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Presidential Documents

Title 3—

The President

Proclamation 9381 of December 14, 2015

Bill of Rights Day, 2015

By the President of the United States of America

A Proclamation

The ratification of the Bill of Rights on December 15, 1791, marked one of our country's earliest and most important steps toward ensuring that the ideals enshrined in our founding documents are the birthright of all Americans. Written to guarantee our fledgling Nation would never succumb to the tyranny it fought against, these first 10 Amendments to our Constitution help safeguard the bedrock principles of equality, liberty, and justice. In the years since, America has carried forward the spirit enshrined in the Bill of Rights—recognizing that freedom is a value we must forever work to uphold.

Each generation is tasked with continuing the work of perfecting our Nation. In the 224 years since this codification of our most fundamental freedoms, America has been propelled by the persistent effort of her citizens—people from all walks of life who have accepted the challenge of pushing to expand liberty to all. The same American instinct that sparked our revolution and spurred the creation of the Bill of Rights still inspires us to step forward to defend our founding ideals. It is what inspired a groundbreaking convention in Seneca Falls, drove courageous people to march in Selma, and started a transformative movement for LGBT rights at a bar in New York City. Generations of heroes who believed America is a constant work in progress have advocated and sacrificed to realize that progress and have worked to uphold the belief at the heart of the Bill of Rights: Free men and women have the capacity to shape their own destiny and forge a fairer and more just world for all who follow.

Today, we stand on the shoulders of those who dedicated their lives to upholding the meaning of our founding documents throughout changing times—a mission made possible by the fundamental liberties secured in the Bill of Rights. As we reflect on the strides we have made to lift up an engaged citizenry, we pay tribute to the extraordinary foresight of our Founders who granted the protections that enable us to bring about the change we seek. Let us recommit to continuing our legacy as a Nation that rejects complacency, empowers its citizens to recognize and redress its imperfections, and embraces the struggle of improving our democracy so that all our people are able to make of their lives what they will.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 15, 2015, as Bill of Rights Day. I call upon the people of the United States to mark this observance with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of December, 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. 2015–31976
Filed 12–17–15; 8:45 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A; Docket No. R–1476]

RIN 7100–AE08

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) to implement the emergency lending authorities provided under the 3rd undesignated paragraph of section 13 of the Federal Reserve Act (the FRA) as amended by sections 1101 and 1103 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). These provisions of the Dodd-Frank Act require the Board, in consultation with the Secretary of the Treasury, to establish by regulation policies and procedures with respect to emergency lending under section 13(3) of the FRA.

DATES: Effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Laurie S. Schaffer, Associate General Counsel (202) 452–2272, Sophia H. Allison, Special Counsel (202) 452–3565, or Jay R. Schwarz, Senior Counsel (202) 452–2970, Legal Division. Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 23, 2013, the Board invited public comment on proposed amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) to implement sections 1101 and 1103 of the Dodd-Frank Act (Pub. L. 111–203, 124 Stat. 1376).[1] The purpose of the proposed amendments was to implement the Dodd-Frank Act revisions to the Board's emergency lending authority in section 13(3) of the Federal Reserve Act that limit the use of this authority to the provision of liquidity through broadly-based facilities for solvent firms in a time of crisis. After careful review and consideration of the comments, the final rule adopted by the Board includes a number of changes and additional limitations to address concerns raised by commenters.

Prior to the enactment of the Dodd-Frank Act, section 13(3) provided that the Board may authorize a Federal Reserve Bank to extend credit to any individual, partnership, or corporation subject to four principal conditions. These conditions required that (1) credit be extended only in unusual and exigent circumstances; (2) credit be extended only if the Board authorizes the lending by the affirmative vote of at least five of its members; [2] (3) the lending Federal Reserve Bank obtain evidence before extending the credit that the borrower is unable to secure adequate credit from other banking institutions; and (4) the extension of credit be indorsed or otherwise secured to the satisfaction of the Federal Reserve Bank. This statutory authority to extend emergency credit to any person in unusual and exigent circumstances was enacted by Congress in 1932 to enable the Federal Reserve, as the nation's central bank, to provide liquidity in times of financial stress.[3]

Effective on July 21, 2010, the Dodd-Frank Act (Pub. L. 111–203, 124 Stat. 1376) amended section 13(3) to limit this emergency lending authority to broad-based programs and facilities that relieve liquidity pressures in financial markets. To accomplish this, the Dodd-Frank Act amended section 13(3) to remove the general authority to lend to an individual, partnership, or corporation and to replace that general authority with the limited authority to extend emergency credit only to participants in a program or facility with broad-based eligibility designed for the purpose of providing liquidity to the financial system.[4] In addition, the amendments to section 13(3) provide that a program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy or resolution under a Federal or State insolvency proceeding would not be considered a program or facility with broad-based eligibility.[5] The Dodd-Frank Act also prohibits lending under section 13(3) to insolvent borrowers, and requires that the Board establish policies and procedures that assign a value to all collateral for an emergency loan and that are designed to ensure that the collateral is sufficient to protect taxpayers from losses. Moreover, section 13(3) was amended to provide that a program or facility may not be established without the prior approval of the Secretary of the Treasury. The Dodd-Frank Act also imposed certain publication and congressional reporting requirements regarding lending under section 13(3).

The draft rule proposed by the Board for public comment adopted all of the requirements and much of the specific statutory language contained in the Dodd-Frank Act amendments to section 13(3). The Board received fewer than a dozen comments on the proposed rule from financial institutions, policy institutions, individuals, and members of Congress.

While commenters generally expressed support for the proposed rule, most commenters recommended revisions to the proposed rule. Among the suggestions made by the commenters are that the rule:

- Provide a more specific definition of what it means for a program or facility to be ''broad-based'';
- adopt a broader definition of insolvency for purposes of the prohibition on lending to insolvent borrowers;

[1] 79 FR 615 (January 6, 2014).

[2] A lesser number of votes is required in certain emergency situations where at least five members of the Board are unavailable or not in service. 12 U.S.C. 248(r).

[3] *See* H.R. Rep. No. 1777, at 19, 20 (1932) (Conf. Rep.); S. Rep. No. 102–167, at 202 (1991) (Conf. Rep.).

[4] Public Law 13–203, Sec. 1101(a)(2): 124 STAT 2113(amending section 13 of the Federal Reserve Act, 12 U.S.C. 343).

[5] Public Law 13–203, Sec. 1101(a)(6): 124 STAT 2113(amending section 13 of the Federal Reserve Act, 12 U.S.C. 343).

• clarify that solvent firms may not borrow for the purpose of passing the proceeds of emergency loans on to insolvent firms;
• specify that emergency loans would only be made at a penalty rate that exceeds the market rate for such loans;
• include a specific timeline for evaluating whether an emergency lending program or facility should be terminated;
• limit the classes of collateral that can be accepted for emergency loans and require that the collateral be independently appraised; and
• require the Board to seek a joint resolution of Congress prior to granting an emergency loan.

The final rule adopts all of the limitations and revisions required by the Dodd-Frank Act. In addition, in response to the comments, the Board has revised the final rule in a number of significant ways. In particular, as discussed below, the Board modified the final rule to:

• Further limit the definition of a broad-based program by including, in addition to the proposed requirement that the program be designed to provide liquidity to an identifiable market or sector of the financial system and not be for the purpose of assisting a specific firm to avoid bankruptcy or other resolution, a requirement that at least five persons be eligible to participate in the facility and a requirement that the facility not be designed to assist any number of identified firms to avoid bankruptcy or resolution;
• Expand the definition of insolvency to include potential borrowers that are generally not paying their undisputed debts as they become due during the 90 days preceding borrowing from the program, and potential borrowers that are otherwise determined by the Board or the lending Federal Reserve Bank to be insolvent, in addition to the proposal to identify as insolvent any person in a resolution or bankruptcy proceeding;
• Provide that loans may not be made to companies that are borrowing for the purpose of lending to insolvent companies;
• Specify that emergency loans must be extended at a penalty rate;
• Provide that the Board will make public and report to Congress a description of the market or sector of the financial system to which a program or facility with broad-based eligibility is intended to provide liquidity;
• Provide that the Board will review each program or facility at least every six months and that each program or facility will terminate within one year from the date of its first extension of credit or its latest renewal date unless the Board determines, by a vote of at least five members of the Board [6] and with the approval of the Secretary of the Treasury, to renew the program or facility; and,
• Clarify that, if a company or its representative is found to have made a knowing material misrepresentation regarding its solvency in obtaining emergency credit, the credit plus all applicable interest, fees, and penalties will become immediately due and payable, and the Federal Reserve will refer the matter to the relevant law enforcement authorities for appropriate action.

II. Section by Section Summary of Final Rule

A. Section 201.4(d)—Emergency Credit for Others

1. Authorization To Extend Credit

Section 201.4(d)(1) of the final rule provides that, in unusual and exigent circumstances, the Board may, upon the affirmative vote of not less than five of its members,[7] authorize any Federal Reserve Bank to extend credit under section 13(3) of the FRA through a program or facility with broad-based eligibility. This requirement mirrors the statutory requirement and is unchanged from the proposed rule. Conditions governing when a program or facility has broad-based eligibility are discussed below.

In addition, section 201.4(d)(1) provides that any credit extended under section 13(3) of the FRA is subject to such other conditions as the Board may determine. These could include conditions that govern the timing of, collateral supporting, duration of, consideration for, terms of, counterparties to, and other conditions governing the extension of credit.

2. Approval of the Secretary of the Treasury

Section 201.4(d)(2) of the final rule provides that a program or facility under section 13(3) of the FRA may not be established without the prior approval of the Secretary of the Treasury. This condition implements a requirement of the Dodd-Frank Act.[8]

One commenter suggested that, in addition to this approval, the Board should seek a joint resolution of Congress in connection with the establishment of a program or facility. While Congress in the Dodd-Frank Act imposed a similar requirement as a condition of certain emergency actions by the Federal Deposit Insurance Corporation (FDIC), Congress did not adopt this requirement in connection with emergency lending under section 13(3) of the FRA. Instead, Congress established a number of other specific procedural requirements for emergency lending in section 1101 of the Dodd-Frank Act, including the requirement that the Secretary of the Treasury approve the establishment of a program or facility.

The final rule does not adopt a requirement that Congress ratify a lending program or facility. It is the exclusive prerogative of Congress to determine when and on what matters it will act. However, to further Congressional oversight of emergency lending facilities, the Board's final rule establishes a process by which the Board will promptly provide written notice to Congress of any emergency program or facility established under section 13(3) of the FRA.

3. Disclosure of Justification and Terms

Section 201.4(d)(3) of the final rule requires that the Board make publicly available, as soon as is reasonably practicable, and no later than 7 days after the Board authorizes the program or facility, a description of the program or facility, the unusual and exigent circumstances that exist, the intended effect of the program or facility, and the terms and conditions for participation in the program or facility. The final rule also provides that, within the same 7-day period, this information will be provided by the Board to the Committee on Banking, Housing and Urban Affairs of the U.S. Senate and the Committee on Financial Services of the U.S. House of Representatives.

Some commenters suggested that the Board provide additional clarity regarding the scope of the market that must be eligible for a facility to have ''broad-based eligibility.'' While this is addressed below, as part of its response to this comment, the Board amended section 201.4(d)(3) of the final rule to require that the Board publicly disclose the market or sector of the financial system to which the program or facility is intended to provide liquidity. The Board added this disclosure requirement to help provide transparency regarding the broad-based nature of a program or facility at the time it is created.

[6] A lesser number of votes is required in certain emergency situations where at least five members of the Board are unavailable or not in service. 12 U.S.C. 248(r).

[7] The rule permits the Board to authorize lending under the rule by a vote of fewer than five members in certain emergency situations permitted by statute where at least five members of the Board are not available or not in service. 12 U.S.C. 248(r).

[8] 12 U.S.C. 343(3)(B)(iv).

4. Definition of Broad-Based Eligibility

The Dodd-Frank Act limits emergency lending under section 13(3) of the FRA to lending conducted through a program or facility ''with broad-based eligibility.'' [9] The draft implementing rule as originally proposed would have implemented this restriction in the Dodd-Frank Act by incorporating the language contained in the Dodd-Frank Act prohibiting lending for the purpose of removing assets from the balance sheet of ''a single and specific company,'' assisting ''a single and specific company'' to avoid bankruptcy, resolution under Title II of the Dodd-Frank Act, or any other Federal or State insolvency proceeding, or aiding a failing financial company.[10]

Several commenters expressed concern that the reference in the proposed rule to ''a single and specific company'' could allow the Board to circumvent the limits imposed by the Dodd-Frank Act by grouping two or more bankrupt or failing firms in a program or facility. Some of these commenters suggested that the Board specify the number of eligible participants that would be required for a program or facility to have broad-based eligibility. One legislative proposal would provide that a program or facility is not broad-based unless at least five persons are eligible to participate in the program or facility.

The Board believes that the requirement that a program or facility have ''broad-based eligibility'' cannot be avoided by grouping two or more failing or bankrupt firms into a single facility. Thus, section 201.4(d)(4) of the final rule has been modified to make clear that an emergency program or facility has broad-based eligibility under the final rule only if three conditions are met. First, the program or facility must be designed for the purpose of providing liquidity to an identifiable market or sector of the financial system.

Second, the program or facility must not be designed for the purpose of assisting one or more specific companies to avoid bankruptcy or other resolution, including by removing assets from the balance sheet of the company or companies. The original proposal would have adopted the language in the Dodd-Frank Act that a program not be designed for the purpose of assisting ''a single and specific company'' avoid bankruptcy or resolution. The final rule has been changed to provide that a program or facility may not be designed to assist ''one or more'' specific companies to avoid bankruptcy or resolution. This change is intended to accent that a program or facility would not qualify as a broad-based program or facility if it is designed for the purpose of assisting any number of specific persons or entities to avoid resolution. A program or facility that is designed to remove assets from a single and specific firm's balance sheet to help the firm avoid bankruptcy or resolution such as was done with regard to Bear Stearns would not be permissible.

Third, the final rule provides that a program or facility would not be considered broad-based if fewer than five persons are eligible to participate in the program or facility. In this context, eligibility would be determined by qualification under all the terms and conditions established for participation in the program or facility.

Together, these limitations are designed to ensure that emergency credit programs and facilities are established only to fulfill the central bank's role as lender of last resort to the financial system and not as a lender to troubled firms seeking to avoid resolution or failure. For example, this approach would permit the Federal Reserve to establish programs or facilities like the Term Asset-backed Securities Loan Facility (TALF), which provided several thousand loans that provided liquidity to fund several billion dollars of student loans, car loans, small business loans and other loans in the securitization market; the Commercial Paper Funding Facility (CPFF), which was a program with broad-based eligibility designed to provide liquidity to the commercial paper market; the Asset-backed Commercial Paper Money Market Mutual Fund Liquidity Facility (AMLF) and the Money Market Investor Funding Facility (MMIFF), which were programs with broad-based eligibility designed to provide liquidity to the money market fund sector; and the Primary Dealer Credit Facility (PDCF), which provided liquidity to all primary dealers in support of trading in the U.S. Government securities market.

However, these restrictions would not permit emergency lending to remove assets from a failing firm as was done in the case of the emergency loan to Bear Stearns, or to provide credit to prevent a firm from entering bankruptcy as was done in the case of the emergency credit facility established for AIG. Importantly, the final rule would not authorize a program or facility that sought to evade these limitations by grouping multiple failing or insolvent firms in a single program or facility. Thus, the revisions in the final rule would not permit the Federal Reserve to extend emergency credit in a case like the Bear Stearns or AIG situation simply by establishing a single program or facility for the purpose of providing credit to both Bear Stearns and AIG, or any other number of specific failing or insolvent firms.[11]

The Board is adopting section 201.4(d)(4)(iv) as proposed. That section authorizes the Board to determine the type of mechanism or vehicle used to extend credit, so long as the facility is broad-based. For example, liquidity facilities may extend credit directly to participants in those facilities in some cases, or through a special purpose vehicle in other cases. In any case, the extensions of credit would be subject to all of the requirements related to the provision of liquidity under section 13(3) of the FRA.

5. Definition of Insolvency

As noted above, section 1101 of the Dodd-Frank Act requires the Board to ''establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent.'' Section 1101 also provides that a borrower ''shall be considered insolvent'' if the borrower ''is in bankruptcy, resolution under Title II of [the Dodd-Frank Act], or any other Federal or State insolvency proceeding.'' [12] Some commenters suggested that section 1101 does not preclude the Board from identifying other situations where a person or entity has not yet entered into formal proceedings but nevertheless should be deemed to be insolvent and encouraged the Board to extend the definition of insolvency to apply to these circumstances.

As an initial matter, the final rule adopts the insolvency constraint as provided in the Dodd-Frank Act. Section 201.4(d)(5) provides that a Federal Reserve Bank may not extend credit through a program or facility established under section 13(3) of the FRA to any person or entity that is in bankruptcy, resolution under Title II of the Dodd-Frank Act, or any other Federal or State insolvency proceeding.

In response to these comments, the Board has amended the final rule to acknowledge that there may be situations that are not identified

[9] 12 U.S.C. 343(3)(A).

[10] *See* 12 U.S.C. 343(3)(B)(iii).

[11] While the final rule requires that at least five persons be eligible to participate in a program or facility, that requirement is in addition to the restriction on establishing a program or facility for the purpose of providing credit to prevent the failure or resolution of any number of specific failing or insolvent persons, and would not allow a program or facility designed for the purpose of preventing the resolution or failure of more than five persons.

[12] 124 Stat. 1376 at 2113–15.

explicitly in the statute where the Board may determine that an entity is insolvent. In particular, the final rule provides that a person or entity is insolvent if the person or entity is generally not paying its undisputed debts as they become due during the 90 days preceding the date of borrowing under the program or facility. The final rule also provides that the Board or Federal Reserve Bank may determine, based on recent audited financial statements or other relevant documentation, that an entity is otherwise insolvent.

Section 201.4(d)(5) of the final rule requires the Board or the lending Federal Reserve Bank, prior to extending credit, to obtain evidence that the person or entity is not insolvent. As provided by the Dodd-Frank Act, the final rule provides that the Board and a Federal Reserve Bank may rely on a written certification from the person, the chief executive officer of the entity or another authorized officer of the entity, at the time the person or entity initially borrows under a program or facility, that the person or entity is not in bankruptcy or in a resolution or other insolvency proceeding. The Board has broadened this part of the final rule to require that the certification also state that the potential borrower has not failed to generally pay its undisputed debts as they become due during the 90 days preceding the date of borrowing.

The statute specifically permits the Board to rely on a certification to establish solvency. Use of a certification is particularly important in the context of programs and facilities with broad-based eligibility because these programs and facilities have the potential to involve numerous borrowers seeking credit in unusual periods of severe illiquidity. A binding certification aids in quickly and effectively making liquidity available on safe and reasonable terms in these difficult economic circumstances.

The final rule contains a number of provisions designed to ensure the continued accuracy of the certification. First, the final rule provides that a person or entity that submits a written certification must immediately notify the lending Federal Reserve Bank if the information in the certification changes. Section 201.4(d)(5)(vi) of the final rule also provides that a participant that is or has become insolvent would be prohibited from receiving any new extension of credit under the program or facility.

Moreover, to improve the reliability of a certification, the final rule provides that, if a participant or a person has provided a certification under section 201.4(d)(5) or (8) that includes a knowing material misrepresentation, all emergency credit extended to the borrower immediately becomes due and payable, and the Federal Reserve will promptly refer the matter to appropriate law enforcement authorities for action under applicable criminal and civil law.

Some commenters expressed concern that third-party conduits would be used to evade any insolvency restrictions in the rule by passing borrowed funds on to an entity that is insolvent. Section 201.4(d)(5)(i) of the final rule provides that a Federal Reserve Bank may not extend credit through a program or facility to any person that is borrowing for the purpose of lending the proceeds of the loan to an insolvent entity.

Another commenter suggested that the final rule clarify whether conservatorships are eligible to participate in broad-based facilities. Section 13(3) as amended by the Dodd-Frank Act prohibits lending to an insolvent borrower or to aid a failing firm. As a general matter, conservators are appointed to conserve a failing company's assets.[13] Accordingly, a conservatorship and a company in conservatorship would not be eligible to borrow from a program or facility established under section 13(3) of the FRA.

6. Indorsement or Other Security

Prior to the Dodd-Frank Act, section 13(3) provided that any extension of credit under that section must be ''indorsed or otherwise secured to the satisfaction of the Federal Reserve bank.'' [14] The Dodd-Frank Act retained this provision of the original statute and added two further requirements. First, the Dodd-Frank Act directs the Board to adopt policies and procedures ''designed to ensure . . . that the security for emergency loans is sufficient to protect taxpayers from losses.'' [15] Second, the Dodd-Frank Act requires that the Board's policies and procedures ''require that a Federal Reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed'' under section 13(3) of the FRA.[16]

Protecting taxpayers from losses as a result of emergency lending has always been an important concern for the Board, and the Board notes that the extensions of credit under the emergency lending programs it authorized during the recent financial crisis were all repaid in full with interest. The proposed rule incorporated the new statutory requirements from the Dodd-Frank Act into Regulation A.

Some commenters argued that the Board should limit the types of collateral the Federal Reserve Banks may accept in support of an emergency credit. Several commenters argued that the Federal Reserve should establish haircuts for collateral accepted by programs and facilities that extend emergency credit.

The final rule continues to emphasize the importance of ensuring that the security for emergency loans is sufficient to protect taxpayers from losses. As proposed and as adopted in the final rule, section 201.4(d)(6) provides that all credit extended under emergency lending programs and facilities must be indorsed or otherwise secured to the satisfaction of the lending Federal Reserve Bank.

The final rule also requires the Federal Reserve Bank, no later than at the time the credit is initially extended, to assign a lendable value to all collateral for the program or facility, consistent with sound risk management practices and to ensure protection for the taxpayer. The Federal Reserve Banks have long assigned a lendable value to collateral at the time credit is extended. Much of the collateral accepted as security for emergency lending has a readily available market value. In connection with assigning a lendable value to other collateral, Reserve Banks readily take into account independent appraisals of the collateral that may be available. In all cases, the Reserve Bank applies appropriate discounts or ''haircuts'' to the value of the collateral. The haircuts applied to collateral are described in the Federal Reserve Discount Window & Payment System Risk Collateral Margins Table and the Federal Reserve Collateral Guidelines, available on the Federal Reserve Discount Window & Payment System Risk Web site.[17] The Federal Reserve Banks also consider the financial strength of the borrower, the presence of any indorsement, and other factors, in determining whether the credit is satisfactorily secured.

The Board believes that these provisions allow the Federal Reserve to impose collateral and other requirements to protect the taxpayer from loss and address the statutory requirement for policies and procedures that are designed to ensure protection for the taxpayer.

[13] *See* 12 U.S.C. 1821(c)(5).

[14] *See* 12 U.S.C. 343, 47 Stat. 715.

[15] 12 U.S.C. 343(3)(B)(1).

[16] *Id.*

[17] *http://www.frbdiscountwindow.org/index.cfm.*

7. Penalty Rate

Section 13(3) of the FRA has always provided that emergency credit extended under that section shall be at rates established in accordance with the provisions of section 14(d) of the FRA. Commenters suggested that the Board amend the proposed rule to require that extensions of emergency credit be subject to a penalty rate of interest.

The practice of the Federal Reserve in extending emergency credit has been to set the relevant interest rate at a penalty rate designed to encourage borrowers to repay emergency credit as quickly as possible once the unusual and exigent circumstances that justify the program or facility have receded and financial conditions have normalized. This approach has also ensured that the taxpayer is compensated by a higher interest rate than would be charged during normal times for the increased risk taken in extending emergency credit. Indeed, while the Federal Reserve adopted different rates for the various broad-based facilities that it established during the recent financial crisis, in each case, the rate set for the facility exceeded the rate for comparable instruments during normal times. As a result of this practice, emergency broad-based credit facilities established by the Federal Reserve under section 13(3) terminated and wound down as economic conditions normalized.

In keeping with this practice, section 201.4(d)(7) of the final rule provides that a penalty rate will be imposed on emergency extensions of credit. Because the appropriate interest rate depends on a number of factors, such as the duration of the credit, the collateral requirements, and the other terms and conditions for the credit, it is not feasible to establish a single penalty rate for all emergency facilities or to set penalty rates in advance of designing the facility. Consequently, the final rule provides that the interest rate for credit extended under section 13(3) must be at a level that is a premium to the market rate in normal circumstances, affords liquidity in unusual and exigent circumstances, and encourages repayment and discourages use of the program as unusual and exigent circumstances normalize.

