the 2008 IFR. The NPRM would lengthen the duration of the STEM OPT extension to 24 months; require a Mentoring and Training Plan executed by STEM OPT students and their employers; and require that the plan include assurances to safeguard students and the interests of U.S. workers in related fields; require that the plan include objective-tracking and reporting requirements. The proposed rule would require students and employers (through an appropriate signatory official) to report on the Mentoring and Training Plan certain specified information relating to STEM OPT extensions. For instance, the Mentoring and Training Plan would explain how the employment will provide a work-based learning opportunity for the student by stating the specific goals of the practical training and describe how those goals will be achieved; detail the knowledge, skills, or techniques to be imparted to the student; explain how the mentorship and training is directly related to the student's qualifying STEM degree; and describe the methods of performance evaluation and the frequency of supervision. The Mentoring and Training Plan would also include a number of employer attestations intended to ensure the academic benefit of the practical training experience, protect STEM OPT students, and protect against appreciable adverse consequences on U.S. workers. The proposed rule would also require schools to collect and retain this information for a period of three years following the completion of each STEM practical training opportunity.

(5) An estimate of the total annual average number of respondents, annual average number of responses, and the total amount of time estimated for respondents in an average year to collect, provide information, and keep the required records is:

- 43,970 STEM OPT student respondents; 1,109 accredited schools endorsing STEM OPT students; and 16,891 employers of STEM OPT students.
- 43,970 average responses annually at 4.00 hours per initial Mentoring and Training Plan response.
- 87,941 average responses annually at 1.75 hours per 6-month evaluation response by STEM OPT students.

(6) An estimate of the total public burden (in hours) associated with the collection: 330,174 hours.

The recordkeeping requirements set forth by this rule are new requirements that will require a new OMB Control Number. DHS is seeking comment on these new requirements as part of this NPRM.

G. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this proposed rule under that

Order and have determined that it does not have implications for federalism.

H. Civil Justice Reform

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

I. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is a ''significant regulatory action'' under Executive Order 12866 but is not likely to have a significant adverse effect of the supply, distribution, or use of energy.

J. Environment

The U.S. Department of Homeland Security Management Directive (MD) 023–01 Rev. 01 establishes procedures that DHS and its Components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508. CEQ regulations allow federal agencies to establish categories of actions, which do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The MD 023–01 Rev. 01 lists the Categorical Exclusions that DHS has found to have no such effect. MD 023–01 Rev. 01 Appendix A Table 1.

For an action to be categorically excluded, MD 023–01 Rev. 01 requires the action to satisfy each of the following three conditions:

(1) The entire action clearly fits within one or more of the Categorical Exclusions.

(2) The action is not a piece of a larger action.

(3) No extraordinary circumstances exist that create the potential for a significant environmental effect. MD 023–01 Rev. 01 section V.B(1)–(3).

Where it may be unclear whether the action meets these conditions, MD 023–01 Rev. 01 requires the administrative record to reflect consideration of these conditions. MD 023–01 Rev. 01 section V.B.

DHS has analyzed this proposed rule under MD 023–01 Rev. 01. DHS has made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule clearly fits within the Categorical Exclusion found in MD 023–01 Rev. 01, Appendix A, Table 1, number A3(a): ''Promulgation of rules . . . of a strictly administrative or procedural nature;'' and A3(d): ''Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.'' This proposed rule is not part of a larger action. This proposed rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

K. Indian Tribal Governments

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

L. Taking of Private Property

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

M. Protection of Children

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

N. Technical Standards

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

The Proposed Amendments

For the reasons set forth in the preamble, the Department of Homeland Security proposes to amend parts 214 and 274a of Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

Subchapter B—Immigration Regulations

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 2. Amend § 214.2 by:

■ a. Republishing paragraph (f)(5)(vi); and

■ b. Revising paragraphs (f)(10)(ii)(A)(*3*), (f)(10)(ii)(C), (D), and (E), and (f)(11) and (12).

The revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(5) * * *

(vi) *Extension of duration of status and grant of employment authorization.* (A) The duration of status, and any employment authorization granted under 8 CFR 274a.12(c)(3)(i)(B) or (C), of an F–1 student who is the beneficiary of an H–1B petition and request for change of status shall be automatically

extended until October 1 of the fiscal year for which such H–1B visa is being requested where such petition:

(*1*) Has been timely filed; and

(*2*) States that the employment start date for the F–1 student is October 1 of the following fiscal year.