Section 201.4(d)(7)(iii) of the final rule sets forth a non-exhaustive list of factors that the Board will take into account when establishing the penalty rate. These factors include the condition of the affected markets and the financial system generally, the historical rate of interest for loans of comparable terms and maturity during normal times, the purpose of the program or facility, the risk of repayment, the collateral supporting the credit, the duration, terms and amount of the credit, and other factors relevant to ensuring the taxpayer is appropriately compensated for the risks associated with the emergency credit. The final rule also explains that the rate on emergency credit under section 13(3) may be set by auction or other method consistent with section 14(d) of the FRA. Such an auction could be structured with a minimum stop out rate to ensure that the resulting rate would satisfy the requirements of a penalty rate.

8. Evidence Regarding Unavailability of Adequate Credit Accommodation

Section 13(3) has always required that a Federal Reserve Bank, prior to extending credit to any participant in a program or facility under that section, obtain evidence that such participant is unable to secure adequate credit accommodations from other banking institutions. The proposed rule incorporated this requirement and provided that this evidence may include evidence based on economic conditions in the market or markets addressed by the program or facility or evidence obtained from other sources, including facility or market participants and certifications from borrowers. In response to comments, the Board has amended the final rule to add as relevant evidence a certification from the participant that it is unable to secure adequate credit accommodations from other banking institutions.

9. Termination of Program or Facility

The Dodd-Frank Act requires that the Board's policies and procedures with respect to section 13(3) extensions of credit be designed to ensure that any such program is terminated in a timely and orderly fashion.[18] In order to address this requirement, the proposed rule would have required the Board periodically to review the existence of unusual and exigent circumstances; the extent of usage of the program or facility; the extent to which the continuing authorization of the program or facility facilitates restoring or sustaining confidence in financial markets; economic and market conditions; the functioning of financial markets; the ongoing need for the liquidity support provided by such program or facility; and such other factors as the Board may deem to be appropriate.

Some commenters suggested that a specific time period for review be adopted. The Board has amended the draft proposal to adopt this suggestion. Section 201.4(d)(9)(i) of the final rule provides that a program or facility will terminate no later than one year after the date of the first extension of credit under the program or facility. The rule allows the Board to renew the program or facility if it finds, by a vote of five members,[19] that unusual and exigent circumstances continue to exist, and the Secretary of the Treasury has approved the renewal. Each renewal may extend the program or facility for not more than one year. The final rule requires the Board promptly to report publicly and to the relevant congressional committees any renewal of a program or facility under section 13(3).

The final rule has been amended to provide that the Board will, not less frequently than every six months, review whether each emergency lending program or facility should be terminated. The final rule provides that the Board may terminate an emergency lending program or facility at any time, and will terminate an emergency program or facility upon finding that conditions no longer warrant continuation of the program or facility.

The final rule retains the provisions of the proposed rule providing factors for the Board to consider in conducting this review, with some additional modifications. Specifically, the final rule provides that the Board will consider such factors as the continued existence of unusual and exigent circumstances; the extent of usage of the program or facility; the extent to which the continuing authorization of the program or facility facilitates restoring or sustaining confidence in the identified financial markets; the ongoing need for the liquidity support provided by such program or facility; and other appropriate factors.

One commenter suggested that the final rule include procedures for the orderly unwinding of a program or facility, including how the Board will cover any associated losses. The Board expects, as it has with past facilities, to evaluate the appropriate methods for an orderly unwinding of any emergency credit facility at the time the facility is unwound.

10. Reporting Requirements

The Dodd-Frank Act contains detailed reporting requirements with respect to section 13(3) extensions of credit.[20] The proposed rule set forth the statutory requirements as enacted, and no comments were received on those

[18] Dodd-Frank Act Section 1101(a)(6).

[19] See 12 U.S.C. 248(r).

[20] Dodd-Frank Act Sections 1101(a)(6) and 1103(b).

provisions of the proposed rule. Therefore, the Board is adopting these provisions as proposed. The final rule provides that the Board will comply with 12 U.S.C. 248(s) and 12 U.S.C. 343(3)(C) pursuant to their terms.

11. No Obligation To Extend Credit

Section 201.4(d)(11) of the proposed rule provided that Federal Reserve Banks have no obligation to extend credit to any particular person or entity through an emergency lending program or facility. This provision mirrors the provision applicable to lending to depository institutions set forth in section 201.3(b) of Regulation A. No comments were received on this provision, and the Board is adopting it as proposed.

12. Participation in Programs and Facilities and Vendor Selection

The final rule reflects existing legal requirements that participation in any program or facility under section 13(3) of the Federal Reserve Act will not be limited or conditioned on the basis of any legally prohibited basis, such as the race, religion, color, gender, national origin, age or disability of the borrower. Moreover, in accordance with existing law, the selection of third-party vendors used in the design, marketing or implementation of any program or facility under this subsection will be without regard to the race, religion, color, gender, national origin, age or disability of the vendor or any principal shareholder of the vendor, and, to the extent possible and consistent with law, will involve a process designed to support equal opportunity and diversity.

13. Short-Term Emergency Credit Secured Solely by United States or Agency Obligations

Section 201.4(d)(13) of the proposed rule retained, but relocated, a provision in current Regulation A that authorizes a Federal Reserve Bank to extend credit under section 13(13) of the FRA if the collateral used to secure the credit consists solely of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or an agency of the United States. Section 201.4(d)(13) of the final rule retains the provision that extensions of credit under this section be at a rate above the highest rate in effect for advances to depository institutions. As set forth in section 13(13) of the FRA, section 201.4(d)(13) of the final rule also provides that credit extended under this provision may not be extended for a term exceeding 90 days.

One commenter suggested that section 201.4(d)(13) should be revised to limit the number of times a loan issued pursuant to its provisions may be rolled over. However, the commenter did not provide a suggested limit on roll overs and acknowledged that there would need to be exceptions made to any limit imposed. Instead of imposing such a limit, the Board will rely on its ability to assess whether unusual and exigent circumstances continue to exist at the time that the loan is renewed in order to appropriately limit roll overs of such loans. Therefore, the Board is retaining section 201.4(d)(13) as written.

B. Section 201.3(b)—No Obligation To Make Advances or Discounts

Section 201.3(b) of the final rule reflects a technical change to conform the language of that section with the language of section 201.4(d)(11) of the final rule.

III. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Board solicited public comment on the rule in a notice of proposed rulemaking. The Board did not receive any comments regarding burden to small banking organizations.

In accordance with section 1101 and 1103 of the Dodd-Frank Act, the Board is amending Regulation A (12 CFR part 201 *et seq.*) to establish policies and procedures for emergency lending under section 13(3) of the FRA. The reasons and justification for the final rule are described in the **SUPPLEMENTARY INFORMATION**. The Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. Under regulations issued by the Small Business Administration (''SBA''), a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $75.5 million or less in assets to $550 million or less in assets. The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature and the vast majority of emergency loans under section 13(3) during the recent financial crisis were extended to such firms.

As discussed in the **SUPPLEMENTARY INFORMATION**, the final rule would apply to any participant in an emergency lending program or facility with broad-based eligibility. To the extent that small entities are participants in these programs or facilities, they would be receiving extensions of emergency credit from Federal Reserve Banks. It is not possible to ascertain at this time the number of small entities that might participate in these programs and facilities were they to be authorized, or what requirements would be imposed on them if they do so. At a minimum, it is likely that participants would be required to pay interest on credit extended to them and to keep records of the use of proceeds of such extensions of credit. However, the positive economic impact of receiving such a credit is likely to substantially outweigh any economic burden of participating in the program or facility.

In light of the foregoing, the Board does not believe that the final rule would have a significant negative economic impact on a substantial number of small entities.

B. Paperwork Reduction Act Analysis

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for the Board is 7100–NEW. The Board reviewed the final rule under the authority delegated to the Board by OMB. The final rule contains requirements subject to the PRA. The reporting requirements are found in section 201.4(d)(5)(iv)(A). The Board indicated in the proposed rule that the reporting requirements associated with the Regulation A would be minimal and no PRA burden was taken. The Board received no comments on this aspect of the proposal. However, based on the comments received for clarifying the proposed rule to prohibit solvent firms from passing the proceeds of emergency loans on to insolvent firms and adopting a broader definition of insolvency, the Board will take reporting burden for this section.

The Board has a continuing interest in the public's opinions of collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for

reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. A copy of the comments may also be submitted to the OMB desk officer (1) by mail to U.S. Office of Management and Budget, 725 17th Street NW., 10235, Washington, DC 20503; (2) by facsimile to 202–395–6974; or (3) by email to: *oira_submission@omb.eop.gov,* Attention, Federal Reserve Board Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting Requirements Associated with Regulation A (Extensions of Credit by Federal Reserve Banks).

Frequency of Response: Event-generated.

Affected Public: Businesses, individuals or other persons.

Respondents: Any participant in a program or facility with broad-based eligibility.

Abstract: Sections 1101 and 1103 of the Dodd-Frank Act amend the emergency lending authorities provided in section 13(3) of the Federal Reserve Act. The amendments require the Board, in consultation with the Secretary of the Treasury, to establish by regulation policies and procedures with respect to such emergency lending. The purpose of the amendments to Regulation A in this final rule is to implement the Dodd-Frank Act revisions to the Board's emergency lending authority in section 13(3) of the Federal Reserve Act that limit the use of this authority to the provision of liquidity through broadly-based facilities for solvent firms in a time of crisis.

Reporting Requirements

Section 201.4(d)(5)(iv)(A) provides that a Federal Reserve Bank may rely on a written certification from the person or from the chief executive officer or other authorized officer of the entity, at the time the person or entity initially borrows under the program or facility, that the person or entity is not in bankruptcy, resolution under Title II of Public Law 111–203 (12 U.S.C. 5381 *et seq.*) or any other Federal or State insolvency proceeding, and has not failed to generally pay its undisputed debts as they become due during the 90 days preceding the date of borrowing under the program or facility, and is not borrowing for the purpose of lending the proceeds of the loan to a person or entity that is insolvent.

Estimated Burden per Response: 5 hours.

Number of Respondents: 10 (The Federal Reserve is not currently aware of any respondents, but for purposes of the PRA we will assume 10. If or when we receive any certifications we intend to update this data upon the next renewal of the information collection).

Total Estimated Annual Burden: 50 hours.

C. Invitation for Comments on Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act of 1999 requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[21] The Board received no comments on these matters and believes that the final rule is written plainly and clearly.

List of Subjects in 12 CFR Part 201

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

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 201 (Regulation A) as follows:

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

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

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

■ 2. Section 201.3 paragraph (b) is revised to read as follows:

§ 201.3 Extensions of credit generally.

* * * * *

(b) *No obligation to make advances or discounts.* This section does not entitle any person or entity to obtain any credit or any increase, renewal or extension of maturity of any credit from a Federal Reserve Bank.

* * * * *

§ 201.109 [Amended]

■ 3. In § 201.109, redesignate footnotes 4 through 6 as footnotes 6 through 8.

§ 201.108 [Amended]

■ 4. In § 201.108, redesignate footnotes 2 and 3 as footnotes 4 and 5.

§ 201.51 [Amended]

■ 5. In § 201.51, redesignate footnote 1 as footnote 3.

■ 6. Section 201.4 paragraph (d) is revised to read as follows:

§ 201.4 Availability and terms of credit.

* * * * *

(d) *Emergency credit for others*—(1) *Authorization to extend credit.* In unusual and exigent circumstances, the Board, by the affirmative vote of not less than five members,[1] may authorize any Federal Reserve Bank, subject to such conditions and during such periods as the Board may determine, to extend credit to any participant in a program or facility with broad-based eligibility established and operated in accordance with this paragraph (d).

(2) *Approval of the Secretary of the Treasury.* A program or facility may not be established under this paragraph (d) without obtaining the prior approval of the Secretary of the Treasury.

(3) *Disclosure of justification and terms.* As soon as is reasonably practicable, and no later than 7 days after a program or facility is authorized under this paragraph (d), the Board and the authorized Federal Reserve Bank or Federal Reserve Banks, as appropriate, will make publicly available a description of the program or facility, a description of the market or sector of the financial system to which the program or facility is intended to provide liquidity, a description of the unusual and exigent circumstances that exist, the intended effect of the program or facility, and the terms and conditions for participation in the program or facility. In addition, within the same 7-day period, the Board will provide a copy of this information to the Committee on Banking, Housing and Urban Affairs of the U.S. Senate and the Committee on Financial Services of the U.S. House of Representatives.

(4) *Broad-based eligibility.* (i) A program or facility established under this paragraph (d) must have broad-based eligibility in accordance with terms established by the Board.

(ii) For purposes of this paragraph (d), a program or facility has broad-based eligibility only if the program or facility is designed to provide liquidity to an identifiable market or sector of the financial system;

(iii) A program or facility will not be considered to have broad-based eligibility for purposes of this paragraph (d) if:

(A) The program or facility is designed for the purpose of assisting one or more specific companies avoid bankruptcy, resolution under Title II of Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 12 U.S.C. 5381 *et seq.*), or any other Federal or State insolvency proceeding, including by removing assets from the

[21] 12 U.S.C. 4809.

[1] Unless fewer are authorized pursuant to section 11(r) of the Federal Reserve Act. 12 U.S.C. 248(r).

balance sheet of one or more such company;

(B) The program or facility is designed for the purpose of aiding one or more failing financial companies; or

(C) Fewer than five persons or entities would be eligible to participate in the program or facility.

(iv) A Federal Reserve Bank may extend credit through a program or facility with broad-based eligibility established under this paragraph (d) through such mechanism or vehicle as the Board determines would facilitate the extension of such credit.

(5) *Insolvency.* (i) A Federal Reserve Bank may not extend credit through a program or facility established under this paragraph (d) to any person or entity that is insolvent or to any person or entity that is borrowing for the purpose of lending the proceeds of the loan to a person or entity that is insolvent.

(ii) Before extending credit through a program or facility established under this paragraph (d) to any person or entity, the Federal Reserve Bank must obtain evidence that the person or entity is not insolvent.

(iii) A person or entity is ''insolvent'' for purposes of this paragraph (d) if:

(A) The person or entity is in bankruptcy, resolution under Title II of Public Law 111–203 (12 U.S.C. 5381 *et seq.*) or any other Federal or State insolvency proceeding;

(B) The person or entity is generally not paying its undisputed debts as they become due during the 90 days preceding the date of borrowing under the program or facility; or

(C) The Board or Federal Reserve Bank otherwise determines that the person or entity is insolvent.

(iv) For purposes of meeting the requirements of this paragraph (d)(5), the Board or Federal Reserve Bank, as relevant, may rely on:

(A) A written certification from the person or from the chief executive officer or other authorized officer of the entity, at the time the person or entity initially borrows under the program or facility, that the person or entity is not in bankruptcy, resolution under Title II of Public Law 111–203 (12 U.S.C. 5381 *et seq.*) or any other Federal or State insolvency proceeding, and has not failed to generally pay its undisputed debts as they become due during the 90 days preceding the date of borrowing under the program or facility;

(B) Recent audited financial statements of the person or entity; or

(C) Other information that the Board or the Federal Reserve Bank may determine to be relevant.

(v) A person or officer (or successor of either) that submits a written certification under this subparagraph must immediately notify the lending Federal Reserve Bank if the information in the certification changes.

(vi) Upon a finding by the Board or a Federal Reserve Bank that a participant, including a participant that has provided a certification under this paragraph (d)(5), is or has become insolvent, that participant is not eligible for any new extension of credit from a program or facility established under this paragraph (d) until such time as the Board or a Federal Reserve Bank determines that such participant is no longer insolvent.

(vii) If a participant or person has provided a certification under this paragraph (d)(5) or paragraph (d)(8)(ii) of this section that includes a knowing material misrepresentation in the certification, all extensions of credit made pursuant to this paragraph (d) that are outstanding to the relevant participant shall become immediately due and payable, and all accrued interest, fees and penalties shall become immediately due and payable. The Board or the lending Federal Reserve Bank will also refer the matter to the relevant law enforcement authorities for investigation and action in accordance with applicable criminal and civil law.

(6) *Indorsement or other security.* (i) All credit extended under a program or facility established under this paragraph (d) must be indorsed or otherwise secured, in each case, to the satisfaction of the lending Federal Reserve Bank.

(ii) In determining whether an extension of credit under any program or facility established under this paragraph (d) is secured to its satisfaction, a Federal Reserve Bank must, prior to or at the time the credit is initially extended, assign a lendable value to all collateral for the program or facility, consistent with sound risk management practices and to ensure protection for the taxpayer.

(7) *Penalty rate and fees.* (i) The Board will determine the interest rate to be charged on any credit extended through a program or facility established under this section in accordance with this paragraph (d) and the provisions of section 14, subdivision (d) of the Federal Reserve Act (12 U.S.C. 357). The Board may determine the interest rate by auction or such other method as the Board determines in accordance with section 14, subdivision (d) of the Federal Reserve Act (12 U.S.C. 357).

(ii) The interest rate established for credit extended through a program or facility established under this section will be set at a penalty level that:

(A) Is a premium to the market rate in normal circumstances;

(B) Affords liquidity in unusual and exigent circumstances; and

(C) Encourages repayment of the credit and discourages use of the program or facility as the unusual and exigent circumstances that motivated the program or facility recede and economic conditions normalize.

(iii) In determining the rate, the Board will consider the condition of affected markets and the financial system generally, the historical rate of interest for loans of comparable terms and maturity during normal times, the purpose of the program or facility, the risk of repayment, the collateral supporting the credit, the duration, terms and amount of the credit, and any other factor that the Board determines to be relevant to ensuring that the taxpayer is appropriately compensated for the risks associated with the credit extended under the program or facility and the purposes of this paragraph (d) are fulfilled.

(iv) In addition to the rate established and charged under this paragraph (d)(7), the Board may require the payment of any fees, penalties, charges or other consideration the Board determines to be appropriate to protect and appropriately compensate the taxpayer for the risks associated with the credit extended under the program or facility.

(8) *Evidence regarding unavailability of adequate credit accommodation.* (i) Each lending Federal Reserve Bank must obtain evidence that, under the prevailing circumstances, participants in a program or facility established under this paragraph (d) are unable to secure adequate credit accommodations from other banking institutions.

(ii) Evidence required under this paragraph (d)(8) may be based on economic conditions in the market or markets intended to be addressed by the program or facility, a written certification from the person or from the chief executive officer or other authorized officer of the entity at the time the person or entity initially borrows under the program or facility, or other evidence from participants or other sources.

(9) *Termination of program or facility.* (i) A program or facility established under this paragraph (d) shall cease extending new credit no later than one year after the date of the first extension of credit under the program or facility or the date of any extension of the program or facility by the Board under paragraph (d)(9)(ii) of this section.

(ii) A program or facility may be renewed upon the vote of not less than

five members of the Board [2] that unusual and exigent circumstances continue to exist and the program or facility continues to appropriately provide liquidity to the financial system, and the approval of the Secretary of the Treasury.

(iii) The Board shall make the disclosures required under paragraph (d)(3) of this section to the public and the relevant congressional committees no later than 7 days after renewing a program or facility under this paragraph (d)(9).

(iv) The Board may at any time terminate a program or facility established under this paragraph (d). To ensure that the program or facility under this paragraph (d) is terminated in a timely and orderly fashion, the Board will periodically review, no less frequently than once every 6 months, the existence of unusual and exigent circumstances, the extent of usage of the program or facility, the extent to which the continuing authorization of the program or facility facilitates restoring or sustaining confidence in the identified financial markets, the ongoing need for the liquidity support provided by such program or facility, and such other factors as the Board may deem to be appropriate. The Board will terminate lending under a program or facility promptly upon finding that conditions no longer warrant the continuation of the program or facility or that continuation of the program or facility is no longer appropriate.

(v) A program or facility that has been terminated will cease extending new credit and will collect existing loans pursuant to the applicable terms and conditions.

(10) *Reporting requirements.* The Board will comply with the reporting requirements of 12 U.S.C. 248(s) and 12 U.S.C. 343(3)(C) pursuant to their terms.

(11) *No obligation to extend credit.* This paragraph (d) does not entitle any person or entity to obtain any credit or any increase, renewal or extension of maturity of any credit from a Federal Reserve Bank.

(12) *Participation in programs and facilities and vendor selection.* (i) Participation in any program or facility under this paragraph (d) shall not be limited or conditioned on the basis of any legally prohibited basis, such as the race, religion, color, gender, national origin, age or disability of the borrower.

(ii) The selection of any third-party vendor used in the design, marketing or implementation of any program or facility under this paragraph (d) shall be without regard to the race, religion, color, gender, national origin, age or disability of the vendor or any principal shareholder of the vendor, and, to the extent possible and consistent with law, shall involve a process designed to support equal opportunity and diversity.

(13) *Short-term emergency credit secured solely by United States or agency obligations.* In unusual and exigent circumstances and after consultation with the Board, a Federal Reserve Bank may extend credit under section 13(13) of the Federal Reserve Act if the collateral used to secure such credit consists solely of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or an agency thereof. Prior to extending credit under this paragraph (d)(13), the Federal Reserve Bank must obtain evidence that credit is not available from other sources and failure to obtain such credit would adversely affect the economy. Credit extended under this paragraph (d)(13) may not be extended for a term exceeding 90 days, must be extended at a rate above the highest rate in effect for advances to depository institutions as determined in accordance with section 14(d) of the Federal Reserve Act, and is subject to such limitations and conditions as provided by the Board.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 30, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–30584 Filed 12–17–15; 8:45 am]

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[2] Unless fewer are authorized pursuant to section 11(r) of the Federal Reserve Act. 12 U.S.C. 248(r).

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Standards of Conduct and Employee Restrictions and Responsibilities

CFR Correction

In Title 13 of the Code of Federal Regulations, revised as of January 1, 2015, on page 34, in § 105.401, in paragraph (b)(3), remove ''Director of Human Resources'' and add in its place ''Chief Human Capital Officer''.

[FR Doc. 2015–31738 Filed 12–17–15; 8:45 am]

BILLING CODE 1505–01–D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loans

CFR Correction

In Title 13 of the Code of Federal Regulations, revised as of January 1, 2015, on page 307, in § 120.802, in the definition of *Priority CDC,* remove the first instance of ''504'' and add ''504'' before the word ''program''.

[FR Doc. 2015–31739 Filed 12–17–15; 8:45 am]

BILLING CODE 1505–01–D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 136

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Small Business Administration

CFR Correction

■ In Title 13 of the Code of Federal Regulations, revised as of January 1, 2015, on pages 658 and 659, in § 136.170, remove ''Director, OEEOC'' each time it appears in paragraphs (h)(1) and (j)(1) and (2) and add, in its place, ''AA/EEOCCR''.

[FR Doc. 2015–31740 Filed 12–17–15; 8:45 am]

BILLING CODE 1505–01–D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 140

Debt Collection

CFR Correction

In Title 13 of the Code of Federal Regulations, revised as of January 1, 2015, on page 665, in § 140.11, in paragraph (i)(3)(ii), remove the term ''the SBA'' and add ''the Agency'' in its place.

[FR Doc. 2015–31745 Filed 12–17–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–1139; Airspace Docket No. 15–AWP–4]

Establishment of Class E Airspace; Los Angeles, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E surface area airspace designated as an extension at Whiteman Airport, Los Angeles, CA. The FAA found it necessary to establish the airspace area for the safety and management of Instrument Flight Rules (IFR) operations for arriving and departing aircraft at the airport.

DATES: Effective 0901 UTC, February 4, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy 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 FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

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

FOR FURTHER INFORMATION CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4563.

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 surface area airspace at Whiteman Airport, Los Angeles, CA.

History

On October 16, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace designated as an extension at Whiteman Airport, Los Angeles, CA, (80 FR 62509). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One anonymous comment was received supporting the proposal.

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 designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, 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 establishes Class E airspace designated as an extension to surface area airspace at Whiteman Airport, Los Angeles, CA. The airspace extends from the 3-mile radius of Whiteman Airport to 6.6 miles northwest of the airport for the safety and management of IFR operations.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP CA E4 Los Angeles, CA [New]

Los Angeles, Whiteman Airport, CA
(Lat. 34°15′34″ N., long. 118°24′48″ W.)