(B) The automatic extension of an F–1 student's duration of status and employment authorization under paragraph (f)(5)(vi)(A) of this section shall immediately terminate upon the rejection, denial, or revocation of the H–1B petition filed on such F–1 student's behalf.

(C) In order to obtain the automatic extension of stay and employment authorization under paragraph (f)(5)(vi)(A) of this section, the F–1 student, according to 8 CFR part 248, must not have violated the terms or conditions of his or her nonimmigrant status.

(D) An automatic extension of an F–1 student's duration of status under paragraph (f)(5)(vi)(A) of this section also applies to the duration of status of any F–2 dependent aliens.

* * * * *

(10) * * *

(ii) * * *

(A) * * *

(*3*) After completion of the course of study, or, for a student in a bachelor's, master's, or doctoral degree program, after completion of all course requirements for the degree (excluding thesis or equivalent). Continued enrollment, for the school's administrative purposes, after all requirements for the degree have been met does not preclude eligibility for optional practical training. A student must complete all practical training within a 14-month period following the completion of study, except that a 24-month extension pursuant to paragraph (f)(10)(ii)(C) of this section does not need to be completed within such 14-month period.

* * * * *

(C) *24-month extension of post-completion OPT for a science, technology, engineering, or mathematics (STEM) degree.* Consistent with paragraph (f)(11)(i)(C) of this section, a qualified student may apply for an extension of OPT while in a valid period of post-completion OPT authorized under 8 CFR 274a.12(c)(3)(i)(B). An extension will be for 24 months for the first qualifying degree completed by the student, including any previously obtained degree that qualifies. If a student completes another qualifying degree at a higher degree level than the first, a second extension will be for an additional 24 months. In no event may a student be authorized for more than two lifetime STEM OPT extensions. Any subsequent application for an additional 24-month OPT extension under this paragraph (f)(10)(ii)(C) must be based on a degree at a higher degree level than the degree that was the basis for the student's first 24-month OPT extension. In order to qualify for an extension of post-completion OPT based upon a STEM degree, all of the following requirements must be met.

(*1*) *Accreditation.* The degree that is the basis for the 24-month OPT extension is from an educational institution accredited by an accrediting agency recognized by the Department of Education.

(*2*) *DHS-approved degree.* The degree that is the basis for the 24-month OPT extension is a bachelor's, master's, or doctoral degree in one of the degree programs determined by the Secretary, or his or her designee, to qualify within a science, technology, engineering, or mathematics field.

(*i*) The term ''science, technology, engineering or mathematics field'' means a field included in the Department of Education's Classification of Instructional Programs taxonomy within the summary groups containing mathematics, natural sciences (including physical sciences and biological/agricultural sciences), engineering/engineering technologies, and computer/information sciences, and related fields.

(*ii*) The Secretary, or his or her designee, will maintain the STEM Designated Degree Program List, which will be a complete list of qualifying degree program categories, published on the Student and Exchange Visitor Program Web site at *http://www.ice.gov/sevis.* Changes that are made to the Designated Degree Program list may also be published in a notice in the **Federal Register**. All program categories included on the list must be consistent with the definition set forth in paragraph (f)(10)(ii)(C)(*2*)(*i*) of this section.

(*iii*) At the time the DSO recommends an OPT extension under paragraph (f)(10)(ii)(C) of this section in SEVIS, the degree that is the basis for the application for a 24-month OPT extension must be contained within a category on the STEM Designated Degree Program List.

(*3*) *Previously obtained STEM degree(s).* The degree that is the basis for the 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section may be, but is not required to be, the degree that is the basis for the post-completion OPT period authorized under 8 CFR 274a.12(c)(3)(i)(B). In either case, the degree that is the basis of the 24-month OPT extension must have been conferred by an accredited U.S. educational institution and must be contained within a category on the current STEM Designated Degree Program List at the time of the DSO recommendation. If an application for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section is based upon a degree obtained previous to the degree that provided the basis for the period of post-completion OPT authorized under 8 CFR 274a.12(c)(3)(i)(B), that previously obtained degree must have been conferred within the 10 years preceding the student's application date, and the student's most recent degree must also be from an institution accredited by an accrediting agency recognized by the Department of Education.

(*4*) *Eligible practical training opportunity.* The STEM practical training opportunity that is the basis for the 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section must be directly related to the degree that qualifies the student for such extension, which may be the previously obtained degree described in paragraph (f)(10)(ii)(C)(*3*) of this section.