That airspace extending upward from the surface within 1.1 miles each side of the 304° bearing from the Whiteman Airport, extending from the 3-mile radius of Whiteman Airport to 6.6 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on December 10, 2015.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2015–31645 Filed 12–17–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

[Docket No. 110819516–5999–03]

RIN 0648–BB02

Atlantic Highly Migratory Species; Smoothhound Shark Management Measures

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

ACTION: Final rule; effective date of OMB control numbers.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in regulations pertaining to the U.S. Atlantic smoothhound shark fisheries in a final rule that was published on November 24, 2015. The intent of this final rule is to inform the public of the effectiveness of the collection-of-information requirements associated with the commercial smoothhound shark permit.

DATES: This final rule is effective on March 15, 2016.

ADDRESSES: Written comments regarding burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Steve Durkee by phone at 202–670–6637 or email at *steve.durkee@noaa.gov.*

SUPPLEMENTARY INFORMATION: Atlantic sharks, including smoothhound sharks, are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the authority to promulgate regulations under the Magnuson-Stevens Act has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, which detailed management measures for Atlantic Highly Migratory Species (HMS) fisheries, including for the Atlantic shark fisheries. The implementing regulations for the 2006 Consolidated HMS FMP and its amendments are at 50 CFR part 635.

The final rule implementing Amendment 9 to the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) (Amendment 9) was published on November 24, 2015 (80 FR 73128) and included measures to bring smoothhound sharks under Federal management. Among these measures was a commercial smoothhound shark permit requirement for Federal smoothhound shark fishermen in the Atlantic Ocean and Gulf of Mexico. At the time of publication of the final rule implementing Amendment 9, collection-of-information requirements associated with the smoothhound shark permit were pending approval by OMB.

OMB approved the collection-of-information requirements contained in the final rule on December 10, 2015. Additionally, the application for the smoothhound shark permit is now available.

Classification

Paperwork Reduction Act

This rule makes effective a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0205. This collection is revised to add a commercial smoothhound shark permit in association with Amendment 9 to the HMS FMP (Amendment 9). Among other things, Amendment 9 implements a commercial smoothhound shark permit requirement for vessels retaining smoothhound sharks caught in Federal waters of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This permit requirement will aid in identifying the participants in the smoothhound shark fishery to facilitate information gathering for fishery management and quota monitoring, facilitate enforcement of fishing regulations, and help maintain a sustainable fishery. The commercial smoothhound shark permitting requirement will become effective on March 15, 2016. NMFS estimates up to 500 applicants for the new permit with each response taking 30 minutes. Thus, this revision will add 500 respondents, 500 responses, and 250 burden hours to fill out and submit an application for a commercial smoothhound shark permit. Additionally, a $25 application fee will result in a total of $12,500 additional cost to OMB Control Number 0648–0205.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and opportunity for public comment for this action because notice and comment would be unnecessary and contrary to the public interest. This action simply provides notice of OMB's approval of the reporting requirements at issue, which has already occurred, and renders those requirements effective. Thus, this action does not involve any further exercise of agency discretion and no comment received at this time would impact any decision by NMFS or OMB. In addition, the public has had the opportunity to comment on both the substance of the reporting requirements, at the time NMFS adopted them, and on NMFS' request to OMB for revision of the information collection. The reporting requirements at issue were detailed in a proposed rule on which NMFS accepted public comment. The reporting provisions in 50 CFR 635.4 were initially published at 79 FR 56047 on September 18, 2014, with comments accepted until November 14, 2014, and published as a final rule at 80 FR 73128 on November 24, 2015. An additional opportunity for public comment at this point would not be meaningful, and would be duplicative.

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are inapplicable.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

Dated: December 14, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 as follows:

Title 15—Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENT UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR'', add an entry in alphanumeric order for ''635.4(e)(4)'' to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control No. (all numbers begin with 0648–)
* * * * *	
50 CFR	.....
* * * * *	
635.4(e)(4)	–0205
* * * * *	

[FR Doc. 2015–31782 Filed 12–15–15; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

[Docket No. FDA–2015–N–0002]

New Animal Drugs for Use in Animal Feed; Withdrawal of Approval of New Animal Drug Applications; Nitarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the withdrawal of approval of three new animal drug applications (NADAs) providing for the use of nitarsone in medicated feed for chickens and turkeys. This action is being taken at the sponsor's request because these products are no longer manufactured or marketed.

DATES: This rule is effective December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Sujaya Dessai, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5761, *sujaya.dessai@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007 has requested that FDA withdraw approval of the following NADAs that provide for the use of nitarsone in medicated feed for chickens and turkeys because the products are no longer manufactured or marketed:

File No.	Product name	21 CFR Section
007–616	HISTOSTAT 50 (nitarsone) Type A Medicated Article	558.369
141–088	HISTOSTAT 50 (nitarsone)/BMD (bacitracin methylene disalicylate)	558.369
141–132	HISTOSTAT 50/ALBAC (bacitracin zinc)	558.369

Elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADAs 007–616, 141–088, and 141–132, and all supplements and amendments thereto, is withdrawn, effective December 31, 2015. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these voluntary withdrawals of approval.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Parts 556

Animal drugs, Food.

21 CFR Parts 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

§ 556.60 [Removed]

■ 2. Remove § 556.60.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

§ 558.4 [Amended]

■ 4. In § 558.4(d), in the ''Category II'' table, remove the entry for ''Nitarsone''.

§ 558.76 [Amended]

■ 5. In § 558.76, remove and reserve paragraph (d)(3)(xiii).

§ 558.78 [Amended]

■ 6. In § 558.78, remove and reserve paragraph (d)(3)(vii).

§ 558.369 [Removed]

■ 7. Remove § 558.369.

Dated: December 11, 2015.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2015–31827 Filed 12–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2015–N–0002]

New Animal Drugs for Use in Animal Feed; Withdrawal of Approval of New Animal Drug Applications; Nitarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADAs) providing for the use of nitarsone in medicated feed for chickens and turkeys. This action is being taken at the sponsor's request because these products are no longer manufactured or marketed.

DATES: Withdrawal of approval is effective December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Sujaya Dessai, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5761, *sujaya.dessai@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007 has requested that FDA withdraw approval of the following NADAs that provide for the use of nitarsone in medicated feed for chickens and turkeys because the products are no longer manufactured or marketed:

File No.	Product name	21 CFR Section
007–616	HISTOSTAT 50 (nitarsone) Type A Medicated Article	558.369
141–088	HISTOSTAT 50 (nitarsone)/BMD (bacitracin methylene disalicylate)	558.369
141–132	HISTOSTAT 50/ALBAC (bacitracin zinc)	558.369

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with 21 CFR 514.116 *Notice of withdrawal of approval of application*, notice is given that approval of NADAs 007–616, 141–088, and 141–132, and all supplements and amendments thereto, is hereby withdrawn, effective December 31, 2015.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the voluntary withdrawal of approval of these applications.

Dated: December 11, 2015.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2015–31828 Filed 12–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9745]

RIN 1545–BL43

Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the Medicare and Medicaid Extenders Act of 2010, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, and the Department of Defense and Full-Year Continuing Appropriations Act, 2011. These final regulations affect individuals who enroll in qualified health plans through Affordable Insurance Exchanges (Exchanges, sometimes called Marketplaces) and claim the health insurance premium tax credit, and Exchanges that make qualified health plans available to individuals and employers.

DATES: *Effective Date:* These regulations are effective on December 18, 2015.

Applicability Dates: For dates of applicability, see §§ 1.36B–1(o) and 1.36B–6(g).

FOR FURTHER INFORMATION CONTACT: For general questions on the premium tax credit, Shareen Pflanz, (202) 317–4718; for minimum value, Andrew Braden, (202) 317–7006 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 36B of the Internal Revenue Code (Code) relating to the health insurance premium tax credit. Section 36B was enacted by the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act). Final regulations under section 36B (TD 9590) were published on May 23, 2012 (77 FR 30377) (2012 section 36B final regulations). On May 3, 2013, a notice of proposed rulemaking (REG–125398–12) was published in the **Federal Register** (78 FR 25909). Written comments responding to the proposed regulations were received. The comments have been considered in connection with these final regulations and are available for public inspection at *www.regulations.gov* or on request. No public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted, in part, as amended by this Treasury decision. Some rules proposed under REG–125398–12 on the minimum value of eligible employer-sponsored plans have been reserved and will be finalized separately under REG–119850–15. Two paragraphs on minimum value have been re-proposed, see REG–143800–14 (80 FR 52678) (2015 proposed minimum value regulations), are finalized in part, and will be finalized in part under REG–143800–14.

Explanation of Revisions and Summary of Comments

1. Definition of Modified Adjusted Gross Income

Section 36B(d)(2) provides that a taxpayer's household income includes the modified adjusted gross income of the taxpayer and the members of the taxpayer's tax family who are required to file an income tax return. The 2012 section 36B final regulations provide that, in computing household income, whether a family member must file a tax return is determined without regard to section 1(g)(7). Under section 1(g)(7), a parent may elect to include a child's gross income in the parent's gross income if certain requirements are met.

The proposed regulations removed ''without regard to section 1(g)(7)'' from the 2012 section 36B final regulations because that language implied that the child's gross income is included in both the parent's adjusted gross income and the child's adjusted gross income in determining household income. Thus, the proposed regulations clarified that when a parent makes an election under section 1(g)(7), household income includes the child's gross income included on the parent's return only. These final regulations adopt that rule without change and clarify that the modified adjusted gross income of a parent who makes the section 1(g)(7) election includes the child's modified adjusted gross income. Thus, the parent's modified adjusted gross income includes not only the child's gross income but also the child's tax-exempt interest and nontaxable Social Security income, which are excluded from gross

income but included in modified adjusted gross income in computing household income. (A parent may not make a section 1(g)(7) election if the child has income excluded under section 911, the third type of nontaxable income included in modified adjusted gross income.)

2. Wellness Program Incentives

Under section 36B(c)(2)(C)(i) and § 1.36B–2(c)(3)(v), an eligible employer-sponsored plan is affordable for an employee and related individuals only if the portion of the annual premium the employee must pay for self-only coverage does not exceed the required contribution percentage of the taxpayer's household income. Under section 36B(c)(2)(C)(ii), an eligible employer-sponsored plan provides minimum value only if the plan's share of the total allowed cost of benefits is at least 60 percent and, under the 2015 proposed minimum value regulations, the plan provides substantial coverage of inpatient hospital services and physician services.

The proposed regulations provide that, for an employee eligible to participate in a wellness program, the affordability and minimum value of eligible employer-sponsored coverage are determined by assuming that each employee fails to satisfy the requirements of a wellness program, except the requirements of a nondiscriminatory wellness program related to tobacco use. Thus, the affordability and minimum value of a plan that charges a higher initial premium or higher cost-sharing for tobacco users are determined based on the premium or cost-sharing that is charged to non-tobacco users or to tobacco users who complete the related wellness program, such as attending smoking cessation classes.

Identical rules, addressing only an employee's required contribution for purposes of determining affordability, were proposed in regulations under section 5000A (REG–141036–13, 79 FR 4302, January 27, 2014) (section 5000A proposed regulations). The preamble to regulations finalizing the section 5000A proposed regulations (TD 9705, 79 FR 70464, November 26, 2014) (section 5000A final regulations) discusses the comments received on the proposed regulations under section 36B, except comments discussed in the next paragraph, and additional comments received on the section 5000A proposed regulations (79 FR 70466). Comments discussed in the preamble to the section 5000A proposed regulations are not discussed again in this preamble.

Because the standard for affordability for individuals eligible for coverage by reason of a relationship to an employee (related individuals) under section 5000A is different than the standard under section 36B, the section 5000A final regulations do not address certain comments on the treatment of wellness program incentives in determining affordability for related individuals. These commenters requested that wellness incentives related to tobacco use be treated as unearned for related individuals. The commenters expressed concern that treating wellness incentives related to tobacco use as earned in all cases unfairly penalizes related individuals for an employee's tobacco use. However, section 36B(c)(2)(C) provides that the affordability of coverage for related individuals under section 36B is based on the cost of self-only coverage. Accordingly, the final regulations do not adopt this comment.

Thus, after considering all the comments, these final regulations, like the section 5000A final regulations, retain the rules in the proposed regulations that wellness incentives unrelated to tobacco use are treated as unearned and wellness incentives related to tobacco use are treated as earned in determining affordability. For purposes of both the section 5000A final regulations and these final regulations, nondiscriminatory wellness programs include both participatory and health-contingent wellness programs. Both the section 5000A final regulations and these final regulations also clarify that (1) a wellness incentive that includes any component unrelated to tobacco use is treated as unearned (however, as stated in the preamble to the section 5000A final regulations, if there is an incentive for completing a program unrelated to tobacco use and a separate incentive for completing a program related to tobacco use, then the incentive related to tobacco use may be treated as earned), and (2) the term *wellness program incentives* has the same meaning as the term *reward* in regulations issued by the Departments of Health and Human Services (HHS) and Labor as well as the Treasury Department, see § 54.9802–1(f), 29 CFR 2590.702(f), and 45 CFR 146.121(f). These final regulations also apply the rules described in this section of the preamble for purposes of determining minimum value.

3. Employer Contributions to Health Reimbursement Arrangements (HRA)

The proposed regulations provide that amounts newly made available in the current plan year under an HRA that is integrated with eligible employer-sponsored coverage and that an employee may use to pay premiums are counted toward the employee's required contribution for purposes of determining affordability. Amounts newly made available in the current plan year under an HRA that is integrated with eligible employer-sponsored coverage and that an employee may use only to reduce cost-sharing for medical expenses covered by the primary plan count toward a plan's minimum value percentage.

The comments on the proposed regulations are discussed in the section 5000A final regulations. After considering all the comments, both the section 5000A final regulations and these final regulations (1) cross-reference Notice 2013–54 (2013–40 IRB 287, see § 601.601(d)) for guidance on the requirements for an HRA to be integrated with eligible employer-sponsored coverage, (2) clarify that amounts newly made available under an HRA reduce an employee's required contribution (or, for purposes of section 36B, count towards providing minimum value) if the HRA would have been integrated with eligible employer-sponsored coverage had the employee enrolled in the primary plan, (3) clarify that an HRA is taken into account in determining affordability (and minimum value for purposes of section 36B) only if the HRA and the primary eligible employer-sponsored coverage are offered by the same employer, (4) clarify that HRA contributions are taken into account for affordability and not minimum value if an employee may use the HRA contributions to pay premiums for the primary plan only or to pay cost-sharing or benefits not covered by the primary plan in addition to premiums, and (5) clarify that employer contributions to an HRA reduce an employee's required contribution (or count towards providing minimum value for section 36B purposes) only to the extent the amount of the annual contribution is required under the terms of the plan or is otherwise determinable within a reasonable time before the employee must decide whether to enroll. For more information on how contributions to an HRA are taken into account for purposes of section 4980H(b) and related reporting under section 6056, see Notice 2015–87, 2015–52 IRB, released simultaneously with these final regulations.

Additional regulations will finalize other rules on minimum value in the proposed regulations.

4. Employer Contributions to Cafeteria Plans (Flex Contributions)

The preamble to the section 5000A proposed regulations requested comments on how employer contributions under a section 125 cafeteria plan (flex contributions) that employees may not opt to receive as a taxable benefit should be taken into account in determining an employee's required contribution for purposes of the affordability of coverage. The section 5000A final regulations discussed the comments received and adopted the rule that an employee's required contribution is reduced by employer contributions under a section 125 cafeteria plan that (1) may not be taken as a taxable benefit, (2) may be used to pay for minimum essential coverage, and (3) may be used only to pay for medical care within the meaning of section 213. These final regulations adopt this rule for purposes of determining affordability under section 36B.

For more information on the effect of flex contributions and other similar arrangements on affordability for purposes of sections 36B, 5000A, and related consequences under section 4980H, see Notice 2015–87, released simultaneously with these final regulations.

5. Post-Employment Coverage

Section 1.36B–2(c)(3)(iv) provides that an individual who may enroll in continuation coverage required under Federal law or a State law that provides comparable continuation coverage is eligible for minimum essential coverage only for months that the individual is enrolled in the coverage. The proposed regulations provide that this rule applies only to former employees and extend the rule to retiree coverage. Accordingly, an individual who may enroll in retiree coverage is eligible for minimum essential coverage only for the months the individual is enrolled in the coverage.

Commenters opined that the continuation and retiree coverage rules should apply to individuals eligible for the coverage by reason of a relationship to an employee, for example, the spouse of a retired employee. In response to these comments, the final regulations clarify that an individual who may enroll in continuation coverage or retiree coverage because of a relationship to a former employee is eligible for the coverage only for the months the individual is enrolled in the coverage.

Commenters suggested that the rule for continuation coverage should apply to current employees eligible for continuation coverage as a result of reduced hours. The final regulations do not adopt this suggestion. Eligible employer-sponsored coverage for current employees does not present the same administrability issues as for former employees. Current employees with continuation coverage should be subject to the same general rules on eligibility for employer-sponsored coverage as other current employees. Although employees may be subject to a higher required contribution for continuation coverage than is required for other eligible employer-sponsored coverage, for purposes of the premium tax credit, employees are eligible for eligible employer-sponsored coverage only if the coverage is both affordable and provides minimum value. Thus, current employees offered continuation coverage, like other current employees, may be eligible for the premium tax credit if the coverage offered either is not affordable or does not provide minimum value.

6. Newborns, Adopted Children, and Other Individuals Enrolled Midmonth

Regulations at 45 CFR 155.420(d)(2)(i) require issuers to provide coverage to a newborn child enrolled in a qualified health plan effective on the date of birth. Under section 36B(c)(2)(A)(i) and § 1.36B–3(c)(1)(i), a month is a coverage month for an individual only if the individual is enrolled in a qualified health plan through an Exchange as of the first day of the month. Under § 1.36B–3(d), the monthly premium assistance amount is determined, in part, by the adjusted monthly premium for the applicable second lowest cost silver (benchmark) plan (benchmark plan premium). The proposed regulations provide that a child enrolled in a qualified health plan in the month of the child's birth, adoption, or placement with the taxpayer for adoption or in foster care (birth month) is treated as enrolled as of the first day of the month.

Some commenters interpreted the coverage month rule for newborns as requiring that issuers must provide coverage for a newborn as of the first day of the month.

Other commenters noted that applying a new adjusted monthly premium as of the first of the month, thus increasing the premium assistance amount for the month, is inconsistent with HHS regulations that provide that the amount of advance credit payments (which approximates the premium assistance amount) does not change until the first day of the month following the birth month.

No changes are made to the final regulations to reflect these comments. The rules treat certain individuals as enrolled as of the first day of the month for purposes of the premium tax credit to conform with the general rules for coverage months but do not require issuers to enroll the individuals as of the first day of the month. Furthermore, HHS regulations published on July 15, 2013 (78 FR 42321) removed the rule providing that advance credit payments do not change until the month following a birth or other event for which a midmonth enrollment is allowed.

Under 45 CFR 155.420(b)(2)(i), Exchanges must ensure that a taxpayer eligible to enroll an individual in coverage may choose for the individual's coverage to be effective as of the individual's date of birth, adoption, or placement for adoption or in foster care or as of the first day of the following month. Similarly, for individual's placed with a taxpayer by court order, 45 CFR 155.420(b)(2)(v) provides that Exchanges must allow the individual's coverage to be effective as of the date the court order is effective. Accordingly, the final regulations provide that an individual is treated as enrolled as of the first day of the month of birth, adoption, or placement in adoption or foster care if the individual's enrollment is effective as of the date of birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order. The final regulations use the term *individual* instead of *child* to align with HHS regulations relating to midmonth enrollments.

The proposed regulations provide that the adjusted monthly premium is determined as if all members of the coverage family for that month were enrolled in a qualified health plan for the entire month. The intent of this rule was to specify that the adjusted monthly premium is determined as of the first day of a coverage month and is not prorated for midmonth changes in enrollment or eligibility for other minimum essential coverage. Accordingly, an individual who enrolls midmonth but who is treated as enrolled as of the first day of the month is a member of the coverage family (if all other requirements are met) in determining the adjusted monthly premium for that month. For other coverage family changes, the adjusted monthly premium does not change until the following month. The final regulations clarify these rules by providing that the term *coverage family* means the members of a taxpayer's family for whom a month is a coverage month (which requires being enrolled

on the first day of the month) and that the adjusted monthly premium is determined as of the first day of a coverage month.

7. Partial Months of Coverage

The proposed regulations provide that the premium assistance amount for a coverage month is prorated by the number of days of coverage when a qualified health plan is terminated before the last day of a month and the issuer reduces or refunds a portion of the monthly premium.

The proposed rule for computing a prorated premium assistance amount has proven to be complex and may be difficult to administer. Accordingly, the final regulations provide that the premium assistance amount for a termination month is the lesser of (1) the enrollment premiums charged (reduced by any amounts that were refunded) and (2) the difference between the benchmark plan premium and contribution amount for the full month. The final regulations clarify that this computation also applies to a month an individual is enrolled in coverage effective on the date of the individual's birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order. The Treasury Department and the IRS anticipate publishing rules requiring Exchanges to report under section 36B(f)(3) for partial months of coverage the amount of enrollment premiums charged and advance credit payments made for the days of coverage and the benchmark plan premium for a full month of coverage.

Effective/Applicability Date

These final regulations apply to taxable years ending after December 31, 2013.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

The principal authors of these final regulations are Andrew Braden, Arvind Ravichandran, and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.36B–0 is amended by:
■ 1. Revising the introductory text.
■ 2. Revising the entries for §§ 1.36B–2(c)(3)(iv) and 1.36B–2(c)(3)(v)(A)(*4*).
■ 2. Adding entries for §§ 1.36B–2(c)(3)(v)(A)(*5*) and (*6*).
■ 3. Revising the entries for §§ 1.36B–3(c)(2) and (3).
■ 4. Adding entries for §§ 1.36B–3(c)(4), 1.36B–3(d)(1) and (2), 1.36B–3(d)(2)(i) and (ii) and 1.36B–6.

The revisions and additions read as follows:

§ 1.36B–0 Table of contents.

This section lists the captions contained in §§ 1.36B–1 through 1.36B–6.

* * * * *

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *
(c) * * *
(3) * * *
(iv) Post-employment coverage.
(v) * * *
(A) * * *
(*4*) Wellness program incentives.
(*5*) Employer contributions to health reimbursement arrangements.
(*6*) Employer contributions to cafeteria plans.
* * * * *

§ 1.36B–3 Computing the premium assistance credit amount.

* * * * *
(c) * * *
(2) Certain individuals enrolled during a month.
(3) Premiums paid for a taxpayer.
(4) Examples.
(d) * * *
(1) In general.
(2) Partial month of coverage.
(i) In general.
(ii) Examples.
* * * * *

§ 1.36B–6 Minimum value.

(a) In general.
(b) MV standard population.
(c) MV percentage.
(1) In general.
(2) Wellness program incentives.
(i) In general.
(ii) Example.
(3) Employer contributions to health savings accounts.
(4) Employer contributions to health reimbursement arrangements.
(5) Expected spending adjustments for health savings accounts and health reimbursement arrangements.
(d) Methods for determining MV.
(e) Scope of essential health benefits and adjustment for benefits not included in MV Calculator.
(f) Actuarial certification.
(1) In general.
(2) Membership in American Academy of Actuaries.
(3) Actuarial analysis.
(4) Use of MV Calculator.
(g) Effective/applicability date.
(1) In general.
(2) Exception.

■ **Par. 3.** Section 1.36B–1 is amended by revising paragraphs (e)(1)(i), (e)(1)(ii)(B), and (n) to read as follows:

§ 1.36B–1 Premium tax credit definitions.

* * * * *
(e) * * *
(1) * * *
(i) A taxpayer's modified adjusted gross income (including the modified adjusted gross income of a child for whom an election under section 1(g)(7) is made for the taxable year);
(ii) * * *
(B) Are required to file a return of tax imposed by section 1 for the taxable year.
* * * * *

(n) *Rating area.* The term *rating area* has the same meaning as used in section 2701(a)(2) of the Public Health Service Act (42 U.S.C. 300gg(a)(2)) and 45 CFR 147.102(b).
* * * * *

■ **Par. 4.** Section 1.36B–2 is amended by:
■ 1. Revising paragraphs (c)(3)(iv) and (c)(3)(v)(A)(*4*).
■ 2. Adding paragraphs (c)(3)(v)(A)(*5*) and (*6*) and (c)(3)(v)(D), *Example 9.*
■ 3. Revising paragraph (c)(3)(vi).

The revisions and additions read as follows:

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(3) * * *

(iv) *Post-employment coverage.* A former employee (including a retiree), or an individual related (within the meaning of paragraph (c)(3)(i) of this section) to a former employee, who may enroll in eligible employer-sponsored coverage or in continuation coverage required under Federal law or a State law that provides comparable continuation coverage is eligible for minimum essential coverage under this coverage only for months that the former employee or related individual is enrolled in the coverage.

(v) * * *

(A) * * *

(*4*) *Wellness program incentives.* Nondiscriminatory wellness program incentives offered by an eligible employer-sponsored plan that affect premiums are treated as earned in determining an employee's required contribution for purposes of affordability of an eligible employer-sponsored plan to the extent the incentives relate exclusively to tobacco use. Wellness program incentives that do not relate to tobacco use or that include a component unrelated to tobacco use are treated as not earned for this purpose. For purposes of this section, the term *wellness program incentive* has the same meaning as the term *reward* in § 54.9802–1(f)(1)(i) of this chapter.

(*5*) *Employer contributions to health reimbursement arrangements.* Amounts newly made available for the current plan year under a health reimbursement arrangement that an employee may use to pay premiums, or may use to pay cost-sharing or benefits not covered by the primary plan in addition to premiums, reduce the employee's required contribution if the health reimbursement arrangement would be integrated, as that term is used in Notice 2013–54 (2013–40 IRB 287) (see § 601.601(d) of this chapter), with an eligible employer-sponsored plan for an employee enrolled in the plan. The eligible employer-sponsored plan and the health reimbursement arrangement must be offered by the same employer. Employer contributions to a health reimbursement arrangement reduce an employee's required contribution only to the extent the amount of the annual contribution is required under the terms of the plan or otherwise determinable within a reasonable time before the employee must decide whether to enroll in the eligible employer-sponsored plan.

(*6*) *Employer contributions to cafeteria plans.* Amounts made available for the current plan year under a cafeteria plan, within the meaning of section 125, reduce an employee's or a related individual's required contribution if—

(*i*) The employee may not opt to receive the amount as a taxable benefit;

(*ii*) The employee may use the amount to pay for minimum essential coverage; and

(*iii*) The employee may use the amount exclusively to pay for medical care, within the meaning of section 213.

* * * * *

(D) * * *

Example 9. Wellness program incentives. (i) Employer X offers an eligible employer-sponsored plan with a nondiscriminatory wellness program that reduces premiums by $300 for employees who do not use tobacco products or who complete a smoking cessation course. Premiums are reduced by $200 if an employee completes cholesterol screening within the first six months of the plan year. Employee B does not use tobacco and the cost of his premiums is $3,700. Employee C uses tobacco and the cost of her premiums is $4,000.

(ii) Under paragraph (c)(3)(v)(A)(*4*) of this section, only the incentives related to tobacco use are counted toward the premium amount used to determine the affordability of X's plan. C is treated as having earned the $300 incentive for attending a smoking cessation course regardless of whether C actually attends the course. Thus, the required contribution for determining affordability for both Employee B and Employee C is $3,700. The $200 incentive for completing cholesterol screening is treated as not earned and does not reduce their required contribution.

(vi) *Minimum value.* See § 1.36B–6 for rules for determining whether an eligible employer-sponsored plan provides minimum value.

* * * * *

■ **Par. 5.** Section 1.36B–3 is amended by:

■ 1. Revising paragraph (b)(2).

■ 2. Redesignating paragraphs (c)(2) and (3) as paragraphs (c)(3) and (4) and adding paragraph (c)(2).

■ 3. Revising paragraph (d).

■ 4. Adding a sentence to the end of paragraph (e).

■ 5. Revising paragraphs (f)(4), (g)(2), and (j)(1) and (3).

■ 6. Removing the language ''(d)(1)'' everywhere it appears in paragraphs (h), (j), and (k), and adding the language ''(d)(1)(i)'' in its place and removing the language ''(d)(2)'' everywhere it appears in paragraphs (h) and (j) and adding the language ''(d)(1)(ii)'' in its place.

The revisions and additions read as follows:

§ 1.36B–3 Computing the premium assistance credit amount.

* * * * *

(b) * * *

(2) The term *coverage family* means, in each month, the members of a taxpayer's family for whom the month is a coverage month.

(c) * * *

(2) *Certain individuals enrolled during a month.* If an individual enrolls in a qualified health plan and the enrollment is effective on the date of the individual's birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order, the individual is treated as enrolled as of the first day of that month for purposes of this paragraph (c).

* * * * *

(d) *Premium assistance amount*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, the premium assistance amount for a coverage month is the lesser of—

(i) The premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or

(ii) The excess of the adjusted monthly premium for the applicable benchmark plan (benchmark plan premium) over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year (the taxpayer's contribution amount).

(2) *Partial month of coverage*—(i) *In general.* If a qualified health plan is terminated before the last day of a month or an individual is enrolled in coverage effective on the date of the individual's birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order, the premium assistance amount for the month is the lesser of—

(A) The enrollment premiums for the month (not including any amounts that were refunded); or

(B) The excess of the benchmark plan premium for a full month of coverage over the full contribution amount for the month.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (d)(2).

Example 1. (i) Taxpayer R is single and has no dependents. R enrolls in a qualified health plan with a monthly premium of $450. The difference between R's benchmark plan premium and contribution amount for the month is $420. R's premium assistance amount for a coverage month with a full month of coverage is $420 (the lesser of $450 and $420).

(ii) The issuer of R's qualified health plan is notified that R died on September 20. The

issuer terminates coverage as of that date and refunds the remaining portion of the September enrollment premiums ($150) for R's coverage.

(iii) Under this paragraph (d)(2), R's premium assistance amount for September is the lesser of the enrollment premiums for the month ($300 ($450—$150)) or the difference between the benchmark plan premium for a full month of coverage and the full contribution amount for the month ($420). R's premium assistance amount for September is $300, the lesser of $420 and $300.

Example 2. The facts are the same as in *Example 1* of this paragraph (d)(2)(ii), except that the qualified health plan issuer does not refund any enrollment premiums for September. Under this paragraph (d)(2), R's premium assistance amount for September is $420, the lesser of $450 and $420.

Example 3. The facts are the same as in *Example 1* of this paragraph (d)(2)(ii), except that the difference between R's benchmark plan premium and contribution amount for a month is $275. Accordingly, R's premium assistance amount for a coverage month with a full month of coverage is $275 (the lesser of $450 and $275). Under this paragraph (d)(2), R's premium assistance amount for September remains $275, the lesser of $300 and $275.

(e) * * * The adjusted monthly premium for a coverage month is determined as of the first day of the month.

(f) * * *

(4) *Family members residing at different locations.* The benchmark plan premium determined under paragraphs (f)(1) and (2) of this section for family members who live in different States and enroll in separate qualified health plans is the sum of the premiums for the applicable benchmark plans for each group of family members living in the same State.

* * * * *

(g) * * *

(2) *Applicable percentage table.*

Household income percentage of Federal poverty line	Initial percentage	Final percentage
Less than 133%	2.0	2.0
At least 133% but less than 150%	3.0	4.0
At least 150% but less than 200%	4.0	6.3
At least 200% but less than 250%	6.3	8.05
At least 250% but less than 300%	8.05	9.5
At least 300% but not more than 400%	9.5	9.5

* * * * *

(j) *Additional benefits*—(1) *In general.* If a qualified health plan offers benefits in addition to the essential health benefits a qualified health plan must provide under section 1302 of the Affordable Care Act (42 U.S.C. 18022), or a State requires a qualified health plan to cover benefits in addition to these essential health benefits, the portion of the premium for the plan properly allocable to the additional benefits is excluded from the monthly premiums under paragraph (d)(1)(i) or (ii) of this section. Premiums are allocated to additional benefits before determining the applicable benchmark plan under paragraph (f) of this section.

* * * * *

(3) *Examples.* The following examples illustrate the rules of this paragraph (j):

Example 1. (i) Taxpayer B enrolls in a qualified health plan that provides benefits in addition to essential health benefits (additional benefits). The monthly premiums for the plan in which B enrolls are $370, of which $35 is allocable to additional benefits. B's benchmark plan premium (determined after allocating premiums to additional benefits for all silver level plans) is $440, of which $40 is allocable to additional benefits. B's monthly contribution amount, which is the product of B's household income and the applicable percentage, is $60.

(ii) Under this paragraph (j), B's enrollment premiums and the benchmark plan premium are reduced by the portion of the premium that is allocable to the additional benefits provided under that plan. Therefore, B's monthly enrollment premiums are reduced to $335 ($370 − $35) and B's benchmark plan premium is reduced to $400 ($440 − $40). B's premium assistance amount for a coverage month is $335, the lesser of $335 (B's enrollment premiums, reduced by the portion of the premium allocable to additional benefits) and $340 (B's benchmark plan premium, reduced by the portion of the premium allocable to additional benefits ($400), minus B's $60 contribution amount).

Example 2. The facts are the same as in *Example 1* of this paragraph (j)(3), except that the plan in which B enrolls provides no benefits in addition to the essential health benefits required to be provided by the plan. Thus, under paragraph (j) of this section, B's benchmark plan premium ($440) is reduced by the portion of the premium allocable to additional benefits provided under that plan ($40). B's enrollment premiums ($370) are not reduced under this paragraph (j). B's premium assistance amount for a coverage month is $340, the lesser of $370 (B's enrollment premiums) and $340 (B's benchmark plan premium, reduced by the portion of the premium allocable to additional benefits ($400), minus B's $60 contribution amount).

* * * * *

■ **Par. 6.** Section 1.36B–6 is added to read as follows:

§ 1.36B–6 Minimum value.

(a) *In general.* An eligible employer-sponsored plan provides minimum value (MV) only if—

(1) The plan's share of the total allowed costs of benefits provided to an employee (the MV percentage) is at least 60 percent; and

(2) [Reserved]

(b) *MV standard population.* [Reserved]

(c) *MV percentage*—(1) *In general.* [Reserved]

(2) *Wellness program incentives*—(i) *In general.* Nondiscriminatory wellness program incentives offered by an eligible employer-sponsored plan that affect deductibles, copayments, or other cost-sharing are treated as earned in determining the plan's MV percentage if the incentives relate exclusively to tobacco use. Wellness program incentives that do not relate to tobacco use or that include a component unrelated to tobacco use are treated as not earned for this purpose. For purposes of this section, the term *wellness program incentive* has the same meaning as the term *reward* in § 54.9802–1(f)(1)(i) of this chapter.

(ii) *Example.* The following example illustrates the rules of this paragraph (c)(2):

Example. (i) Employer X offers an eligible employer-sponsored plan that reduces the deductible by $300 for employees who do not use tobacco products or who complete a smoking cessation course. The deductible is reduced by $200 if an employee completes cholesterol screening within the first six months of the plan year. Employee B does not use tobacco and his deductible is $3,700. Employee C uses tobacco and her deductible is $4,000.

(ii) Under paragraph (c)(2)(i) of this section, only the incentives related to tobacco use are considered in determining the plan's MV percentage. C is treated as having earned the $300 incentive for attending a smoking cessation course regardless of whether C actually attends the course. Thus, the deductible for determining the MV percentage for both Employees B and C is $3,700. The $200 incentive for completing cholesterol screening is disregarded.

(3) *Employer contributions to health savings accounts.* Employer

contributions for the current plan year to health savings accounts that are offered with an eligible employer-sponsored plan are taken into account for that plan year towards the plan's MV percentage.

(4) *Employer contributions to health reimbursement arrangements.* Amounts newly made available for the current plan year under a health reimbursement arrangement that would be integrated within the meaning of Notice 2013–54 (2013–40 IRB 287), see § 601.601(d) of this chapter, with an eligible employer-sponsored plan for an employee enrolled in the plan are taken into account for that plan year towards the plan's MV percentage if the amounts may be used to reduce only cost-sharing for covered medical expenses. A health reimbursement arrangement counts toward a plan's MV percentage only if the health reimbursement arrangement and the eligible employer-sponsored plan are offered by the same employer. Employer contributions to a health reimbursement arrangement count for a plan year towards the plan's MV percentage only to the extent the amount of the annual contribution is required under the terms of the plan or otherwise determinable within a reasonable time before the employee must decide whether to enroll in the eligible employer-sponsored plan.

(5) *Expected spending adjustments for health savings accounts and health reimbursement arrangements.* [Reserved]

(d) *Methods for determining MV.* [Reserved]

(e) *Scope of essential health benefits and adjustment for benefits not included in MV Calculator.* [Reserved]

(f) *Actuarial certification.* [Reserved]

(1) *In general.* [Reserved]

(2) *Membership in American Academy of Actuaries.* [Reserved]

(3) *Actuarial analysis.* [Reserved]

(4) *Use of MV Calculator.* [Reserved]

(g) *Effective/applicability date—in general.* (1) Except as provided in paragraph (g)(2) of this section, this section applies for taxable years ending after December 31, 2013.

(2) *Exception.* [Reserved]

■ **Par. 7.** Section 1.6011–8 is amended by revising paragraph (a) to read as follows:

§ 1.6011–8 Requirement of income tax return for taxpayers who claim the premium tax credit under section 36B.

(a) *Requirement of return.* A taxpayer for whom advance payments of the premium tax credit under section 36B are made in a taxable year must file an income tax return for that taxable year on or before the due date for the return (including extensions of time for filing).

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: December 11, 2015

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015–31866 Filed 12–16–15; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1902, 1903, 1904, 1952, 1953, 1954, 1955, and 1956

[Docket No. OSHA–2014–0009]

RIN 1218–AC76

Streamlining of Provisions on State Plans for Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; confirmation of effective date; approval of collections of information under the Paperwork Reduction Act of 1995.

SUMMARY: On August 18, 2015 OSHA published in the **Federal Register** a direct final rule that streamlined provisions on State Plans. OSHA stated in that document that it would withdraw the companion proposed rule and confirm the effective date of the final rule if the Agency received no significant adverse comments on the direct final rule or the proposal. Since OSHA received no comments on the direct final rule or the proposal, the Agency now confirms that the direct final rule became effective as a final rule on October 19, 2015. The proposed rule and the direct final rule also requested comments on the collections of information contained in State Plan regulations under the Paperwork Reduction Act of 1995. The Office of Management and Budget (OMB) approved those collections of information.

DATES: The effective date for the direct final rule that published on August 18, 2015 (80 FR49897) is confirmed as October 19, 2015.

ADDRESSES: Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Francis Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N–3700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION: Confirmation of the effective date: On August 18, 2015, OSHA published a direct final rule in the **Federal Register** amending OSHA regulations to remove the detailed descriptions of State Plan coverage, purely historical data, and other unnecessarily codified information. In addition, this document moved most of the general provisions of subpart A of part 1952 into part 1902, where the general regulations on State Plan criteria are found. It also amended several other OSHA regulations to delete references to part 1952, which will no longer apply. A companion proposed rule was also published on that date.

In the direct final rule, OSHA stated that it would publish a **Federal Register** document confirming the effective date of the direct final rule and withdraw the proposed rule if it received no significant adverse comments on the direct final rule or the proposal. OSHA received no comments on the direct final rule or the proposed rule. Accordingly, OSHA is confirming the effective date of the direct final rule and the proposed rule is withdrawn.

Approval of collections of information: The proposed rule and the direct final rule also contained a request for comments on an Information Collection Request under the Paperwork Reduction Act of 1995 (PRA), which covers all collections of information in OSHA State Plan regulations. OMB received no comments. OMB has approved the revised collections of information and is retaining OMB control number 1218–0247 for these requirements. The expiration date for the approval is April 30, 2016.

List of Subjects in 29 CFR Parts 1902, 1903, 1904, 1952, 1953, 1954, 1955, and 1956

Intergovernmental relations, Law enforcement, Occupational safety and health.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this final rule. OSHA is issuing this direct final rule under the authority specified by Sections 8(c)(1), 8(c)(2), and 8(g)(2) and 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657 (c)(1), (c)(2), and (g)(2) and 667) and Secretary of Labor's Order No. 1–2012 (76 FR 3912).

Signed at Washington, DC, on December 11, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–31878 Filed 12–17–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2015–1087]

Drawbridge Operation Regulation; Upper Mississippi River, Rock Island, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois. The deviation is necessary to allow the bridge owner time to perform preventive maintenance and critical repairs that are essential to the continued safe operation of the drawbridge, and is scheduled in the winter when there is less impact on navigation. This deviation allows the bridge to be maintained in the closed-to-navigation position for 21 days.

DATES: This deviation is effective from 8 a.m., February 8, 2016 until 5 p.m., February 28, 2016.

ADDRESSES: The docket for this deviation, [USCG–2015–1087] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Army Rock Island Arsenal requested a temporary deviation for the Rock Island Railroad and Highway Drawbridge, across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois to remain in the closed-to-navigation position for 21 days from 8 a.m., February 8, 2016 to 5 p.m., February 28, 2016, while preventive maintenance and critical repairs that are essential to the continued safe operation of the drawbridge are performed.

The Rock Island Railroad and Highway Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that the drawbridge shall open on signal.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River. The bridge cannot open in case of emergency.

Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 13 (Mile 522.5 UMR) and Lock No. 21 (Mile 324.9 UMR) from 7 a.m. January 4, 2016 until 12 p.m., March 4, 2016 will preclude any significant navigation demands for the drawspan opening. In addition, Army Corps Lock No. 14 (Mile 493.3 UMR) and Lock No. 17 (Mile 437.1 UMR) will be closed from 7 a.m. December 14, 2015 until 12 p.m. March 2, 2016.

The Rock Island Railroad and Highway Drawbridge provides a vertical clearance of 23.8 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: December 15, 2015.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2015–31856 Filed 12–17–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–1070]

Drawbridge Operation Regulation; Cheesequake Creek, Morgan, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the New Jersey Transit Rail Operations (NJTRO) Morgan railroad bridge across Cheesequake Creek, mile 0.2, at Morgan, New Jersey. This deviation is necessary to allow the bridge owner to perform structural repairs at the bridge. This deviation allows the bridge to remain closed on six consecutive weekends.

DATES: This deviation is effective from 6 a.m. on Saturday, January 9 to 7 p.m. February 28, 2016.

ADDRESSES: The docket for this deviation, [USCG–2015–1070] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 514–4336, email *joe.m.arca@uscg.mil.*

SUPPLEMENTARY INFORMATION: The NJTRO Morgan railroad bridge across Cheesequake Creek, mile 0.2, at Morgan, New Jersey, has a vertical clearance in the closed position of 3 feet at mean high water and 8 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.709(b).

The waterway is transited by seasonal recreational vessels of various sizes.

The bridge owner, New Jersey Transit Rail Operations, requested a temporary deviation from the normal operating schedule to facilitate structural repairs at the bridge.

Under this temporary deviation, the NJTRO Morgan railroad bridge shall remain in the closed position for six

consecutive weekends from 6 a.m. on Saturday to 7 p.m. on Sunday on the following dates: January 9 and 10; January 23 and 24; January 30 and 31; February 6 and 7; February 20 and 21; and February 27 and 28, 2016.

The draw shall maintain its normal operating schedule at all other times.

There are no alternate routes for vessel traffic; however, vessels that can pass under the closed draws during this closure may do so at all times. The bridge may be opened in the event of an emergency.

The Coast Guard will inform the users of the waterways through our Local Notice and Broadcast to Mariners of the change in operating schedule for the bridge so that vessel operations can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: December 15, 2015.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2015–31842 Filed 12–17–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2015–1048]

Safety Zone; Circle Line Sightseeing Fireworks, Liberty Island, Upper New York Bay, Manhattan, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone in the Captain of the Port New York Zone on the specified date and time. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zone without permission from the Captain of the Port (COTP).

DATES: The regulation for the safety zone described in 33 CFR 165.160 will be enforced on December 31, 2015 from 11:30 p.m. to 12:40 a.m. on January 1, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email Marine Science Technician First Class Daniel Vazquez, Coast Guard; telephone 718–354–4154, email *daniel.vazquez@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.160 on the specified date and time as indicated in Table 1 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

1. Circle Line Sightseeing Fireworks; Liberty Island Safety Zone; 33 CFR 165.168(a)(1).	• Launch site: A barge located in approximate position 40°41′16.5″ N., 074°02′23″ W. (NAD 1983), approximately 360 yards east of Liberty Island. This Safety Zone is a 180-yard radius from the barge. • Date: December 31, 2015–January 1, 2016. • Time: 11:30 p.m.–12:40 a.m.

Under the provisions of 33 CFR 165.160, a vessel may not enter the regulated area unless given express permission from the COTP or the designated representative. Spectator vessels may transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice of enforcement is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice of enforcement, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: December 1, 2015.

M.H. Day,

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

[FR Doc. 2015–31910 Filed 12–17–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–1030]

RIN 1625–AA87

Security Zone; Kailua Bay, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in support of a visit by very important persons (VIPs). The security zone begins on the navigable waters in Kailua Bay on the west side of a line connecting Kapoho Point and continuing at a bearing of 227° (true) as well as the nearby channel from its entrance near Kapoho Point to a point along the channel 150 yards to the south of the N. Kalaheo Avenue Road Bridge. This security zone is necessary to ensure the safety of the VIPs.

DATES: This rule is effective from 6:00 a.m. (HST) on December 18, 2015, through 10:00 p.m. (HST) on January 3, 2016.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2015–1030. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2015–1030 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Nicolas Jarboe, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 541–4359, email *Nicolas.a.jarboe@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
TFR Temporary final rule
Pub. L. Public Law
§ Section
U.S.C. United States Code
VIP Very Important Person

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553 (b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds those procedures are ''impractical, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The details of the VIPs' travel to Hawaii were not made available to the Coast Guard in sufficient time to issue a notice of proposed rulemaking. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect the VIPs; therefore, a 30-day notice period is impracticable. Delaying the effective date would be contrary to the security zone's intended objectives of protecting the VIPs, mitigating potential terroristic acts, enhancing public and maritime safety and security. Publishing a Notice of Proposed Rulemaking (NPRM) and delaying the effective date would be contrary to the public interest since the occasion would occur before a notice-and-comment rulemaking could be completed, thereby jeopardizing the safety of the VIPs. The COTP finds that this temporary security zone must be effective by December 18, 2015 to ensure the safety of the VIPs during their visit to the Kailua Bay area on the eastern coast of Oahu, Hawaii. The Coast Guard received the official request on November 1, 2015.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. From December 18, 2015 through January 3, 2016, VIPs of the United States of America plans to visit the Kailua Bay area on Oahu, Hawaii. The security zone begins on the navigable waters in Kailua Bay on the west side of a line connecting Kapoho Point and continuing at a bearing of 227° (true) as well as the nearby channel from its entrance near Kapoho Point to a point along the channel 150 yards to the south of the N. Kalaheo Avenue Road Bridge. The Captain of the Port of Honolulu (COTP) has determined that there is reasonable potential for terroristic acts associated with the VIPs visit to the Kailua Bay area, and that a security zone is necessary to ensure their safety.

IV. Discussion of Comments, Changes, and the Rule

This temporary final rule establishes a security zone from 6:00 a.m. (HST) on December 18, 2015, through 10:00 p.m. (HST) on January 03, 2016. The security zone area is located within the COTP Zone (See 33 CFR 3.70–10) and covers all U.S. navigable waters in the Kailua Bay on the west side of a line connecting Kapoho Point and continuing at a bearing of 227° (true) to 21°25′11″ N., 157°44′39″ W.; as well as the nearby channel from its entrance near Kapoho Point to a point along the channel 150 yards to the south of the N. Kalaheo Avenue Road Bridge. This zone extends from the surface of the water to the ocean floor. This zone will include the navigable waters of the channel beginning at a point 21°25′04″ N., 157°44′54″ W., then extending to 21°25′27″ N., 157°44′21″ W. (Kapoho Point) including all the waters to the west of a straight line to 21°25′11″ N., 157°44′39″ W., and the extending back to the original point 21°25′04″ N., 157°44′54″ W.

One (1) yellow buoy and two (2) shore-side markers will be placed in proximity of the security zone along the security zone boundary and one (1) orange boom will be placed at the channel boundary south of the N. Kalaheo Avenue Road Bridge as visual aids for mariners and public to approximate the zone. An illustration of the security zone will be made available on *www.regulations.gov* in docket for this rulemaking, USCG–2015–1030. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Coast Guard expects the economical impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the limited duration of the zone, the limited geographic area affected by it, and the lack of commercial vessel traffic affected by the zone. This rule has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T14–1030 to read as follows:

§ 165.T14–1030 Security Zone; Kailua Bay, Oahu, HI.