(*5*) *Employer qualification.* The student's employer is enrolled in the E-Verify program, as evidenced by either a valid E-Verify company identification number or, if the employer is using an employer agent to create its E-Verify cases, a valid E-Verify client company identification number, and the employer is a participant in good standing in the E-Verify program, as determined by USCIS. An employer must also have an employer identification number (EIN) used for tax purposes.

(*6*) *Employer reporting.* A student may not be authorized for employment with an employer pursuant to paragraph (f)(10)(ii)(C)(*2*) of this section unless the employer agrees, by signing the Mentoring and Training Plan, to report the termination or departure of an OPT student to the DSO at the student's school, if the termination or departure is prior to the end of the authorized period of OPT. Such reporting must be made within 48 hours of the termination or departure. An employer shall consider a student to have departed when the employer knows the student has left the practical training opportunity, or if the student has not reported for his or her practical training for a period of five consecutive business days without the consent of the employer, whichever occurs earlier.

(*7*) *Mentoring and Training Plan (Form I–910).* (*i*) A student must fully

complete an individualized Mentoring and Training Plan and obtain requisite signatures from his or her employer or an appropriate individual in the employer's organization on the Mentoring and Training Plan, or any successor form, consistent with form instructions, before the DSO may recommend a 24-month OPT extension under paragraph (f)(10)(ii)(C)(*2*) of this section in SEVIS. A student must submit the Mentoring and Training Plan, which includes a certification of adherence to the plan completed by an appropriate individual in the employer's organization who has signatory authority for the employer, to the student's DSO, prior to the new DSO recommendation. A student must present his or her signed and completed Mentoring and Training Plan to a DSO at the educational institution of his or her most recent enrollment. A student, while in F–1 nonimmigrant status, may also be required to submit the Mentoring and Training Plan to ICE and/or USCIS upon request or in accordance with form instructions.

(*ii*) The Mentoring and Training Plan must explain how the employment will provide a work-based learning opportunity for the student by stating the specific goals of the STEM practical training opportunity and describing how those goals will be achieved; detailing the knowledge, skills, or techniques to be imparted to the student; explaining how the mentorship and training is directly related to the student's qualifying STEM degree; and describing the methods of performance evaluation and the frequency of supervision.

(*iii*) If a student initiates a new practical training opportunity with a new employer during his or her 24-month OPT extension, the student must submit, within 10 days of beginning the new practical training opportunity, a new Mentoring and Training Plan to the student's DSO, and subsequently obtain a new DSO recommendation.

(*8*) *Duties, hours, and compensation for training.* The terms and conditions of a STEM practical training opportunity during the period of the 24-month OPT extension, including duties, hours, and compensation, must be commensurate with terms and conditions applicable to the employer's similarly situated U.S. workers in the area of employment, except in no event may the student engage in compensated practical training for less than 20 hours per week. If the employer does not employ and has not recently employed more than two similarly situated U.S. workers in the area of employment, the employer nevertheless remains obligated to attest that the terms and conditions of a STEM practical training opportunity are commensurate with the terms and conditions of employment for other similarly situated U.S. workers in the area of employment. ''Similarly situated U.S. workers'' includes U.S. workers performing similar duties subject to similar supervision and with similar educational backgrounds, industry expertise, employment experience, levels of responsibility, and skill sets as the STEM OPT student. The duties, hours, and compensation of STEM OPT students are ''commensurate'' with those offered to U.S. workers employed by the employer in the same area of employment when the employer can show that the duties, hours, and compensation are consistent with the range of such terms and conditions the employer has offered or would offer to similarly situated U.S. employees. The student must disclose his or her compensation, including any adjustments, as agreed to with the employer, on the Mentoring and Training Plan.

(*9*) *Evaluation requirements.* A student may not be authorized for employment with an employer pursuant to paragraph (f)(10)(ii)(C)(*2*) of this section unless the employer develops procedures for evaluating the student, which shall include documentation of the student's progress toward the training goals described in the Mentoring and Training Plan. All required evaluations must be completed prior to the conclusion of a STEM practical training opportunity, and the student and his or her immediate supervisor must sign the evaluations. At a minimum, all STEM practical training opportunities require a concluding evaluation and a recurrent evaluation at every six-month interval of each OPT extension period under paragraph (f)(10)(ii)(C)(*2*) of this section. The educational institution whose DSO is responsible for duties associated with the student's latest OPT extension under paragraph (f)(10)(ii)(C)(*2*) of this section is responsible for ensuring the Student and Exchange Visitor Program has access to each individualized Mentoring and Training Plan and associated student evaluations (electronic or hard copy), including through SEVIS if technologically available, beginning within 30 days after the document is submitted to the DSO and continuing for a period of three years following the completion of each STEM practical training opportunity.