(a) *Location.* The security zone area is located within the Captain of the Port (COTP) Zone (See 33 CFR 3.70–10) and covers all U.S. navigable waters in the Kailua Bay on the west side of a line connecting Kapoho Point and continuing at a bearing of 227° (true) to 21°25′11″ N., 157°44′39″ W.; as well as the nearby channel from its entrance near Kapoho Point to a point along the channel 150 yards to the south of the N. Kalaheo Avenue Road Bridge. This zone extends from the surface of the water to the ocean floor. This zone will include the navigable waters of the channel beginning at a point 21°24′56″ N., 157°44′58″ W., then extending to 21°25′27″ N., 157°44′21″ W. (Kapoho Point) including all the waters to the west of a straight line to 21°25′11″ N., 157°44′39″ W., and extending back to the original point 21°24′56″ N., 157°44′58″ W.

(b) *Effective period.* 6:00 a.m. (HST) on December 18 2015, through 10:00 p.m. (HST) on January 3, 2016.

(c) *Regulations.* The general regulations governing security zones contained in § 165.33 of subpart D of this part apply to the security zone created by this temporary regulations.

(1) All persons are required to comply with the general regulations governing security zones found in this part.

(2) Entry into or remaining in this zone is prohibited unless authorized by the COTP.

(3) Persons desiring to transit the security zones identified in paragraph (a) of this section may contact the COTP at the Command Center telephone number (808) 842–2600 and (808) 842–2601, fax (808) 842–2642 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the zones. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by Federal, State, and local agencies.

(d) *Notice of enforcement.* The COTP will cause notice of the enforcement of the security zone described in this section to be made by verbal broadcasts and written notice to mariners and the general public.

(e) *Definitions.* As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the security zones described in paragraph (a) of this section.

Dated: November 30, 2015.

S.N. Gilreath,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu.

[FR Doc. 2015–31885 Filed 12–15–15; 4:15 pm]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0258; FRL–9940–32–Region 10]

Approval and Promulgation of Implementation Plans; Idaho: Interstate Transport of Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. On June 28, 2010, the State of Idaho made a submittal to the Environmental Protection Agency (EPA) to address these requirements. The EPA is approving the submittal as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality Standard (NAAQS) in any other state.

DATES: This final rule is effective January 19, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2015–0258. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Programs Unit, Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information

On October 30, 2015, the EPA proposed to approve Idaho's June 28, 2010 submittal as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS (80 FR 66862). An explanation of the CAA requirements, a detailed analysis of the submittal, and the EPA's reasons for approval were provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on November 30, 2015. The EPA received no comments on the proposal.

II. Final Action

The EPA is approving Idaho's June 28, 2010 submittal as meeting the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2008 ozone NAAQS.

III. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: December 8, 2015.

Dennis J. McLerran,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart N—Idaho

■ 2. In § 52.670, the table in paragraph (e) is amended by adding the entry ''Interstate Transport Requirements for the 2008 Ozone NAAQS'' at the end of the table to read as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
*	* *	*	*	* *
Interstate Transport Requirements for the 2008 Ozone NAAQS.	State-wide	6/28/2010	12/18/2015 [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(D)(i)(I).

[FR Doc. 2015–31778 Filed 12–17–15; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 80, No. 243
Friday, December 18, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 127

RIN 3245–AG75

Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business—Certification

AGENCY: U.S. Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Small Business Administration (SBA) is seeking input and comments on certification of Women-Owned Small Businesses (WOSB) and Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) in connection with the Women-Owned Small Business Federal Contract Program (WOSB Program). SBA is planning to amend its regulations to implement section 825 of the National Defense Authorization Act for Fiscal Year 2015 (2015 NDAA). Section 825 of the 2015 NDAA removed the statutory authority allowing WOSBs and EDWOSBs to self-certify. SBA intends to draft regulations to implement the statutory changes.

DATES: Comments must be received on or before February 16, 2016.

ADDRESSES: You may submit comments, identified by RIN 3245–AG75, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *For mail, paper, disk, or CD/ROM submissions:* Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8th Floor, Washington, DC 20416.
- *Hand Delivery/Courier:* Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8th Floor, Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to: Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8th Floor, Washington, DC 20416, or send an email to *brenda.fernandez@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Brenda J. Fernandez, Procurement Analyst, Office of Policy, Planning and Liaison, 409 Third Street SW., Washington, DC 20416; (202) 205–7337; *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION: The WOSB Program, set forth in section 8(m) of the Small Business Act, 15 U.S.C. 637(m), authorizes Federal contracting officers to restrict competition to eligible Women-Owned Small Businesses (WOSBs) and Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs) for Federal contracts in certain industries. Congress amended the WOSB Program with section 825 of the National Defense Authorization Act for Fiscal Year 2015, Public Law 113–291, 128 Stat. 3292 (December 19, 2014) (2015 NDAA), which included language granting contracting officers the authority to award sole source awards to WOSBs and EDWOSBs and shortening the time period for SBA to conduct a required study to determine the industries in which WOSBs are underrepresented in federal contracting. In addition, section 825 of the 2015 NDAA amended the Small Business Act to create a requirement that a firm be certified as a WOSB or EDWOSB by a Federal Agency, a State government, SBA, or a national certifying entity approved by SBA. 15 USCS 637(m)(2)(E).

On September 14, 2015, SBA published in the **Federal Register** a final rule to implement the sole source authority for WOSBs and EDWOSBs and the revised timeline for SBA to conduct a study to determine the industries in which WOSBs are underrepresented. 80 FR 55019. SBA did not implement the certification portion of section 825 of the 2015 NDAA in this final rule because its implementation is more complicated, could not be accomplished by merely incorporating the statutory language into the regulations, and would have delayed the implementation of the sole source authority unnecessarily. SBA notified the public that because it did not want to delay the implementation of the WOSB sole source authority by combining it with changes in the certification requirements, SBA decided to implement the certification requirement through a separate rulemaking. This advance notice of proposed rulemaking (ANPR) seeks to solicit public comments to assist SBA in drafting a viable proposed rule to implement a WOSB/EDWOSB certification program.

SBA seeks to better understand what the public believes is the most appropriate way to structure a WOSB/EDWOSB certification program. Although the language of section 825 of the 2015 NDAA authorizes four different types of certification programs (by a Federal Agency, a State government, SBA, or a national certifying entity approved by SBA), SBA requests comments as to whether each of the four types should be pursued, or whether one or more of the types of certification are not feasible. SBA also requests comments on whether there should be a grace period after implementation to give firms that have self-certified the time necessary to complete the certification process. If a grace period were implemented, how long should that period be? In addition, in drafting any proposed rule to implement a WOSB/EDWOSB certification process, SBA must also consider what should happen to the current WOSB repository. As such, SBA requests comments as to whether the repository should continue to be maintained after the certification program is implemented, and if so, why and in what capacity should it be used in the future.

SBA's regulations currently authorize WOSB and EDWOSB certifications by third party national certifying entities approved by SBA, by SBA where the firm is owned and controlled by one or more women and has been certified as a Participant in the 8(a) Business Development (BD) Program, and by

states that have certified firms owned and controlled by women to be Disadvantaged Business Enterprises (DBEs) for the U.S. Department of Transportation's (DOT's) DBE program. 13 CFR 127.300(d). SBA seeks comments on how those certification processes are working, how they can be improved, and how best to incorporate them into any new certification requirements.

To better understand how SBA should structure the new certification processes, this ANPR seeks comments in response to the questions below, relating to each of the four certification approaches.

Third Party Certification

As noted above, SBA regulations currently provide for certification by third party national certifying entities that have been approved by SBA. To date, SBA has approved four third party entities to certify firms as WOSBs and EDWOSBs.

1. How many third party certifiers would be needed to adequately serve the full community of WOSBs and EDWOSBs seeking certification?

2. Should SBA modify its regulations to add more information about the procedures and processes used by third party certifiers to certify firms as WOSBs and EDWOSBs for SBA's WOSB program?

3. Should SBA regulations contain information on how to become an approved third party certifier?

4. What type of notice should be required to identify third party certifiers?

5. Should cost to EDWOSB and WOSBs be part of the criteria that SBA considers when deciding whether to approve one or more additional third party certifiers? If so, what if any methodology should SBA utilize when considering cost?

6. Should SBA consider the ongoing cost of recertification when evaluating third party certifiers?

7. Should SBA determine the term period a third-party certification is valid? If so, what should be an appropriate term for certification validity?

8. Should SBA authorize a third-party limited access to an applicant's repository file for the purpose of directly uploading approved certification documents?

9. Should SBA change its current processes regarding denials by third party certifiers?

10. In the future, should SBA consider allowing third party certifiers to approve mentor-protégé agreements and joint venture agreements involving EDWOSB and WOSB participants?

Certification by States and Other Federal Agencies

The changes to the WOSB program made by section 825 of the 2015 NDAA authorize WOSB and EDWOSB certifications by other Federal agencies and State governments. SBA's current regulations authorize SBA to recognize WOSB certifications made by states that have certified firms that are owned and controlled by women to be DBEs for the DOT's DBE program. The regulations do not, however, recognize any other State certifications and do not authorize other Federal agencies to certify WOSBs and EDWOSBs.

1. Should the authority to certify WOSBs and EDWOSBs be extended to States generally? If the authority should be extended, how should SBA authorize individual States to participate as WOSB and EDWOSB certifying entities (*i.e.,* what sort of approval process should be implemented to ensure that SBA's WOSB and EDWOSB requirements are properly applied)?

2. Should SBA accept DBE certifications for women-owned firms as conclusive of WOSB ownership and control status or should SBA look further at one or more specific eligibility requirement(s)?

3. What other State entities might have sufficient expertise to make WOSB and EDWOSB certifications?

4. Should SBA consider other Federal agencies as entities that can certify WOSBs and EDWOSBs? If so, how should that occur? Should an agency be able to certify a WOSB or EDWOSB only for purposes of a specific WOSB or EDWOSB contract with that agency? Which office within those agencies should bear the responsibility for this certification authority?

5. Should there be a protest mechanism that would allow an interested party to protest the WOSB or EDWOSB status of a firm certified by a State or other Federal agency to SBA?

SBA Certification Program

The changes to the WOSB program made by section 825 of the 2015 NDAA authorize SBA to certify firms as WOSBs and EDWOSBs. SBA currently runs two certification programs. SBA certifies firms as 8(a) BD Program Participants under the 8(a) BD Program, and SBA certifies firms as HUBZone SBCs under the HUBZone Program. 13 CFR 124.201 through 124.207, and 126.300 through 226.309; *see also https://www.sba.gov/content/steps-applying-8a-program; https://www.sba.gov/content/applying-hubzone-program.* SBA's regulations currently recognize certification as an 8(a) BD Program Participant as evidence of a concern's status as a WOSB and EDWOSB, where it is clear that the firm is owned and controlled by one or more women. This is because the 8(a) BD program regulations have similar ownership and control requirements as those applicable to WOSBs and EDWOSBs under the WOSB Program. In addition, the requirements governing economic disadvantage for EDWOSBs under the WOSB Program are similar to those applicable to Participants in the 8(a) BD program. The ownership and control requirements for the HUBZone Program differ from those applicable to the WOSB Program. As such, certification as a HUBZone SBC does not qualify as certification as a WOSB or EDWOSB.

If SBA were to set up its own WOSB/EDWOSB certification program, SBA would want to ensure that it creates an efficient system that enables eligible firms to become certified in a reasonable amount of time, with a reasonable amount of effort, while also providing the necessary oversight to ensure that this Program is not used by ineligible firms. In carrying out these objectives, there are many different forms and structures that SBA could adopt. For example, SBA could adopt a framework under which only minimal documentation is collected and reviewed at the time of application (such as corporate documents and some financial records). In such a scenario, SBA could then use its authority to conduct program examinations and carry out status protests to serve an oversight role. This approach would provide for a faster application and certification process, while still maintaining oversight by providing in-depth examination and protests relating to specific contracts. On the other hand, SBA could adopt a method that includes a detailed initial review, requiring extensive document production. Such a certification process would be similar to the 8(a) BD certification program. This would be a more thorough review providing additional oversight, and would be more time-consuming for both the SBA and WOSB/EDWOSB applicants.

1. Should SBA limit its WOSB and EDWOSB certifications only to those made through the 8(a) BD program, as is currently authorized in SBA's regulations?

2. Should SBA's regulations be clarified to specify how a women-owned firm applying to the 8(a) BD program can simultaneously receive certification as a WOSB and EDWOSB?

3. Recognizing that SBA has limited resources, should SBA create a new certification program specific to WOSBs and EDWOSBs? If so, how should SBA structure such a certification program so that the limited resources do not cause the time period for certification to be overly lengthy? How should SBA handle the likelihood of a large number of firms seeking certification once the certification process is operational? Should SBA consider or attempt to establish an online WOSB/EDWOSB certification program, with dynamic feedback during the certification process?

4. What, if any, documents should SBA collect when certifying a firm as a WOSB or EDWOSB? Are the current repository document requirements unnecessary or significantly burdensome and if so, why?

5. Should SBA and third-party certifiers utilize the same processes for certifying concerns as EDWOSBs and WOSBs?

6. How long should the ED/WOSB certification process take? How would this compare with the current amount of time required for self-certification?

7. Should firms that SBA finds ineligible during the application process have the right to a request for reconsideration or an appeal of that decision? If an appeal, should it be to SBA's Office of Hearings and Appeals (OHA)? Currently, firms denied certification for the 8(a) BD program may appeal to OHA.

8. How long should a certification be valid? Currently the System for Award Management (SAM) requires users to update and verify their information annually. Should firms certified by SBA as EDWOSBs or WOSBs be required to update their certifications manually?

9. Should firms need to be recertified annually? If not annually, how long should WOSB or EDWOSB certification last? How should a firm be re-certified as a WOSB or EDWOSB once the time period for certification expires: should it have to re-apply anew, or should it be able to submit only those items to SBA for review that have changed since its initial certification? Should there be an online process that facilitates application or re-certification? If no changes have occurred, should the firm be able to submit an affidavit or declaration to that effect and be automatically re-certified?

10. If a firm was previously certified by a third-party certifier, should it be able to apply to SBA for certification (or re-certification), or should it be permitted to apply only to the entity that originally certified it?

The SBA welcomes comments on the above questions and any other certification aspect of the WOSB Program. The SBA also welcomes any available data to help substantiate recommendations made in response to the foregoing questions, or other potential policy options. SBA reminds commenters that all submissions by commenters are available to the public upon request.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2015–31806 Filed 12–17–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3772; Airspace Docket No. 15–ANM–21]

Proposed Amendment of Class E Airspace; Butte, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E surface area airspace and Class E airspace extending upward from 700 feet above the surface at Bert Mooney Airport, Butte, MT. After a review, the FAA found it necessary to amend the standard instrument approach procedures for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 1, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2015–3772; Airspace Docket No. 15–ANM–21, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy 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 FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4563.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to

acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–3772; Airspace Docket No. 15–ANM–21.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface area airspace, Class E airspace extending upward from 700 feet above the surface at Bert Mooney Airport, Butte, MT. After a review of the airspace, the FAA found modification necessary for the safety and management of standard instrument approach procedures for IFR operations at the airport. Class E surface area airspace would be increased upward from the surface within a 4.3-mile radius of Bert Mooney Airport, with a segment extending to 11.5 miles to the northwest of the airport. Class E airspace extending upward from 700 feet above the surface would be modified to within a 5.2-mile radius of Bert Mooney Airport, with a segment extending from the 5.2-mile radius to 6 miles to the southeast, 20.7 miles to the north, and 27.5 miles to the northwest of the airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9Z, dated August 6, 2015 and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM MT E2 Butte, MT [Modified]

Bert Mooney Airport, MT
(Lat. 45°57′17″ N., long. 112°29′51″ W.)

That airspace extending upward from the surface within a 4.3-mile radius of the Bert Mooney Airport, and within 4.3 miles south of and parallel to the 309° bearing of the airport extending from the 4.3-mile radius to the 11.5 miles northwest, thence clockwise along the 11.5-mile radius to 2.5 miles east of and parallel to the 347° bearing from the airport extending from the 4.3-mile radius to 11.5 miles north of the airport.

Paragraph 6005: Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANM MT E5 Butte, MT [Modified]

Bert Mooney Airport, MT
(Lat. 45°57′17″ N., long. 112°29′51″ W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 46°17′24″ N, long. 112°44′15″ W; to lat. 46°18′25″ N, long. 112°30′26″ W; to lat. 45°55′41″ N, long. 112°20′52″ W; to lat. 45°50′32″ N, long. 112°26′02″ W; to lat. 45°57′11″ N, long. 112°47′54″ W; to lat. 46°11′45″ N, long. 113°04′28″ W; thence to point of beginning; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°35′00″ N, long. 113°05′00″ W; to lat. 46°37′00″ N, long. 113°05′00″ W; to lat. 46°37′00″ N, long. 112°26′00″ W; to lat. 46°16′00″ N, long. 112°00′00″ W; to lat. 45°35′00″ N, long. 112°00′00″ W; thence to point of beginning.

Issued in Seattle, Washington, on December 7, 2015.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2015–31646 Filed 12–17–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4074; Airspace Docket No. 15–AWP–16]

Proposed Amendment of Class E Airspace, Truckee, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Truckee-Tahoe Airport, Truckee, CA. The FAA found modification of the airspace necessary to ensure the minimum airspace necessary for Instrument Flight Rules (IFR) operations, and to remove references to closed runways from the legal description.

DATES: Comments must be received on or before February 1, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2015–4074; Airspace Docket No. 15–AWP–16, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy 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 FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–4074/Airspace Docket No. 15–AWP–16.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Truckee-Tahoe Airport, Truckee, CA. The FAA identified that Homewood Seaplane Base, a closed runway, was contained in the current Truckee-Tahoe airport legal description. A review of the Truckee-Tahoe airspace was completed eliminating the Homewood Seaplane Base from the legal description and removing airspace no longer required for Instrument Flight Rules (IFR) operations at the airport. The Class E airspace area would be modified to within a 4.2-mile radius of the Truckee-Tahoe Airport, with segments extending from the 4.2-mile radius to 19 miles north of the airport, and 16.5 miles northwest of the airport.

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.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

AWP CA E5 Truckee, CA [Modified]

Truckee-Tahoe Airport, CA
(Lat. 39°19′12″ N., Long. 120°08′22″ W.)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the Truckee-Tahoe Airport, and within 2 miles each side of the 15° bearing from the airport extending from the 4.2-mile radius to 19 miles north of the airport, and within 2 miles each side of the 328° bearing from the airport extending from the 4.2-mile radius to 16.5 miles northwest of the airport.

Issued in Seattle, Washington, on December 10, 2015.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2015–31644 Filed 12–17–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 634

RIN 0702–AA66
Docket No. USA–2014–0005]

Motor Vehicle Traffic Supervision

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army proposes to revise its regulation concerning military traffic supervision on Department of Defense installations worldwide.

DATES: Consideration will be given to all comments received by: February 16, 2016.

ADDRESSES: You may submit comments, identified by 32 CFR part 634, Docket No. USA–2014–0005 and or RIN 0702–AA66, 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 or Regulatory Information Number (RIN) 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: Mr. John Hargitt, (703) 424–3309.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

I. Purpose of the Regulatory Action

a. The publication of this proposed rule announces administrative revision of a current Army regulation covering motor vehicle traffic supervision. It outlines policy on vehicle registration; implements the 0.08 blood alcohol content as the standard for adverse administrative actions; permits involuntary extraction of blood under revised Military Rules of Evidence in cases where intoxicated driving is suspected; provides policy on towing, storing, and impounding vehicles; adopts the National Highway Traffic Safety Administration technical standards for breathalyzer equipment; establishes traffic points for seat belt and child restraint device violations; and requires that new safety requirements be included in the installation traffic code. It implements Department of Defense Directive 5525.04, ''Enforcement of the State Traffic Laws on DoD Installations'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/552504p.pdf*), and Department of Defense Instruction 6055.04, ''DoD Traffic Safety Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/605504p.pdf*). It also implements portions of Department of Defense Instruction 7730.47, ''Defense Incident-Based Reporting System (DIBRS)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/773047p.pdf*), that apply to dispositions. This regulation was most recently published in the **Federal Register** on April 12, 2005 (70 FR 18969).

b. The legal authority for this regulatory action is: 70 FR 18969, 70 FR 18982, 10 U.S.C. 2575, 18 U.S.C. 13.

II. Summary of the Major Provisions of the Regulatory Action in Question

The major provisions of this regulatory action include: Driving privileges, suspensions, revocations, vehicle registration, traffic supervision and offense reporting, accident investigation and reporting, release of information, processing drunk drivers, and impounding privately owned vehicles.

III. Cost and Benefits

This proposed rule will not have a monetary effect upon the public. This proposed rule facilitates information

sharing between authorized law enforcement agencies to enhance protection of personnel and resources critical to DoD mission assurance. Costs of law enforcement, personnel, reporting systems and records management are offset through the efficient collection of data to support traffic enforcement on military installations and enhance safety through intelligence led policing efforts. These efforts allow the efficient deployment of police and security forces proactively to deter, prevent and mitigate losses due to criminal behavior and civil violations.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the proposed rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act doesn't apply. There is no additional burden for collection of information from the public or the addition of additional government forms associated with this rulemaking. Information collected to support this proposed rule is that information normally collected in the performance of law and order and traffic enforcement operations across the United States. Information collected is used to determine wants and warrants issued for criminal offenders, persons driving under suspended or revoked licenses, and traffic point assessment. Failure to provide driver's license or vehicle registration information may result in detention and fines. Procedures and business processes outlined in this proposed rule provide uniform policy concerning military traffic supervision practices to improve productivity, efficiency, and effectiveness of law enforcement traffic supervision, reporting efforts including the reduction of information collection burdens on the public and the improvement of law enforcement service delivery while maintaining privacy, confidentiality and information systems protections.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget (OMB).

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045. This proposed rule does not apply since it does not implement or require actions impacting environmental health or safety risks to children.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this proposed rule does not apply because it will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

Thomas S. Blair,

Chief, Law Enforcement Policy Branch, Office of the Provost Marshal General.

List of Subjects in 32 CFR Part 634

Crime, Distracted driving, Driving under the influence of drugs or alcohol, Investigations, Law, Law enforcement, Law enforcement officers, Military law, Penalties, Personal safety and protection equipment, Text messaging, Traffic, Use of electronic devices.

For reasons stated in the preamble the Department of the Army proposes to revise 32 CFR part 634 to read as follows:

PART 634—MOTOR VEHICLE TRAFFIC SUPERVISION

Subpart A—Introduction

Sec.

Subpart B—Driving Privileges

Subpart C—Motor Vehicle Registration

Subpart D—Traffic Supervision

Authority: 10 U.S.C. 30112(g); 5 U.S.C. 2951; Pub. L. 89–564; 89–670; 91–605; and 93–87.

Subpart A—Introduction

§ 634.1 Purpose.

(a) This subpart establishes policy, responsibilities, and procedures for motor vehicle traffic supervision on military installations in the continental United States (CONUS) and overseas areas. This includes but is not limited to the following:

(1) Granting, suspending, or revoking the privilege to operate a privately owned vehicle (POV).

(2) Registration of POVs.

(3) Administration of vehicle registration and driver performance records.

(4) Driver improvement programs.

(5) Police traffic supervision.

(6) Off-installation traffic activities.

(b) Commanders in overseas areas are authorized to modify these policies and procedures in the following instances:

(1) When dictated by host nation relationships, treaties, and agreements.

(2) When traffic operations under military supervision necessitate measures to safeguard and protect the morale, discipline, and good order in the Services.

§ 634.2 References.

Required and related publications along with prescribed and referenced forms are listed in Appendix A of AR 190–5.

§ 634.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this subpart are explained in the Glossary of AR 190–5. It is available on the internet at: *www.usapa.army.mil.*

§ 634.4 Responsibilities.

(a) *Departmental.* The Provost Marshal General, Headquarters, Department of the Army (HQDA); Director, Naval Criminal Investigative Service, U.S. Navy (USN); Headquarters, Air Force Security Forces Center; Headquarters, U.S. Marine Corps (USMC); Staff Director, Command Security Office, Headquarters, Defense Logistics Agency (DLA), and Chief, National Guard Bureau will—

(1) Exercise staff supervision over programs for motor vehicle traffic supervision.

(2) Develop standard policies and procedures that include establishing an automated records program on traffic supervision.

(3) Maintain liaison with interested staff agencies and other military departments on traffic supervision.

(4) Maintain liaison with departmental safety personnel on traffic safety and accident reporting systems.

(5) Coordinate with national, regional, and state traffic officials and agencies, and actively participate in conferences and workshops sponsored by the Government or private groups at the national level.

(6) Help organize and monitor police traffic supervision training.

(7) Participate in the national effort to reduce intoxicated driving.

(b) *All major commanders.* Major commanders of the Army, Navy, Air Force, Marine Corps, and DLA will—

(1) Manage traffic supervision in their commands.

(2) Cooperate with the support programs of state and regional highway traffic safety organizations.

(3) Coordinate regional traffic supervision activities with other major military commanders in assigned geographic areas of responsibility.

(4) Monitor agreements between installations and host state authorities for reciprocal reporting of suspension and revocation of driving privileges.

(5) Participate in state and host nation efforts to reduce intoxicated driving.

(6) Establish awards and recognition programs to recognize successful installation efforts to eliminate intoxicated driving. Ensure that criteria for these awards are positive in nature and include more than just apprehensions for intoxicated driving.

(7) Modify policies and procedures when required by host nation treaties or agreements.

(c) *Major Army commanders.* Major Army commanders will ensure subordinate installations implement all provisions of this part.

(d) *Commanding General, U.S. Army Training and Doctrine Command (CG, TRADOC).* The CG, TRADOC will ensure that technical training for functional users is incorporated into service school instructional programs.

(e) *Installation or activity commander, Director of Military Support and State Adjutant General.* The installation or activity commander (for the Navy, the term installation shall refer to either the regional commander or installation commanding officer, whoever has ownership of the traffic program) will—

(1) Establish an effective traffic supervision program.

(2) Cooperate with civilian police agencies and other local, state, or federal government agencies concerned with traffic supervision.

(3) Ensure that traffic supervision is properly integrated in the overall installation traffic safety program.

(4) Actively participate in Alcohol Safety Action Projects (ASAP) in neighboring communities.

(5) Ensure that active duty Army law enforcement personnel follow the provisions of AR 190–45 in reporting all criminal violations and utilize the Army Law Enforcement Reporting and Tracking System (ALERTS) to support reporting requirements and procedures. Air Force personnel engaged in law enforcement and adjudication activities will follow the provisions of AFI 31–203 in reporting all criminal and traffic violations, and utilize the Security Forces Management Information Systems (SFMIS) to support reporting requirements and procedures.

(6) Implement the terms of this part in accordance with the provisions of the Federal Service Labor-Management Relations Statute, 5 U.S.C. chapter 71 and title 5 Code of Federal Regulations (CFR) parts 7101 through 7905.

(7) Revoke driving privileges in accordance with this part.

(f) *Installation law enforcement officer.* The installation law enforcement officer will—

(1) Exercise overall staff responsibility for directing, regulating, and controlling

traffic, and enforcing laws and regulations pertaining to traffic control.

(2) Assist traffic engineering functions at installations by participating in traffic control studies designed to obtain information on traffic problems and usage patterns.

(g) *Safety officer.* Safety officers will participate in and develop traffic accident prevention initiatives in support of the installation traffic safety program.

(h) *Facility engineer (public works officer at Navy installations).* The facility engineer, engineer officer or civil engineer at Air Force installations, in close coordination with the law enforcement officer, will:

(1) Perform that phase of engineering concerned with the planning, design, construction, and maintenance of streets, highways, and abutting lands.

(2) Select, determine appropriate design, procure, construct, install, and maintain permanent traffic and parking control devices in coordination with the law enforcement officer and installation safety officer.

(3) Ensure that traffic signs, signals, and pavement markings conform to the standards in the current Manual on Uniform Traffic Control Devices for Streets and Highways.

(4) Ensure that planning, design, construction, and maintenance of streets and highways conform to the Highway Safety Manual (HSM) as implemented by the Army.

(i) *Traffic engineer.* The traffic engineer, in close coordination with the law enforcement officer, will:

(1) Conduct formal traffic engineering studies.

(2) Apply traffic engineering measures, including traffic control devices, to reduce the number and severity of traffic accidents. (If there is no installation traffic engineer, installation commanders may request these services through channels from the Commander, Military Surface Deployment and Distribution Command, 1 Soldier Way, Scott AFB, IL 62225).

(j) *Army Alcohol and Drug Control Officer (ADCO).* The ADCO will provide treatment and education services to personnel with alcohol or drug abuse problems.

(k) *Navy Substance Abuse Rehabilitation Program (SARP) Directors.* These directors will—

(1) Supervise the alcohol and/or drug rehabilitation services to personnel with alcohol or drug abuse problems.

(2) Provide remedial and/or motivational education for all persons identified as alcohol or drug abusers who are evaluated as not dependent on alcohol or drugs and who have been referred to level one rehabilitation by their commands.

(l) *Marine Corps Substance Abuse Program Officer.* This officer will provide alcohol and/or drug education, treatment, and rehabilitation services to personnel with alcohol/drug abuse problems.

(m) *DLA Employee Assistance Program Officer.* This officer will provide alcohol/drug counseling and referral services to identified personnel with alcohol and/or drug abuse problems in accordance with procedures prescribed by the Labor Relations Officer, Office of Human Resource, HQ DLA.

(n) *Alcohol/Drug Abuse Prevention Treatment (ADAPT) program.* Air Force Commanders will refer personnel identified with alcohol and/or drug abuse problems to this program in accordance with established procedures.

§ 634.5 Program objectives.

(a) The objectives of motor vehicle traffic supervision are to assure—

(1) Safe and efficient movement of personnel and vehicles.

(2) Reduction of traffic deaths, injuries, and property damage from traffic accidents. Most traffic accidents can be prevented. Investigation of motor vehicle accidents should examine all factors, operator status, vehicle condition, and supervisory control measures involved.

(3) Integration of installation safety, engineering, legal, medical, and law enforcement resources into the installation traffic planning process.

(4) Removal of intoxicated drivers from installation roadways.

(b) [Reserved]

Subpart B—Driving Privileges

§ 634.6 Requirements for driving privileges.

(a) Driving a Government vehicle or POV on military installations is a privilege granted by the installation commander. Persons who accept the privilege must—

(1) Be lawfully licensed to operate motor vehicles in appropriate classifications and not be under suspension or revocation in any state or host country.

(2) Comply with laws and regulations governing motor vehicle operations on any U.S. military installation.

(3) Comply with installation registration requirements in § 634.19 of this section. Vehicle registration may be required on all Army installations through use of the Vehicle Registration System (VRS). Vehicle registration is required on all Air Force and DLA installations and on National Guard installations as directed by the Chief, National Guard Bureau.

(4) Possess, while operating a motor vehicle and produce on request by law enforcement personnel, the following:

(i) Proof of vehicle ownership or state registration if required by the issuing state or host nation.

(ii) A valid state, host nation, overseas command, or international driver's license and/or OF 346 (U.S. Government Motor Vehicle Operator's Identification Card), as applicable to the class vehicle to be operated, supported by a DD Form 2 (Armed Forces of the United States Geneva Convention Identification Card), U.S. Uniformed Services Identification Card, Common Access Card (CAC) or other appropriate identification for non-Department of Defense (DOD) civilians.

(iii) A valid record of motor vehicle safety inspection, as required by the state or host nation and valid proof of insurance if required by the state or locality.

(iv) Any regulatory permits, or other pertinent documents relative to shipping and transportation of special cargo.

(v) When appropriate, documents that establish identification and status of cargo or occupants.

(vi) *Proof of valid insurance.* Proof of insurance consists of an insurance card, or other documents issued by the insurance company, that has a policy effective date and an expiration date.

(b) Operators of Government motor vehicles must have proof of authorization to operate the vehicle.

§ 634.7 Stopping and inspecting personnel or vehicles.

(a) Government vehicles may be stopped by law enforcement personnel on military installations based on the installation commander's policy.

(1) Government vehicles may be stopped on or off installations as determined by host nation agreement and command policy in overseas areas.

(2) Stops and inspections of vehicles at installation gates or entry points and in restricted areas will be conducted according to command policy.

(b) Stops and inspections of POVs within the military installation, other than at restricted areas or at an installation gate, are authorized only when there is a reasonable suspicion of criminal activity, or a violation of a traffic regulation, or the installation commander's policy. Marine Corps users are guided by publication of Marine Corps order and Military Rules of Evidence 311–316 and local command regulations. DLA users are

guided by DLA One Book Process Chapter, Search and Seizure.

(c) At the time of stop, the driver and occupants may be required to display all pertinent documents, including but not limited to:

(1) DD Form 2 (Active, Reserve, Retired, etc.)

(2) Documents that establish the identity and status of civilians; for example, Common Access Card (CAC), DD Form 1173 (Uniformed Services Identification and Privilege Card), DA Form 1602 (Civilian Identification), AF Form 354 (Civilian Identification Card), DD Form 2 (Armed Forces of the United States Identification Card), post pass, national identity card, passport or other identification.

(3) Proper POV registration documents.

(4) Host nation vehicle registration documents, if applicable.

(5) Authorization to operate a Government vehicle, if applicable.

(6) Drivers license or OF 346 valid for the particular vehicle and area of operation.

(7) Proof of insurance.

§ 634.8 Implied consent.

(a) *Implied consent to blood, breath, or urine tests.* Persons who drive or operate motor vehicles (including cars, motorcycles, mopeds, buses, trucks, or off-road vehicles [tractors, forklifts, cranes, backhoes, bulldozers, golf carts and all terrain vehicles]) or watercraft on the installation shall be deemed to have given their consent to evidential tests for alcohol or other drug content of their blood, breath, or urine when lawfully stopped, apprehended, or cited for any offense allegedly committed while driving or in physical control of a motor vehicle or watercraft on military installations to determine the influence of intoxicants.

(b) *Implied consent to impoundment.* Any person granted the privilege to operate or register a motor vehicle on a military installation shall be deemed to have given his or her consent for the removal and temporary impoundment of the POV when it is parked illegally, or for unreasonable periods, as determined by the installation commander or applicable authority, interfering with military operations, creating a safety hazard, disabled by accident, left unattended in a restricted or controlled area, or abandoned. Such persons further agree to reimburse the United States for the cost of towing and storage should their motor vehicle be removed or impounded. Existence of these conditions will be determined by the installation commander or designee.

(c) Any person who operates, registers, or is in control of a motor vehicle on a military installation involved in a motor vehicle or criminal infraction shall be informed that notice of the violation of law or regulation will be forwarded to the Department of Motor Vehicles (DMV) of the host state and/or home of record for the individual, and to the NHTSA's National Driver Register, when applicable.

§ 634.9 Suspension or revocation of driving or privately owned vehicle registration privileges.

The installation commander or designee may for cause, or any lawful reason, administratively suspend or revoke driving privileges on the installation. The suspension or revocation of installation driving privileges or POV registrations, for lawful reasons unrelated to traffic violations or safe vehicle operation, is not limited or restricted by this part.

(a) *Suspension.* (1) Driving privileges are usually suspended when other measures fail to improve a driver's performance. Measures should include counseling, remedial driving training, and rehabilitation programs if violator is entitled to the programs. Driving privileges may also be suspended for up to six months if a driver continually violates installation parking regulations. The commander will determine standards for suspension based on frequency of parking violations and publish those standards. Aboard Navy installations, any vehicle parked in a fire lane will be towed at the owner's expense. Any vehicle parked without authorization in an area restricted due to force protection measures may subject the driver to immediate suspension by the installation commanding officer. Vehicle will be towed at the owner's and/or operator's expense.

(2) The installation commander has discretionary power to withdraw the authorization of active duty military personnel, DOD civilian employees, and non-appropriated funds (NAF) employees, contractors and subcontractors to operate Government vehicles.

(3) Immediate suspension of installation or overseas command POV driving privileges pending resolution of an intoxicated driving incident is authorized for active duty military personnel, family members, retired members of the military services, DOD civilian personnel, and others with installation or overseas command driving privileges, regardless of the geographic location of the intoxicated driving incident. Suspension is authorized for non-DOD affiliated civilians only with respect to incidents occurring on the installation or in areas subject to military traffic supervision. After a review of available information as specified in § 634.11, installation driving privileges will be immediately suspended pending resolution of the intoxicated driving accident in the following circumstances:

(i) Refusal to take or complete a lawfully requested chemical test to determine contents of blood for alcohol or other drugs.

(ii) Operating a motor vehicle with a blood alcohol content (BAC) of 0.08 percent by volume (0.08 grams per 100 milliliters) or higher or in violation of the law of the jurisdiction that is being assimilated on the military installation.

(iii) Operating a motor vehicle with a BAC of 0.05 percent by volume but less than 0.08 percent blood alcohol by volume in violation of the law of the jurisdiction in which the vehicle is being operated if the jurisdiction imposes a suspension solely on the basis of the BAC level (as measured in grams per 100 milliliters).

(iv) On an arrest report or other official documentation of the circumstances of an apprehension for intoxicated driving.

(b) *Revocation.* (1) The revocation of installation or overseas command POV driving privileges is a severe administrative measure to be exercised for serious moving violations or when other available corrective actions fail to produce the desired driver improvement. Revocation of the driving privilege will be for a specified period, but never less than six months, applies at all military installations, and remains in effect upon reassignment.

(2) Driving privileges are subject to revocation when an individual fails to comply with any of the conditions requisite to the granting privilege (see § 634.6). Revocation of installation driving and registration privileges is authorized for military personnel, family members, civilian employees of DOD, contractors, and other individuals with installation driving privileges. For civilian guests, revocation is authorized only with respect to incidents occurring on the installation or in the areas subject to military traffic supervision.

(3) Driving privileges will be revoked for a mandatory period of not less than one year in the following circumstances:

(i) The installation commander or designee has determined that the person lawfully apprehended for driving under the influence refused to submit to or complete a test to measure the alcohol content in the blood, or detect the

presence of any other drug, as required by the law of the jurisdiction, or installation traffic code, or by Service directive.

(ii) A conviction, non-judicial punishment, or a military or civilian administrative action resulting in the suspension or revocation of driver's license for intoxicated driving. Appropriate official documentation of such conviction is required as the basis for revocation.

(4) When temporary suspensions under paragraph (a)(3) of this section are followed by revocations, the period of revocation is computed beginning from the date the original suspension was imposed, exclusive of any period during which full driving privileges may have been restored pending resolution of charges. (Example: Privileges were initially suspended on January 1, 2000 for a charge of intoxicated driving with a BAC of 0.14 percent. A hearing was held, extreme family hardship was substantiated, and privileges were restored on February 1 pending resolution of the charge. On March 1, 2000, the driver was convicted for intoxicated driving. The mandatory 1-year revocation period will consist of January 2000 plus March 2000 through January 2001, for a total of 12 months with no installation driving privileges).

(c) Army provost marshals will use the automated VRS to develop and maintain records showing that an individual's driving privileges have been revoked.

§ 634.10 Remedial driver training programs.

(a) Navy activities will comply with OPNAVINST 5100.12 Series, and Marine Corps activities with current edition of MCO 5100.19C for establishment of remedial training programs.

(b) Installation commanders may establish a remedial driver-training program to instruct and educate personnel requiring additional training. Personnel may be referred to a remedial program on the basis of their individual driving history or incidents requiring additional training. The curriculum should provide instruction to improve driving performance and compliance with traffic laws.

(c) Installation/unit commanders will direct attendance at an Army Traffic Safety Training Program remedial driving class for any person who has acquired more than five but less than twelve traffic points within a six-month period. Commanders can refer to sections below for detailed determination of points per infraction. Personnel may be referred to a remedial program on the basis of their individual driving history or incidents requiring additional training.

(d) Installation commanders may schedule periodic courses, or if not practical, arrange for participation in courses conducted by local civil authorities.

(e) Active Duty Soldiers and Department of the Army (DA) Civilians required to drive Government owned vehicles may attend remedial courses on the installation, or similar courses off the installation, which incur no expense to the Government. Contractor employees and family members of military personnel will attend similar remedial courses off the installation, which incur no expense to the Government.

(f) Commanders will require individuals, inside or outside normal duty hours, to attend the courses or lose installation driving privileges.

(g) State approved driver improvement programs may be used to fulfill the requirement where an Army standardized course is not provided.

§ 634.11 Administrative due process for suspensions and revocations.

(a) Individual Services will promulgate separate regulations establishing administrative due process procedures for suspension or revocation of driving privileges. The procedures in paragraphs (b) and (c) of this section apply to actions taken by Army commanders with respect to Army military personnel and family members and to civilian personnel operating motor vehicles on Army installations. For Marine Corps users, the provisions of this section apply. For Air Force users, a preliminary suspension for intoxicated driving remains in effect until the installation commander makes a final decision. Requested hearings must take place within a reasonable period, which is determined by the installation commander.

(b) For offenses other than intoxicated driving, suspension or revocation of the installation driving privilege will not become effective until the installation commander or designee notifies the affected person and offers that person an administrative hearing. Suspension or revocation will take place 14 calendar days after written notice is received unless the affected person makes an application for a hearing within this period. Such application will stay the pending suspension or revocation for a period of 14 calendar days.

(1) If, due to action by the government, a hearing is not held within 14 calendar days, the suspension will not take place until such time as the person is granted a hearing and is notified of the action of the installation commander or designee. However, if the affected person requests that the hearing be continued to a date beyond the 14-day period, the suspension or revocation will become effective immediately on receipt of notice that the request for continuance has been granted, and remain in force pending a hearing at a scheduled hearing date.

(2) If it is determined as a result of a hearing to suspend or revoke the affected person's driving privilege, the suspension or revocation will become effective when the person receives the written notification of such action. In the event that written notification cannot be verified, either through a return receipt for mail or delivery through command channels, the hearing authority will determine the effective date on a case-by-case basis.

(3) If the revocation or suspension is imposed after such hearing, the person whose driving privilege has been suspended or revoked will have the right to appeal or request reconsideration. Such requests must be forwarded through command channels to the installation commander within 14 calendar days from the date the individual is notified of the suspension or revocation resulting from the administrative hearing. The suspension or revocation will remain in effect pending a final ruling on the request. Requests for restricted privileges will be considered per § 634.15.

(4) If driving privileges are temporarily restored (*i.e.* for family hardship) pending resolution of charges, the period of revocation (after final authority determination) will still total the mandatory 12 months. The final date of the revocation will be adjusted to account for the period when the violator's privileges were temporarily restored, as this period does not count towards the revocation time.

(c) For drunk driving or driving under the influence offenses, reliable evidence readily available will be presented promptly to an individual designated by the installation commander for review and authorization for immediate suspension of installation driving privileges.

(1) The reviewer should be any officer to include GS–11 and above, designated in writing by the installation or garrison commander whose primary duties are not in the field of law enforcement.

(2) Reliable evidence includes witness statements, military or civilian police report of apprehension, chemical test results if completed, refusal to consent to complete chemical testing, videotapes, statements by the

apprehended individual, field sobriety or preliminary breath tests results, and other pertinent evidence. Immediate suspension should not be based solely on published lists of arrested persons, statements by parties not witnessing the apprehension, or telephone conversations or other information not supported by documented and reliable evidence.

(3) Reviews normally will be accomplished within the first normal duty day following final assembly of evidence.

(4) Installation commanders may authorize the installation law enforcement officer to conduct reviews and authorize suspensions in cases where the designated reviewer is not reasonably available and, in the judgment of the installation law enforcement officer, such immediate action is warranted. Air Force Security Forces personnel act in an advisory capacity to installation commanders. Review by the designated officer will follow as soon as practical in such cases. When a suspension notice is based on the law enforcement officer's review, there is no requirement for confirmation notice following subsequent review by the designated officer.

(5) For active duty military personnel, final written notice of suspension for intoxicated driving will be provided to the individual's chain of command for immediate presentation to the individual. Air Force Security Forces provide a copy of the temporary suspension to the individual at the time of the incident or may provide a copy of the final determination at the time of the incident, as pre-determined by the final action authority.

(6) For civilian personnel, written notice of suspension for intoxicated driving will normally be provided without delay via certified mail. Air Force Security Forces personnel provide a copy of the temporary suspension to the individual at the time of the incident or may provide a copy of the final determination at the time of the incident, as pre-determined by the final action authority. If the person is employed on the installation, such notice will be forwarded through the military or civilian supervisor. When the notice of suspension is forwarded through the supervisor, the person whose privileges are suspended will be required to provide written acknowledgment of receipt of the suspension notice.

(7) Notices of suspension for intoxicated driving will include the following:

(i) The fact that the suspension can be made a revocation under § 634.9(b).

(ii) The right to request, in writing, a hearing before the installation commander or designee to determine if post driving privileges will be restored pending resolution of the charge; and that such request must be made within 14 calendar days of the final notice of suspension.

(iii) The right of military personnel to be represented by counsel at his or her own expense and to present evidence and witnesses at his or her own expense. Installation commanders will determine the availability of any local active duty representatives requested.

(iv) The right of Department of Defense civilian employees to have a personal representative present at the administrative hearing in accordance with applicable laws and regulations.

(v) Written acknowledgment of receipt to be signed by the individual whose privileges are to be suspended or revoked.

(8) If a hearing is requested, it must take place within 14 calendar days of receipt of the request. The suspension for intoxicated driving will remain in effect until a decision has been made by the installation commander or designee, but will not exceed 14 calendar days after the hearing while awaiting the decision. If no decision has been made by that time, full driving privileges will be restored until such time as the accused is notified of a decision to continue the suspension.

(9) Hearing on suspension actions under § 634.9(a) for drunk or impaired driving pending resolution of charges will cover only the following pertinent issues of whether—

(i) The law enforcement official had reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle under the influence of alcohol or other drugs.

(ii) The person was lawfully cited or apprehended for a driving under the influence offense.

(iii) The person was lawfully requested to submit his or her blood, breath, or urine in order to determine the content of alcohol or other drugs, and was informed of the implied consent policy (consequences of refusal to take or complete the test).

(iv) The person refused to submit to the test for alcohol or other drug content of blood, breath, or urine; failed to complete the test; submitted to the test and the result was 0.08 or higher blood alcohol content, or between 0.05 and 0.08 in violation of the law of the jurisdiction in which the vehicle in being operated if the jurisdiction imposes a suspension solely on the basis of the BAC level; or showed results indicating the presence of other drugs for an on-post apprehension or in violation of State laws for an off-post apprehension.

(v) The testing methods were valid and reliable and the results accurately evaluated.

(10) For revocation actions under § 634.9(b)(3) for intoxicated driving, the revocation is mandatory on conviction or other findings that confirm the charge. (Pleas of ''nolo contendere'' are considered equivalent to guilty pleas).

(i) Revocations are effective as of the date of conviction or other findings that confirm the charges. Test refusal revocations will be in addition to any other revocation incurred during a hearing. Hearing authority will determine if revocations for multiple offenses will run consecutively or concurrently taking into consideration if offenses occurred on same occasion or different times, dates. The exception is that test refusal will be one year automatic revocation in addition to any other suspension.

(ii) The notice that revocation is automatic may be placed in the suspension letter. If it does not appear in the suspension letter, a separate letter must be sent and revocation is not effective until receipt of the written notice.

(iii) Revocations cancel any full or restricted driving privileges that may have been restored during suspension and the resolution of the charges. Requests for restoration of full driving privileges are not authorized.

(11) The Army Vehicle Registration System will be utilized to maintain infractions by individuals on Army installations.

§ 634.12 Army administrative actions against intoxicated drivers.

Army commanders will take appropriate action against intoxicated drivers. These actions may include the following:

(a) A written reprimand, administrative in nature, will be issued to active duty Soldiers in the cases described in this paragraph. Any general officer, and any officer frocked to the grade of brigadier general, may issue this reprimand. Filing of the reprimand will be in accordance with the provisions of AR 600–37.

(1) Conviction by courts-martial or civilian court or imposition of non-judicial punishment for an offense of drunk or impaired driving either on or off the installation.

(2) Refusal to take or failure to complete a lawfully requested test to measure alcohol or drug content of the

blood, breath, or urine, either on or off the installation, when there is reasonable belief of driving under the influence of alcohol or drugs.

(3) Driving or being in physical control of a motor vehicle or watercraft (as described above) on post when the blood alcohol content is 0.08 percent or higher, irrespective of other charges, or either on or off post when the blood alcohol content is in violation of the law of the State involved.