(*10*) *Additional STEM opportunity obligations.* A student may only participate in a STEM practical training opportunity in which the employer attests, including by signing the Mentoring and Training Plan, that:

(*i*) The employer has sufficient resources and personnel available and is prepared to provide appropriate mentoring and training in connection with the specified opportunity;

(*ii*) The employer will not terminate, lay off, or furlough any full- or part-time, temporary or permanent U.S. worker as a result of the practical training opportunity; and

(*iii*) The student's opportunity assists the student in reaching his or her training goals.

(*11*) *Site visits.* DHS, at its discretion, may conduct a site visit of any employer. The purpose of the site visit is for DHS to ensure that each employer possesses and maintains the ability and resources to provide structured and guided work-based learning experiences consistent with any Mentoring and Training Plan completed and signed by the employer.

(D) *Duration of status while on post-completion OPT.* For a student with approved post-completion OPT, the duration of status is defined as the period beginning when the student's application for OPT was properly filed and pending approval, including the authorized period of post-completion OPT, and ending 60 days after the OPT employment authorization expires.

(E) *Periods of unemployment during post-completion OPT.* During post-completion OPT, F–1 status is dependent upon employment. Students may not accrue an aggregate of more than 90 days of unemployment during any post-completion OPT described in 8 CFR 274a.12(c)(3)(i)(B). Students granted one or more 24-month OPT extensions under paragraph (f)(10)(ii)(C)(*2*) of this section may not accrue an aggregate of more than 150 days of unemployment during a total OPT period, including any post-completion OPT period described in 8 CFR 274a.12(c)(3)(i)(B) and any subsequent 24-month extension period.

(11) *OPT application and approval process*—(i) *Student responsibilities.* A student must initiate the OPT application process by requesting a recommendation for OPT from his or her DSO. Upon making the recommendation, the DSO will provide the student a signed Form I–20 indicating that recommendation.

(A) *Application for employment authorization.* The student must properly file an Application for Employment Authorization (Form I–765, or successor form), with USCIS, accompanied by the required fee, and the supporting documents, as described in the form's instructions.

(B) *Filing deadlines for pre-completion OPT and post-completion OPT.* (*1*) Students may file an Application for Employment Authorization, or successor form, for pre-completion OPT up to 90 days before being enrolled for one full academic year, provided that the period of employment will not start prior to the completion of the full academic year.

(*2*) For post-completion OPT, the student must properly file his or her Application for Employment Authorization, or successor form, up to 90 days prior to his or her program end-date and no later than 60 days after his or her program end date. For all post-completion OPT, except in the case of an application for employment associated with a 24-month OPT extension under paragraph (f)(10)(ii)(C)(*2*) of this section, the student must also file the Application for Employment Authorization with USCIS within 30 days of the date the DSO enters the recommendation for OPT into his or her SEVIS record.

(C) *Applications for 24-month OPT extension.* A student meeting the eligibility requirement for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section may file for an extension of employment authorization by filing an Application for Employment Authorization, or successor form, with the required fee, and the supporting documents, prior to the expiration date of the student's current OPT employment authorization. The student seeking such 24-month OPT extension must properly file his or her Application for Employment Authorization, or successor form, with USCIS within 60 days of the date the DSO enters the recommendation for the OPT extension into his or her SEVIS record. If a student timely and properly files an application for such 24-month OPT extension and timely and properly requests a DSO recommendation, including by submitting the fully-executed Mentoring and Training Plan to his or her DSO, but the Employment Authorization Document (Form I–766, or successor form) currently in the student's possession expires prior to the decision on the student's application for the OPT extension, the student's Form I–766, or successor form, is extended automatically pursuant to the terms and conditions specified in 8 CFR 274a.12(b)(6)(iv).

(D) *Start of OPT employment.* A student may not begin OPT employment prior to the approved start date on his or her employment authorization document except as described in paragraph (f)(11)(i)(C) of this section. A student may not request a start date that is more than 60 days after the student's program end date. Employment authorization will begin on the date requested or the date the employment authorization is adjudicated, whichever is later.