(4) Driving, or being in physical control of a motor vehicle, either on or off the installation, when lawfully conducted chemical tests reflect the presence of illegal drugs.

(b) Review by the commander of the service records of active duty soldiers apprehended for offenses described in paragraph (a) of this section to determine if the following action(s) should be taken—

(1) Administrative reduction per AR 600–8–19; or

(2) Bar to reenlistment per AR 601–280; or

(3) Administrative separation per AR 635–200.

(c) Federal civilian employees may be subject to administrative actions in accordance with 5 CFR part 752.

§ 634.13 Alcohol and drug abuse programs.

(a) Commanders will refer military personnel suspected of drug or alcohol abuse for evaluation in the following circumstances:

(1) Behavior indicative of alcohol or drug abuse.

(2) Continued inability to drive a motor vehicle safely because of alcohol or drug abuse.

(b) The commander will ensure military personnel are referred to the installation alcohol and drug abuse program or other comparable facilities when they are convicted of, or receive an official administrative action for, any offense involving driving under the influence. A first offender may be referred to treatment if evidence of substance abuse exists in addition to the offense of intoxicated driving. The provisions of this paragraph do not limit the commander's prerogatives concerning other actions that may be taken against an offender under separate Service/Agency polices (Army, see AR 600–85. Marine Corps, see MCO P1700.24B).

(c) Active duty Army personnel apprehended for drunk driving, on or off the installation, will be referred to the local Army Substance Abuse Program (ASAP) for evaluation within 14 calendar days to determine if the person is dependent on alcohol or other drugs which will result in enrollment in treatment in accordance with AR 600–85. A copy of all reports on military personnel and DOD civilian employees apprehended for intoxicated driving will be forwarded to the installation alcohol and drug abuse facility.

(d) Active duty Navy personnel apprehended for drunk driving on or off the installation will be screened by the respective SARP facility within 14 calendar days to determine if the individual is dependent on alcohol or other drugs. Active duty Marines apprehended for intoxicated driving, on or off the installation, will be referred to interview by a Level II substance abuse counselor within 14 calendar days for evaluation and determination of the appropriate level of treatment required. Subsequent to this evaluation, the Marine will be assigned to the appropriate treatment programs as prescribed by MCO P1700.24B.

(e) The Services/Agencies may develop preventive treatment and rehabilitative programs for civilian employees with alcohol-related problems.

(f) Army supervisors of civilian employees apprehended for intoxicated driving will advise employees of ASAP services available. Civilian employees apprehended for intoxicated driving while on duty will be referred to the ASAP or comparable facility for evaluation in accordance with AR 600–85. Army commanders will ensure that sponsors encourage family members apprehended for drunk driving seek ASAP evaluation and assistance.

(g) Navy and DLA civilian personnel charged with intoxicated driving will be referred to the Civilian Employee Assistance Program in accordance with 5 CFR part 792. Such referral does not exempt the employee from appropriate administrative or disciplinary actions under civilian personnel regulations.

(h) Marine Corps civilian employees charged with intoxicated driving, on or off the installation, will be referred to the Employee Assistance Program as prescribed by MCO P1700.24B. Marine family members charged with intoxicated driving, on or off the installation, will be provided assistance as addressed in MCO P1700.24B. Such referral and assistance does not exempt the individual from appropriate administrative or disciplinary action under current civilian personnel regulations or State laws.

(i) For the Army, DLA, and the Marine Corps, installation driving privileges of any person who refuses to submit to, or fails to complete, chemical testing for blood-alcohol content when apprehended for intoxicated driving, or convicted of intoxicated driving, will not be reinstated unless the person successfully completes either an alcohol education or treatment program sponsored by the installation, state, county, or municipality, or other program evaluated as acceptable by the installation commander.

(j) Active duty Air Force personnel apprehended for drunk driving, on or off the installation, will be referred by their respective chain of command to the Air Force Substance Abuse office for evaluation in accordance with AFI 44–121/Alcohol Drug Abuse & Treatment Program, and local policies within seven days.

(k) Local installation commanders will determine if active duty Air Force personnel involved in any alcohol incident will immediately be subjected to a urinalysis for drug content. If consent is not given for the test, a command-directed test will be administered in accordance with local policies.

§ 634.14 Restoration of driving privileges upon acquittal of intoxicated driving.

The suspension of driving privileges for military and civilian personnel shall be restored if a final disposition indicates a finding of not guilty, charges are dismissed or reduced to an offense not amounting to intoxicated driving, or where an equivalent determination is made in a non-judicial proceeding. The following are exceptions to the rule in which suspensions will continue to be enforced.

(a) The preliminary suspension was based on refusal to take a BAC test.

(b) The preliminary suspension resulted from a valid BAC test, (unless disposition of the charges was based on invalidity of the BAC test). In the case of a valid BAC test, the suspension will continue, pending completion of a hearing as specified in § 634.11. In such instances, the individual will be notified in writing that the suspension will continue and of the opportunity to request a hearing within 14 calendar days.

(1) At the hearing, the arrest report, the commander's report of official disposition, information presented by the individual, and such other information as the hearing officer may deem appropriate will be considered.

(2) If the hearing officer determines by a preponderance of evidence that the individual was engaged in intoxicated driving, the revocation will be for 1 year from the date of the original preliminary suspension.

(c) The person was driving or in physical control of a motor vehicle

while under a preliminary suspension or revocation.

(d) An administrative determination has been made by the state or host nation licensing authority to suspend or revoke driving privileges.

(e) The individual has failed to complete a formally directed substance abuse or driver's training program.

§ 634.15 Restricted driving privileges or probation.

(a) For the Navy, Air Force, Marine Corps, and DLA, the installation commander, or his or her designee may modify a suspension or revocation of driving privileges in certain cases per paragraph (d) of this section.

(b) Army requests for restricted driving privileges subsequent to suspension or revocation of installation driving privileges will be referred to the installation commander or designee, except for intoxicated driving cases, which must be referred to the General Court Martial Convening Authority. Withdrawal of restricted driving privileges is within the installation commander's discretion.

(c) Probation or restricted driving privileges will not be granted to any person whose driver license or right to operate motor vehicles is under suspension or revocation by a state, Federal, or host nation licensing authority. Prior to application for probation or restricted driving privileges, a state, Federal, or host nation driver's license or right to operate motor vehicles must be reinstated. The burden of proof for reinstatement of driving privileges lies with the person applying for probation or restricted driving privileges. Revocations for test refusals shall remain.

(d) The installation commander or designee may grant restricted driving privileges or probation on a case-by-case basis provided the person's state or host nation driver's license or right to operate motor vehicles remains valid to accommodate any of the following reasons:

(1) Mission requirements.

(2) Unusual personal or family hardships.

(3) Delays exceeding 90 days, not attributed to the person concerned, in the formal disposition of an apprehension or charges that are the basis for any type of suspension or revocation.

(4) When there is no reasonably available alternate means of transportation to officially assigned duties. In this instance, a limited exception can be granted for the sole purpose of driving directly to and from the place of duty.

(e) The terms and limitations on a restricted driving privilege (for example, authorization to drive to and from place of employment or duty, or selected installation facilities such as hospital, commissary, and or other facilities) will be specified in writing and provided to the individual concerned. Persons found in violation of the restricted privilege are subject to revocation action as prescribed in § 634.9.

(f) The conditions and terms of probation will be specified in writing and provided to the individual concerned. The original suspension or revocation term in its entirety may be activated to commence from the date of the violation of probation. In addition, separate action may be initiated based on the commission of any traffic, criminal, or military offense that constitutes a probation violation.

(g) DOD employees and contractors, who can demonstrate that suspension or revocation of installation driving privileges would constructively remove them from employment, may be given a limiting suspension/revocation that restricts driving on the installation or activity (or in the overseas command) to the most direct route to and from their respective work sites (5 U.S.C. 2302(b)(10)). This is not to be construed as limiting the commander from suspension or revocation of on-duty driving privileges or seizure of Optional Form (OF) 346, U.S. Government Motor Vehicle Operator's Identification Card even if this action would constructively remove a person from employment in those instances in which the person's duty requires driving from place to place on the installation.

§ 634.16 Reciprocal State-Military action.

(a) Commanders will recognize the interests of the states in matters of POV administration and driver licensing. Statutory authority may exist within some states or host nations for reciprocal suspension and revocation of driving privileges. See subpart D of this part for additional information on exchanging and obtaining information with civilian law enforcement agencies concerning infractions by Armed Service personnel off post. Installation commanders will honor the reciprocal authority and direct the installation law enforcement officer to pursue reciprocity with state or host nation licensing authorities. Upon receipt of written or other official law enforcement communication relative to the suspension/revocation of driving privileges, the receiving installation will terminate driving privileges as if violations occurred within its own jurisdiction.

(b) When imposing a suspension or revocation for an off-installation offense, the effective date should be the same as civil disposition, or the date that state or host-nation driving privileges are suspended or revoked. This effective date can be retroactive.

(c) If statutory authority does not exist within the state or host nation for formal military reciprocity, the procedures below will be adopted:

(1) Commanders will recognize official documentation of suspensions/revocations imposed by state or host nation authorities. Administrative actions (suspension/revocations, or if recognized, point assessment) for moving traffic violations off the installation should not be less than required for similar offenses on the installation. When notified by state or host nation authorities of a suspension or revocation, the person's OF 346 may also be suspended.

(2) In CONUS locations, the host and issuing state licensing authority will be notified as soon as practical when a person's installation driving privileges are suspended or revoked for any period, and immediately for refusal to submit to a lawful BAC test. The notification will be sent to the appropriate state DMV(s) per reciprocal agreements. In the absence of electronic communication technology, the appropriate state DMV(s) will be notified by official certified mail. The notification will include the basis for the suspension/revocation and the BAC level if applicable.

(d) In OCONUS locations, installation commanders must follow provisions of the applicable Status of Forces Agreement (SOFA), the law of the host nation concerning reciprocal suspension and revocation, and other international agreements. To the extent an agreement concerning reciprocity may be permitted at a particular overseas installation, the commander must have prior authorization to negotiate and conclude such an international agreement in accordance with applicable international agreements, DODD 5530.3, International Agreements, June 87, and other individual Service instructions.

§ 634.17 Extensions of suspensions and revocations.

(a) Driving in violation of a suspension or revocation imposed under this part will result in the original period of suspension or revocation being increased by two years. In addition, administrative action may be initiated based on the commission of

any traffic, criminal, or military offenses, for example, active duty military personnel driving on the installation in violation of a lawful order.

(b) For each subsequent determination within a five-year period that revocation is authorized under § 634.9, military personnel, DOD civilians, contractors and NAF employees will be prohibited from obtaining or using an OF 346 for six months for each such incident. A determination whether DOD civilian personnel should be prohibited from obtaining or using an OF 346 will be made in accordance with the laws and regulations applicable to civilian personnel. This does not preclude a commander from imposing such prohibition for a first offense, or for a longer period of time for a first or subsequent offense, or for such other reasons as may be authorized.

(c) Commanders may extend a suspension or revocation of driving privileges on personnel until completion of an approved remedial driver training course or alcohol or drug counseling programs after proof is provided.

(d) Commanders may extend a suspension or revocation of driving privileges on civilian personnel convicted of intoxicated driving on the installation until successful completion of a state or installation approved alcohol or drug rehabilitation program.

(e) For Navy personnel for good cause, the appropriate authority may withdraw the restricted driving privilege and continue the suspension or revocation period (for example, driver at fault in the traffic accident, or driver cited for a moving violation).

§ 634.18 Reinstatement of driving privileges.

Reinstatement of driving privileges shall be automatic, provided all revocations applicable have expired, proper proof of completion of remedial driving course and/or substance abuse counseling has been provided, and reinstatement requirements of individual's home state and/or state the individual may have been suspended in, have been met.

Subpart C—Motor Vehicle Registration

§ 634.19 Registration policy.

(a) Services may require motor vehicle registration according to guidance in this regulation and in policies of each Service and DLA. A person who lives or works on an installation or often uses the facilities may be required to register his or her vehicle. Where required, individuals who access the installation for regular activities such as use of medical facilities and regular recurring activities on the installation should register their vehicles according to a standard operating procedure established by the installation commander. The person need not own the vehicle to register it, but must have a lease agreement, power of attorney, or notarized statement from the owner of the vehicle specifying the inclusive dates for which permission to use the vehicle has been granted.

(b) Vehicles intended for construction and material handling, or used solely off the road, are usually not registered as motor vehicles. Installation commanders may require registration of off-road vehicles and bicycles under a separate local system.

(c) Commanders can grant limited temporary registration for up to 30 days, pending permanent registration, or in other circumstances for longer terms.

(d) *DD Form 2220 vehicle decal.* The Department of Defense does not require vehicles entering Department of Defense installations to be registered via the DD Form 2220 vehicle decal; however installations may utilize DD Form 2220 for registration at the installation commander's discretion. All privately owned vehicles (POVs) must continue to be licensed, registered, inspected, and insured in accordance with state and local laws.

(e) Rental vehicles are considered POVs for purposes of installation entry and access control. The vehicle rental contract will suffice as proper licensing, registration and insurance for installation access.

(f) Army Installation commanders may establish local visitor identification for individuals who will be on installation for less than 30 days. The local policy will provide for use of temporary passes that establish a start and end date for which the pass is valid. Army installation commanders must refer to AR 190–13, chapter 8, for guidance concerning installation access control (Air Force, see AFI 31–113). Other Armed Services and DLA may develop and issue visitor passes locally.

(g) The conditions in § 634.20 must be met to operate a POV on an Army and DLA Installation. Other Armed Services that do not require registration will enforce § 634.20 through traffic enforcement actions. Additionally, failure to comply with § 634.20 may result in administrative suspension or revocation of driving privileges.

§ 634.20 Privately Owned Vehicle operation requirements.

Personnel seeking to register their POVs on military installations within the United States or its territories and in overseas areas will comply with the following requirements. (Registration in overseas commands may be modified in accordance with international agreements or military necessity.)

(a) Possess a valid state, overseas command, host nation or international drivers license (within appropriate classification), supported by a DD Form 2-Series Identification Card, or other appropriate identification for DOD civilians, contractors and retirees.

(b) Possess a certificate of state registration as required by the state in which the vehicle is registered.

(c) Comply with the minimum requirements of the automobile insurance laws or regulations of the state or host nation. In overseas commands where host nation laws do not require minimum personal injury and property damage liability insurance, the major overseas commander will set reasonable liability insurance requirements for registration and/or operation of POVs within the confines of military installations and areas where the commander exercises jurisdiction. Prior to implementation, insurance requirements in host states or nations should be formally coordinated with the appropriate host agency.

(d) Satisfactorily complete a safety and mechanical vehicle inspection by the state or jurisdiction in which the vehicle is licensed. If neither state nor local jurisdiction requires a periodic safety inspection, installation commanders may require and conduct an annual POV safety inspection; however, inspection facilities must be reasonably accessible to those requiring use. Inspections will meet minimum standards established by the National Highway Traffic Safety Administration (NHTSA) in 49 CFR part 570. Lights, turn signals, brake lights, horn, wipers, and pollution control devices and standards in areas where applicable, should be included in the inspection. Vehicles modified from factory standards and determined unsafe may be denied access and registration.

(e) Possess current proof of compliance with local vehicle emission inspection if required by the state, and maintenance requirements.

(f) Vehicles that have been modified in an unsafe manner, as determined by an inspection that is consistent with the standards in 49 CFR part 570, will be denied registration.

§ 634.21 Department of Defense Form 2220.

(a) Use. The DD Form 2220 may be used to identify registered POVs on Army, Navy, Air Force, Marine Corps,

and DLA installations or facilities. The requirement to affix the DD Form 2220 to the front windshield or bumper of registered vehicles is waived for general officers and flag officers of all Armed Services, Armed Service Secretaries, political appointees, members of Congress, and the diplomatic corps.

(1) Each Service and DLA will procure its own forms and installation and expiration tabs. For the Army, the basic decal will be ordered through publications channels and remain on the vehicle until the registered owner disposes of the vehicle, separates from active duty or other conditions specified in paragraph (a)(2) of this section. Air Force, DLA, and Army retirees may retain DD Form 2220. Service retirees may be required to follow the same registration procedures as active duty personnel. Upon termination of affiliation with the Service, the registered owner or authorized operator is responsible for removing the DD Form 2220 from the vehicle and surrender of the decal to the issuing office. Service installations requiring registration are responsible for the costs of procuring decals with the name of their installation and related expiration tabs.

(2) Services and DLA, will require removal of the DD Form 2220, and installation and expiration tabs from POVs by the owner prior to departure from their current installation, retirement, or separation from military or Government affiliation, termination of ownership, registration, liability insurance, or other conditions further identified by local policy.

(b) *Specifications.* (1) DD Form 2220 and installation and expiration tabs will consist of international blue borders and printing on a white background. Printer information will include the following:

(i) Form title (Department of Defense Registered Vehicle).

(ii) Alphanumeric individual form identification number.

(iii) DOD seal.

(2) Name of the installation will be specified on a separate tab abutting the decal. Each Service or DLA may choose optional color codes for the registrant. Army and installations having vehicle registration programs will use the following standard color scheme for the installation tab:

(i) Blue-officers.

(ii) Red-enlisted.

(iii) Green DA civilian employees (including NAF employees).

(iv) Black-contractor personnel and other civilians employed on the installation. White will be used for contract personnel on Air Force installations.

(3) An expiration tab identifying the month and year (6–2004), the year (2000) or simply ''00'' will be abutted to right of the decal. For identification purposes, the date of expiration will be shown in bold block numbers on a lighter contrasting background such as traffic yellow, lime, or orange.

(4) DD Form 2220 and any adjoining tabs will be theft resistant when applied to glass, metal, painted, or rubberized surfaces and manufactured so as to obliterate or self destruct when removal is attempted. Local policy guided by state or host nation laws will specify the exact placement of DD Form 2220.

(5) Services may issue military and retired personnel grade insignia that will be affixed on placards, approximately five inches by eight inches in size, and placed on the driver's side dashboard. Placards should be removed from view when the vehicle is not located on a military installation.

§ 634.22 Gold Star decals.

(a) For Army installations only, a serial-numbered Gold Star vehicle identification decal may be issued in accordance with guidance from the Army's Office of the Assistant Chief of Staff for Installation Management. The decals may be obtained through Army installation Survivor Outreach Services and may serve as a temporary vehicle registration in accordance with DoD security standards.

(b) Gold Star decals issued to identify Surviving Family Members of deceased Soldiers may be used to identify POVs and expedite processing for installation access.

(c) Gold Star decals do not exempt vehicles and passengers from DOD and Army installation access screening procedures.

(d) A physical and visual inspection of ID cards shall be conducted by security forces when required for installation access.

§ 634.23 Termination or denial of registration.

Installation commanders or their designated representatives will terminate POV registration or deny initial registration under the following conditions (decal and tabs will be removed from the vehicle when registration is terminated):

(a) The owner fails to comply with the registration requirements.

(b) The owner sells or disposes of the POV, is released from active duty, separated from the Service, or terminates civilian employment with a military Service or DOD agency. Army and Air Force personnel on a permanent change of station will retain the DD Form 2220 if the vehicle is moved to their new duty station.

(c) The owner is other than an active duty military or civilian employee and discontinues regular operations of the POV on the installation.

(d) The owner's state, overseas command, or host nation driver's license is suspended or revoked, or the installation driving privilege is revoked. Air Force does not require removal of the DD Form 2220 when driving privileges are suspended for an individual. When vehicle registration is terminated in conjunction with the revocation of installation driving privileges, the affected person must apply to re-register the POV after the revocation expires. Registration should not be terminated if other family members having installation driving privileges require use of the vehicle.

§ 634.24 Specified consent to impoundment.

Personnel registering POVs on DOD installations must consent to the impoundment policy. POV registration forms will contain or have appended to them a certificate with the following statement: ''I am aware that (insert number and title of separate Service or DLA directive) and the installation traffic code provide for the removal and temporary impoundment of privately owned motor vehicles that are either parked illegally, or for unreasonable periods, interfering with military operations, creating a safety hazard, disabled by accident, left unattended in a restricted or control area, or abandoned. I agree to reimburse the United States for the cost of towing and storage should my motor vehicle(s), because of such circumstances, be removed and impounded.''

Subpart D—Traffic Supervision

§ 634.25 Traffic planning and codes.

(a) Safe and efficient movement of traffic on an installation requires traffic supervision. A traffic supervision program includes traffic circulation planning and control of motor vehicle traffic; publication and enforcement of traffic laws and regulations; and investigation of motor vehicle accidents.

(b) Installation commanders will develop traffic circulation plans that provide for the safest and most efficient use of primary and secondary roads. Circulation planning should be a major part of all long-range master planning at installations. The traffic circulation plan is developed by the installation law enforcement officer, engineer, safety officer, and other concerned staff agencies. Highway engineering

representatives from adjacent civil communities must be consulted to ensure the installation plan is compatible with the current and future circulation plan of the community. The plan should include the following:

(1) Normal and peak load routing based on traffic control studies.

(2) Effective control of traffic using planned direction, including measures for special events and adverse road or weather conditions.

(3) Point control at congested locations by law enforcement personnel or designated traffic directors or wardens, including trained school-crossing guards.

(4) Use of traffic control signs and devices.

(5) Efficient use of available parking facilities.

(6) Efficient use of mass transportation.

(c) Traffic control studies will provide factual data on existing roads, traffic density and flow patterns, and points of congestion. The installation law enforcement officer and traffic engineer usually conduct coordinated traffic control studies to obtain the data. Accurate data will help determine major and minor routes, location of traffic control devices, and conditions requiring engineering or enforcement services.

(d) The (Military) Surface Deployment and Distribution Command Transportation Engineering Agency (SDDCTEA) will help installation commanders solve complex highway traffic engineering problems. SDDCTEA traffic engineering services include—

(1) Traffic studies of limited areas and situations.

(2) Complete studies of traffic operations of entire installations. (This can include long-range planning for future development of installation roads, public highways, and related facilities.)

(3) Assistance in complying with established traffic engineering standards.

(e) Installation commanders should submit requests for traffic engineering services in accordance with applicable service or agency directives.

§ 634.26 Installation traffic codes.

(a) Installation or activity commanders will establish a traffic code for operation of motor vehicles on the installation. Commanders in overseas areas will establish a traffic code, under provisions of this Part, to the extent military authority is empowered to regulate traffic on the installation under the applicable SOFA. Traffic codes will contain the rules of the road (parking violations, towing instructions, safety equipment, and other key provisions). These codes will, where possible, conform to the code of the State or host nation in which the installation is located. In addition, the development and publication of installation traffic codes will be based on the following:

(1) State Highway Safety Program Standards (23 U.S.C. 402).

(2) Applicable portions of the Uniform Vehicle Code and Model Traffic Ordinance published by the National Committee on Uniform Traffic Laws and Ordinances.

(b) The installation traffic code will contain policy and procedures for the towing, searching, impounding, and inventorying of POVs. These provisions should be well publicized and contain the following:

(1) Specific violations and conditions under which the POV will be impounded and towed.

(2) Procedures to immediately notify the vehicle owner.

(3) Procedures for towing and storing impounded vehicles.

(4) Actions to dispose of the vehicle after lawful impoundment.

(5) Violators are responsible for all costs of towing, storage and impounding of vehicles for other than evidentiary reasons.

(c) Installation traffic codes will also contain the provisions discussed as follows: (Army users see AR 385–10).

(1) Motorcycles and mopeds. For motorcycles and other self-propelled, open, two-wheel, three-wheel, and four-wheel vehicles powered by a motorcycle-type engine, the following traffic rules apply:

(i) Headlights will be on at all times when in operation.

(ii) A rear view mirror will be attached to each side of the handlebars.

(iii) Approved protective helmets (DOT compliance), eye protection, sturdy over-the-ankle footwear that affords protection for the feet and ankles, and protective clothing including long-sleeved shirt or jacket, long trousers, and full-fingered gloves or mittens made from leather or other abrasion-resistant material must be worn by operators and passengers when in operation. Motorcycle jackets and pants constructed of abrasion-resistant materials such as leather, Kevlar®, or Cordura® and containing impact-absorbing padding are strongly encouraged. Riders are encouraged to select PPE that incorporates fluorescent colors and retro-reflective material.

(2) *Restraint systems.* (i) Restraint systems (seat belts) will be worn by all operators and passengers of U.S. Government vehicles on or off the installation.

(ii) Restraint systems will be worn by all civilian personnel (including family members, guests, and visitors) driving or riding in a POV on the installation.