(ii) *Additional DSO responsibilities.* A student needs a recommendation from his or her DSO in order to apply for OPT. When a DSO recommends a student for OPT, the school assumes the added responsibility for maintaining the SEVIS record of that student for the entire period of authorized OPT, consistent with paragraph (f)(12) of this section.

(A) Prior to making a recommendation, the DSO at the educational institution of the student's most recent enrollment must ensure that the student is eligible for the given type and period of OPT and that the student is aware of the student's responsibilities for maintaining status while on OPT. Prior to recommending a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section, the DSO at the educational institution of the student's most recent enrollment must certify that the student's degree being used to qualify that student for the 24-month OPT extension, as shown in SEVIS or official transcripts, is a bachelor's, master's, or doctorate degree with a degree code that is contained within a category on the current STEM Designated Degree Program List at the time the recommendation is made. A DSO may only recommend a student for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section if the Mentoring and Training Plan described in paragraph (f)(10)(ii)(C)(*7*) of this section has been properly completed and executed by the student and prospective employer. A DSO may not recommend a student for an OPT extension under paragraph (f)(10)(ii)(C) of this section if the practical training would be conducted by an employer who has failed to meet the requirements under paragraphs (f)(10)(ii)(C)(5) through (9) of this section or has failed to provide the required assurances of paragraph (f)(10)(ii)(C)(*10*) of this section.

(B) The DSO must update the student's SEVIS record with the DSO's recommendation for OPT before the student can apply to USCIS for employment authorization. The DSO will indicate in SEVIS whether the OPT employment is to be full-time or part-time, or for a student seeking a recommendation for a 24-month OPT extension under paragraph (f)(10)(ii)(C) whether the OPT employment meets the minimum hours requirements described in paragraph (f)(10)(ii)(C)(*8*), and note in SEVIS the OPT start and end dates.

(C) The DSO must provide the student with a signed, dated Form I–20, or successor form, indicating that OPT has been recommended.

(iii) *Decision on application for OPT employment authorization.* USCIS will make a decision on the Application for Employment Authorization, or successor form, on the basis of the DSO's recommendation and other eligibility considerations.

(A) If granted, the employment authorization period for post-completion OPT begins on the requested date of commencement or the date the employment authorization application is approved, whichever is later, and ends at the conclusion of the remaining time period of post-completion OPT eligibility. The employment authorization period for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section begins on the day after the expiration of the initial post-completion OPT employment authorization and ends 24 months thereafter, regardless of the date the actual extension is approved.

(B) USCIS will notify the applicant of the decision on the application for employment authorization in writing, and, if the application is denied, of the reason or reasons for the denial.

(C) The applicant may not appeal the decision.

(12) *Reporting while on optional practical training*—(i) *General.* An F–1 student who is granted employment authorization by USCIS to engage in optional practical training is required to report any change of name or address, or interruption of such employment to the DSO for the duration of the optional practical training. A DSO who recommends a student for OPT is responsible for updating the student's record to reflect these reported changes for the duration of the time that training is authorized.

(ii) *Additional reporting obligations for students with an approved 24-month OPT extension.* Students with an approved 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section have additional reporting obligations. Compliance with these reporting requirements is required to maintain F–1 status. The reporting obligations are:

(A) Within 10 days of the change, the student must report to the student's DSO a change of legal name, residential or mailing address, employer name, employer address, and/or loss of employment.

(B) The student must make a validation report and submit his or her

supervisor-approved recurrent evaluation to the DSO every six months starting from the date the extension begins and ending when the student's F–1 status ends, the student changes educational levels at the same school, or the student transfers to another school or program, or the 24-month OPT extension ends, whichever is first. The validation is a confirmation that the student's information in SEVIS for the items listed in paragraph (f)(12)(ii)(A) of this section is current and accurate. This report is due to the student's DSO within 10 business days of each reporting date.

Note to paragraph (f)(12)(ii)(B): The supervisor-approved recurrent evaluation, described in paragraph (f)(10)(ii)(C)(*9*) of this section, is noted here for ease of reference; this evaluation is an update to the fully executed Mentoring and Training Plan that the student submits to his or her DSO.

■ 3. Revise § 214.3(g)(2)(ii)(F) to read as follows:

§ 214.3 Approval of schools for enrollment of F and M nonimmigrants.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(F) For F–1 students authorized by USCIS to engage in a 24-month extension of OPT under § 214.2(f)(10)(ii)(C):

(*1*) Any change that the student reports to the school concerning legal name, residential or mailing address, employer name, or employer address; and

(*2*) The end date of the student's employment reported by a former employer in accordance with § 214.2(f)(10)(ii)(C)(*6*).

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 4. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2.

Subpart B—Employment Authorization

■ 5. Revise § 274a.12(b)(6)(iv) and (v) and (c)(3)(i) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(6) * * *

(iv) An employment authorization document under paragraph (c)(3)(i)(C) of this section based on a 24-month STEM Optional Practical Training extension, and whose timely filed employment authorization request is pending and employment authorization issued under paragraph (c)(3)(i)(B) of this section has expired. Employment is authorized beginning on the expiration date of the authorization issued under paragraph (c)(3)(i)(B) of this section and ending on the date of USCIS' written decision on the current employment authorization request, but not to exceed 180 days; or

(v) Pursuant to 8 CFR 214.2(h) is seeking H–1B nonimmigrant status and whose duration of status and employment authorization have been extended pursuant to 8 CFR 214.2(f)(5)(vi).

* * * * *

(c) * * *

(3) * * *

(i)(A) Is seeking pre-completion practical training pursuant to 8 CFR 214.2(f)(10)(ii)(A)(*1*) and (*2*);

(B) Is seeking authorization to engage in post-completion Optional Practical Training (OPT) pursuant to 8 CFR 214.2(f)(10)(ii)(A)(*3*); or

(C) Is seeking a 24-month STEM OPT extension pursuant to 8 CFR 214.2(f)(10)(ii)(C);

* * * * *

Jeh Charles Johnson,

Secretary of Homeland Security.

[FR Doc. 2015–26395 Filed 10–16–15; 8:45 am]

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FEDERAL REGISTER

Vol. 80 Monday,
No. 201 October 19, 2015

Part V

The President

Proclamation 9349—Blind Americans Equality Day, 2015

Federal Register
Vol. 80, No. 201
Monday, October 19, 2015

Presidential Documents

Title 3—

The President

Proclamation 9349 of October 14, 2015

Blind Americans Equality Day, 2015

By the President of the United States of America

A Proclamation

Blind and visually impaired individuals make extraordinary contributions to our Nation, and their achievements reflect an enduring belief at the heart of America's promise: that no person's potential should be limited by anything other than the scope of their dreams. On Blind Americans Equality Day, we recommit to making good on this promise by ensuring all our people, including those living with visual impairments or other print disabilities, have the tools and resources they need to realize their greatest aspirations.

Twenty-five years ago, our country took a major step toward achieving this goal with the passage of the Americans with Disabilities Act, which mandates all places that comprise our shared life remain accessible to all people. And each day, in part thanks to this law, millions of legally blind and visually impaired Americans are better able to develop their skills and contribute to communities across our country.

My Administration remains committed to ensuring ours is a Nation where the blind community has every chance to fully realize their incredible talents. Earlier this year, we hosted the White House Summit on Disability and Employment, which provided businesses, organizations, and advocates with information and Federal resources for hiring individuals with disabilities. Additionally, we have prioritized improving the accessibility of Federal Government Web sites for people with disabilities. We also continue to support the inclusion of Braille in our Nation's schools—because no child should be prevented from reaching their fullest potential due to blindness or vision impairment. And across all levels of government, we are working to expand access to high-quality workforce, education, and rehabilitation services for Americans with disabilities.

Blind and visually impaired people are valued members of our communities, and from lecture halls to laboratories and sports stadiums to conference rooms, they drive meaningful progress and help build a stronger, more vibrant Nation. On Blind Americans Equality Day, we rededicate ourselves to building a society where everyone has an equal shot at the American dream and can benefit from all our country has to offer.

By joint resolution approved on October 6, 1964 (Public Law 88–628, as amended), the Congress designated October 15 of each year as ''White Cane Safety Day'' to recognize the contributions of Americans who are blind or have low vision. Today, let us reaffirm our commitment to being a Nation where all our people, including those with disabilities, have every opportunity to achieve their dreams.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 15, 2015, as Blind Americans Equality Day. I call upon public officials, business and community leaders, educators, librarians, and Americans across the country to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

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Vol. 80, No. 201

Monday, October 19, 2015

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