(iii) Restraint systems will be worn by all military service members and Reserve Component members on active Federal service driving or riding in a POV whether on or off the installation.

(iv) Each occupant riding in a passenger motor vehicle who is under eight years of age, weighs less than 65 pounds and is less than four feet, nine inches in height must be secured in an age-appropriate child restraint.

(v) Restraint systems are required only in vehicles manufactured after model year 1966.

(3) Driver Distractions. Vehicle operators on a DoD installation and operators of Government owned vehicles, as well as Federal employees (including service members) operating a POV on official government business or using electronic equipment provided by the Government while driving, will not use a personal wireless communication device, including for text messaging or any other form of electronic data retrieval or electronic data communication, unless the vehicle is safely parked or unless they are using a hands-free device. The wearing of any other portable headphones, earphones, or other listening devices (except for hands–free use of cellular phones) while operating a motor vehicle is prohibited. Use of those devices impairs driving and masks or prevents recognition of emergency signals, alarms, announcements, the approach of vehicles, and human speech. The DOD component safety guidance should note the potential for driver distractions such as eating and drinking, operating radios, CD players, global positioning equipment, and so on. Whenever possible this should only be done when the vehicle is safely parked.

(d) Only administrative actions (reprimand, assessment of points, loss of on-post driving privileges, or other actions) will be initiated against service members for off-post violations of the installation traffic code.

(e) In States where traffic law violations are State criminal offenses, such laws are made applicable under the provisions of 18 U.S.C. 13 to military installations having concurrent or exclusive Federal jurisdiction.

(f) In those States where violations of traffic law are not considered criminal offenses and cannot be assimilated under 18 U.S.C., DODD 5525.4, enclosure 1 expressly adopts the vehicular and pedestrian traffic laws of

such States and makes these laws applicable to military installations having concurrent or exclusive Federal jurisdiction. It also delegates authority to installation commanders to establish additional vehicular and pedestrian traffic rules and regulations for their installations. Persons found guilty of violating the vehicular and pedestrian traffic laws made applicable on the installation under provisions of that directive are subject to a fine as determined by the local magistrate or imprisonment for not more than 30 days, or both, for each violation. In those States where traffic laws cannot be assimilated, an extract copy of this paragraph (f) and a copy of the delegation memorandum in DODD 5525.4, enclosure 1, will be posted in a prominent place accessible to persons assigned, living, or working on the installation.

(g) In those States where violations of traffic laws cannot be assimilated because the Federal Government's jurisdictional authority on the installation or parts of the installation is only proprietary, neither 18 U.S.C. 13 nor the delegation memorandum in DoDD 5525.4, enclosure 1, will permit enforcement of the State's traffic laws in Federal courts. Law enforcement authorities on those military installations must rely on either administrative sanctions related to the installation driving privilege or enforcement of traffic laws by State law enforcement authorities.

§ 634.27 Traffic law enforcement principles.

(a) Traffic law enforcement should motivate drivers to operate vehicles safely within traffic laws and regulations and maintain an effective and efficient flow of traffic. Effective enforcement should emphasize voluntary compliance by drivers and can be achieved by the following actions:

(1) Publishing a realistic traffic code well known by all personnel.

(2) Adopting standard signs, markings, and signals in accordance with NHSPS and the Manual on Uniform Traffic Control Devices for Streets and Highways.

(3) Ensuring enforcement personnel establish courteous, personal contact with drivers and act promptly when driving behavior is improper or a defective vehicle is observed in operation.

(4) Maintaining an aggressive program to detect and apprehend persons who drive while privileges are suspended or revoked.

(5) Using sound discretion and judgment in deciding when to apprehend, issue citations, or warn the offender.

(b) Selective enforcement will be used when practical. Selective enforcement deters traffic violations and reduces accidents by the presence or suggested presence of law enforcement personnel at places where violations, congestion, or accidents frequently occur. Selective enforcement applies proper enforcement measures to traffic congestion and focuses on selected time periods, conditions, and violations that cause accidents. Law enforcement personnel use selective enforcement because that practice is the most effective use of resources.

(c) Enforcement activities against intoxicated driving will include—

(1) Detecting, apprehending, and testing persons suspected of driving under the influence of alcohol or drugs.

(2) Training law enforcement personnel in special enforcement techniques.

(3) Enforcing blood-alcohol concentration standards. (See § 634.35).

(4) Denying installation driving privileges to persons whose use of alcohol or other drugs prevents safe operation of a motor vehicle.

(d) Installation officials will formally evaluate traffic enforcement on a regular basis. That evaluation will examine procedures to determine if the following elements of the program are effective in reducing traffic accidents and deaths:

(1) Selective enforcement measures;

(2) Suspension and revocation actions; and

(3) Chemical breath-testing programs.

§ 635.28 Speed-measuring devices.

Speed-measuring devices will be used in traffic control studies and enforcement programs. Signs may be posted to indicate speed-measuring devices are being used.

(a) *Equipment purchases.* Installations will ensure operators attend an appropriate training program for the equipment in use.

(b) *Training and certification standards.* (1) The commander of each installation using traffic radar will ensure that personnel selected as operators of such devices meet training and certification requirements prescribed by the State (or SOFA) in which the installation is located. Specific information on course dates, costs, and prerequisites for attending may be obtained by contacting the State agency responsible for police traffic radar training.

(2) Installation commanders located in States or overseas areas where no formal training program exists, or where the military personnel are unable or ineligible to participate in police traffic radar training programs, may implement their own training program or use a selected civilian institution or manufacturer's course.

(3) The objective of the civilian or manufacturer-sponsored course is to improve the effectiveness of speed enforcement through the proper and efficient use of speed-measurement radar. On successful completion, the course graduate must be able to—

(i) Describe the association between excessive speed and accidents, deaths, and injuries, and describe the traffic safety benefits of effective speed control.

(ii) Describe the basic principles of radar speed measurement.

(iii) Identify and describe the Service's policy and procedures affecting radar speed measurement and speed enforcement.

(iv) Identify the specific radar instrument used and describe the instrument's major components and functions.

(v) Demonstrate basic skills in checking calibration and operating the specific radar instrument(s).

(vi) Demonstrate basic skills in preparing and presenting records and courtroom testimony relating to radar speed measurement and enforcement.

(c) *Recertification.* Recertification of operators will occur every three years, or as prescribed by State law.

§ 634.29 Traffic accident investigation.

Installation law enforcement personnel must make detailed investigations of accidents described in this section:

(a) Accidents involving Government vehicles or Government property on the installation involving a fatality, personal injury, or estimated property damage in the amount established by separate Service/DLA policy. (Minimum damage limits are: Army, $1,000; Air Force, as specified by the installation commander; Navy and Marine Corps, $500.) The installation motor pool will provide current estimates of the cost of repairs. Investigations of off-installation accidents involving Government vehicles will be made in cooperation with the civilian law enforcement agency.

(b) POV accidents on the installation involving a fatality, personal injury, or when a POV is inoperable as a result of an accident.

(c) Any accident prescribed within a SOFA agreement.

§ 634.30 Traffic accident investigation reports.

(a) *Accidents requiring immediate reports.* The driver or owner of any vehicle involved in an accident, as described in § 634.29, on the installation, must immediately notify the installation law enforcement office. The operator of any Government vehicle involved in a similar accident off the installation must immediately notify the local civilian law enforcement agency having jurisdiction, as well as law enforcement personnel of the nearest military installation.

(b) *Investigation records.* Installation law enforcement officials will record traffic accident investigations on Service/DLA forms. Information will be released according to Service/DLA policy, the Privacy Act, and the Freedom of Information Act.

(c) *Army law enforcement officers.* These officers provide the Department of the Army local Safety Office copies of traffic accident investigation reports pertaining to accidents investigated by military police that resulted in a fatality, personal injury, or estimated damage to Government vehicles or property in excess of $1,000.

(d) *POV accidents not addressed in § 634.29.* Guidance for reporting these cases is provided as follows:

(1) Drivers or owners of POVs will be required to submit a written report to the installation law enforcement office within 24 hours of an accident in the following cases, with all information listed in paragraph (d)(3) of this section:

(i) The accident occurs on the installation.

(ii) The accident involves no personal injury.

(iii) The accident involves only minor damage to the POV and the vehicle can be safely and normally driven from the scene under its own power.

(2) Information in the written report cannot be used in criminal proceedings against the person submitting it unless it was originally categorized a hit and run and the violator is the person submitting the report. Rights advisement will be given prior to any criminal traffic statements provided by violators. Within the United States, the installation law enforcement official may require such reporting on Service forms or forms of the State jurisdiction.

(3) Reports required in paragraph (d)(1) of this section by the Army will include the following about the accident:

(i) Location, date, and time.

(ii) Identification of all drivers, pedestrians, and passengers involved.

(iii) Identification of vehicles involved.

(iv) Speed and direction of travel of each vehicle involved, including a sketch of the collision and roadway with street names and north arrow.

(v) Property damage involved.

(vi) Environmental conditions at the time of the incident (weather, visibility, road surface condition, and other factors).

(vii) A narrative description of the events and circumstances concerning the accident.

§ 634.31 Use of traffic accident investigation report data.

(a) Data derived from traffic accident investigation reports and from vehicle owner accident reports will be analyzed to determine probable causes of accidents. When frequent accidents occur at a location, the conditions at the location and the types of accidents (collision diagram) will be examined.

(b) Law enforcement personnel and others who prepare traffic accident investigation reports will document on DA Form 3975, Military Police Report or other Service equivalent, whether or not seat restraint devices were being used at the time of the accident.

(c) When accidents warrant, an installation commander may establish a traffic accident review board. The board will consist of law enforcement, engineer, safety, medical, and legal personnel. The board will determine principal factors leading to the accident and recommend measures to reduce the number and severity of accidents on and off the installation. (The Air Force will use Traffic Safety Coordinating Groups. The Navy will use Traffic Safety Councils per OPNAVINST 5100.12 Series).

(d) Data will be shared with the installation legal, engineer, safety, and transportation officers. The data will be used to inform and educate drivers and to conduct traffic engineering studies.

(e) Army traffic accident investigation reports will be provided to Army Centralized Accident Investigation of Ground Accidents (CAIG) boards on request. The CAIG boards are under the control of the Commander, U.S. Army Safety Center, Fort Rucker, AL 36362–5363. These boards investigate Class A, on-duty, non-POV accidents and other selected accidents Army-wide (See AR 385–40). Local commanders provide additional board members as required to complete a timely and accurate investigation. Normally, additional board members are senior equipment operators, maintenance officers, and medical officers. However, specific qualifications of the additional board members may be dictated by the nature of the accident.

(f) The CAIG program is not intended to interfere with, impede, or delay law enforcement agencies in the execution of regulatory responsibilities that apply to the investigation of accidents for a determination of criminal intent or criminal acts. Criminal investigations have priority.

(g) Army law enforcement agencies will maintain close liaison and cooperation with CAIG boards. Such cooperation, particularly with respect to interviews of victims and witnesses and in collection and preservation of physical evidence, should support both the CAIG and law enforcement collateral investigations.

§ 634.32 Parking.

(a) The most efficient use of existing on- and off-street parking space should be stressed on a non-reserved (first-come, first-served) basis.

(b) Reserved parking facilities should be designated as parking by permit or numerically by category of eligible parkers. Designation of parking spaces by name, grade, rank, or title should be avoided.

(c) Illegal parking contributes to congestion and slows traffic flow on an installation. Strong enforcement of parking restrictions results in better use of available parking facilities and eliminates conditions causing traffic accidents.

(d) The ''Denver boot'' device is authorized for use as a technique to assist in the enforcement of parking violations where immobilization of the POV is necessary for safety. Under no circumstances should the device be used to punish or ''teach a lesson'' to violators. Booting should not be used if other reasonably effective but less restrictive means of enforcement (such as warnings, ticketing, reprimands, revocations, or suspensions of on-post driving privileges) are available. Procedures for booting must be developed as follows:

(1) Local standing operating procedures (SOPs) must be developed to control the discretion of enforcers and limit booting to specific offenses. SOPs should focus on specific reasons for booting, such as immobilization of unsafe, uninspected, or unregistered vehicles or compelling the presence of repeat offenders. All parking violations must be clearly outlined in the installation traffic code.

(2) Drivers should be placed on notice that particular violations or multiple violations may result in booting. Also, drivers must be provided with a prompt hearing and an opportunity to obtain the release of their property.

(3) To limit liability, drivers must be warned when a boot is attached to their vehicle and instructed how to have the boot removed without damaging the vehicle.

§ 634.33 Traffic violation reports.

(a) Most traffic violations occurring on DOD installations (within the UNITED STATES or its territories) should be referred to the proper U.S. Magistrate. (Army, see AR 190–45; DLA, see DLA One Book Process Chapter, Criminal Offenses and U.S. Federal Court Procedures; and Air Force, see AFI 51–905). However, violations are not referred when—

(1) The operator is driving a Government vehicle at the time of the violation.

(2) A Federal Magistrate is either not available or lacks jurisdiction to hear the matter because the violation occurred in an area where the Federal Government has only proprietary legislative jurisdiction.

(3) Mission requirements make referral of offenders impractical.

(4) A U.S. Magistrate is available but the accused refuses to consent to the jurisdiction of the court and the U.S. Attorney refuses to process the case before a U.S. District Court. For the Navy, DUI and driving under the influence of drugs cases will be referred to the Federal Magistrate.

(b) Installation commanders will establish administrative procedures for processing traffic violations.

(1) All traffic violators on military installations will be issued either a DD Form 1408 (Armed Forces Traffic Ticket) or a Central Violations Bureau (CVB) United States District Court Violation Notice (DCVN), as appropriate. Unless specified otherwise by separate Service/DLA policy, only on-duty law enforcement personnel (including game wardens) designated by the installation law enforcement officer may issue these forms. Air Force individuals certified under the Parking Traffic Warden Program may issue DD Form 1408 in areas under their control.

(2) A copy of all reports on military personnel and DOD civilian employees apprehended for intoxicated driving will be forwarded to the installation alcohol and drug abuse facility.

(c) Installation commanders will establish procedures used for disposing of traffic violation cases through administrative or judicial action consistent with the Uniform Code of Military Justice (UCMJ) and Federal law.

(d) The CVB will be used to refer violations of State traffic laws made applicable to the installation (Assimilative Crimes Act (18 U.S.C. 13) and the delegation memorandum in DoDD 5525.4, enclosure 1, and other violations of Federal law) to the U.S. Magistrate. (Army users, see AR 190–45.)

(1) A copy of DD Form 1805 and any traffic violation reports on military personnel and DOD civilian employees will be forwarded to the commander or supervisor of the violator. DA form 3975 may be use to forward the report.

(2) Detailed instructions for properly completing the CVB are contained in separate Service policy directives.

(3) The assimilation of State traffic laws as Federal offenses should be identified by a specific State code reference in the CODE SECTION block of the CVB (or in a complaint filed with the U.S. Magistrate).

(4) The Statement of Probable Cause on the CVB will be used according to local staff judge advocate and U.S. Magistrate court policy. The Statement of Probable Cause is required by the Federal misdemeanor rules to support the issuance of a summons or arrest warrant.

(5) For cases referred to U.S. Magistrates, normal distribution of the CVB will be as follows:

(i) The installation law enforcement official will forward copy 1 (white) and copy 2 (yellow) to the U.S. District Court (Central Violation Bureau).

(ii) The installation law enforcement office will file copy 3 (pink).

(iii) Law enforcement personnel will provide copy 4 (envelope) to the violator.

(e) When DD Form 1408 is used, one copy (including written warnings) will be forwarded through command channels to the service member's commander, to the commander of the military family member's sponsor, or to the civilian's supervisor or employer as the installation commander may establish.

(1) Previous traffic violations committed by the offender and points assessed may be shown.

(2) For violations that require a report of action taken, the DD Form 1408 will be returned to the office of record through the reviewing authority as the installation commander may establish.

(3) When the report is received by the office of record, that office will enter the action on the violator's driving record.

§ 634.34 Training of law enforcement personnel.

(a) As a minimum, installation law enforcement personnel will be trained to do the following:

(1) Recognize signs of alcohol and other drug impairment in persons operating motor vehicles.

(2) Prepare DD Form 1920 (Alcohol Influence Report).

(3) Perform the three field tests of the improved sobriety testing techniques (§ 634.36[b]).

(4) Determine when a person appears intoxicated but is actually physically or mentally ill and requires prompt medical attention.

(5) Understand the operation of breath-testing devices.

(b) Each installation using breath-testing devices will ensure that operators of these devices—

(1) Are chosen for integrity, maturity, and sound judgment.

(2) Meet certification requirements of the State where the installation is located.

(c) Installations located in States or overseas areas having a formal breath-testing and certification program should ensure operators attend that training.

(d) Installations located in States or overseas areas with no formal training program will train personnel at courses offered by selected civilian institutions or manufacturers of the equipment.

(e) Operators must maintain proficiency through refresher training every 18 months or as required by the State.

§ 634.35 Blood alcohol concentration standards.

(a) Administrative revocation of driving privileges and other enforcement measures will be applied uniformly to offenders driving under the influence of alcohol or drugs. When a person is tested under the implied consent provisions of § 634.8, the results of the test will be evaluated as follows:

(1) If the percentage is 0.05 but less than 0.08, presume the person may be impaired. This standard may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(2) If the percentage is 0.08 or more, or if tests reflect the presence of illegal drugs, the person was driving while intoxicated.

(b) Percentages in paragraph (a) of this section are percent of weight by volume of alcohol in the blood based on grams of alcohol per 100 milliliters of blood. These presumptions will be considered with other evidence in determining intoxication.

§ 634.36 Chemical testing policies and procedures.

(a) *Validity of chemical testing.* Results of chemical testing are valid under this part only under the following circumstances:

(1) Blood, urine, or other bodily substances are tested using generally

accepted scientific and medical methods and standards.

(2) Breath tests are administered by qualified personnel (§ 634.33).

(3) An evidential breath-testing device approved by the State or host nation is used. For Army, Air Force, and Marine Corps, the device must also be listed on the NHTSA ''Conforming Products List of Evidential Breath Measurement Devices'' (77 FR 35747, and subsequent updates that NHTSA may publish periodically in the **Federal Register**). The most current NHTSA list may be found by searching the **Federal Register** Web site (*https://www.federalregister.gov/articles/search?conditions%5Bterm%5D=%22Conforming+Products+List+of+Evidential+Breath+Measurement+Devices%22*).

(4) Procedures established by the State or host nation or as prescribed in paragraph (b) of this section are followed.

(b) *Breath-testing device operational procedures.* If the State or host nation has not established procedures for use of breath-testing devices, the following procedures will apply:

(1) Screening breath-testing devices will be used—

(i) During the initial traffic stop as a field sobriety testing technique, along with other field sobriety testing techniques, to determine if further testing is needed on an evidential breath-testing device.

(ii) According to manufacture operating instructions. (For Army, Air Force, and Marine Corps, the screening breath-testing device must also be listed on the NHTSA ''Conforming Products List of Evidential Breath Measurement Devices'' (see paragraph (a)(3) of this section).

(2) Evidential breath-testing devices will be used as follows:

(i) Observe the person to be tested for at least 15 minutes before collecting the breath specimen. During this time, the person must not drink alcoholic beverages or other fluids, eat, smoke, chew tobacco/gum, or ingest any substance.

(ii) Verify calibration and proper operation of the instrument by using a control sample immediately before the test.

(iii) Comply with operational procedures in the manufacturer's current instruction manual.

(iv) Perform preventive maintenance as required by the instruction manual.

(c) *Chemical tests of personnel involved in fatal accidents.* (1) Installation medical authorities will immediately notify the installation law enforcement officer of—

(i) The death of any person involved in a motor vehicle accident.

(ii) The circumstances surrounding such an accident, based on information available at the time of admission or receipt of the body of the victim.

(2) Medical authorities will examine the bodies of those persons killed in a motor vehicle accident to include drivers, passengers, and pedestrians subject to military jurisdiction. They will also examine the bodies of family members, who are 16 years of age or older, if the sponsors give their consent. Tests for the presence and concentration of alcohol or other drugs in the person's blood, bodily fluids, or tissues will be made as soon as possible and where practical within eight hours of death. The test results will be included in the medical reports.

(3) As provided by law and medical conditions permitting, a blood or breath sample will be obtained from any surviving operator whose vehicle is involved in a fatal accident.

§ 634.37 Detection, apprehension, and testing of intoxicated drivers.

(a) Law enforcement personnel usually detect drivers under the influence of alcohol or other drugs by observing unusual or abnormal driving behavior. Drivers showing such behavior will be stopped immediately. The cause of the unusual driving behavior will be determined, and proper enforcement action will be taken.

(b) When a law enforcement officer reasonably concludes that the individual driving or in control of the vehicle is impaired, field sobriety tests should be conducted on the individual. The DD Form 1920 may be used by law enforcement agencies in examining, interpreting, and recording results of such tests. Law enforcement personnel should use the Standardized Field Sobriety Test battery as sanctioned by the National Highway Traffic Safety Administration (consisting of three tests: The horizontal gaze nystagmus test, Walk and Turn, and One-Leg Stand) and screening breath-testing devices to conduct field sobriety tests.

§ 634.38 Voluntary breath and bodily fluid testing based on implied consent.

(a) Implied consent policy is explained in § 634.8.

(b) Tests may be administered only if the following conditions are met:

(1) The person was lawfully stopped while driving, operating, or in actual physical control of a motor vehicle on the installation.

(2) Reasonable suspicion exists to believe that the person was driving under the influence of alcohol or drugs.

(3) A request was made to the person to consent to the tests combined with a warning that failure to voluntarily submit to or complete a chemical test of bodily fluids or breath will result in the revocation of driving privileges.

(c) As stated in paragraphs (a) and (b) of this section, the law enforcement official relying on implied consent will warn the person that driving privileges will be revoked if the person fails to voluntarily submit to or complete a requested chemical test. The person does not have the right to have an attorney present before stating whether he or she will submit to a test, or during the actual test. Installation commanders will prescribe the type or types of chemical tests to be used. Testing will follow policies and procedures in § 634.35. The results of chemical tests conducted under the implied consent provisions of this part may be used as evidence in courts-martial, non-judicial proceedings under Article 15 of the UCMJ, administrative actions, and civilian courts.

(d) Special rules exist for persons who have hemophilia, other blood-clotting disorders, or any medical or surgical disorder being treated with an anticoagulant. These persons—

(1) May refuse a blood extraction test without penalty.

(2) Will not be administered a blood extraction test to determine alcohol or other drug concentration or presence under this part.

(3) May be given breath or urine tests, or both.

(e) If a person suspected of intoxicated driving refuses to submit to a chemical test, a test will not be administered except as specified in § 634.39.

§ 634.39 Involuntary extraction of bodily fluids in traffic cases.

(a) *General.* The procedures outlined in this section pertain only to the investigation of individuals stopped, apprehended, or cited on a military installation for any offense related to driving a motor vehicle and for whom probable cause exists to believe that such individual is intoxicated. Extractions of body fluids in furtherance of other kinds of investigations are governed by the Manual for Courts-Martial, United States, Military Rule of Evidence 315 (2002) (MRE 315), and regulatory rules concerning requesting and granting authorizations for searches.

(1) Air Force policy on nonconsensual extraction of blood samples is addressed in AFI 44–102.

(2) Army and Marine Corps personnel should not undertake the nonconsensual extraction of body fluids

for reasons other than a valid medical purpose without first obtaining the advice and concurrence of the installation staff judge advocate or his or her designee.

(3) DLA policy on nonconsensual taking of blood samples is contained in the DLA One Book Process Chapter, Search and Seizure.

(b) *Procedures.* Involuntary bodily fluid extraction must be based on valid search and seizure authorization. An individual subject to the UCMJ who does not consent to chemical testing, as described in § 634.37, may nonetheless be subjected to an involuntary extraction of bodily fluids, including blood and urine, only in accordance with the following procedures:

(1) An individual subject to the UCMJ who was driving a motor vehicle and suspected of being under the influence of an intoxicant may be subjected to a nonconsensual bodily fluid extraction to test for the presence of intoxicants only when there is a probable cause to believe that such an individual was driving or in control of a vehicle while under the influence of an intoxicant.

(i) A search authorization by an appropriate commander or military magistrate obtained pursuant to the Manual for Courts-Martial, United States, Military Rule of Evidence 315 (2002) is required prior to such nonconsensual extraction.

(ii) A search authorization is not required under such circumstances when there is a clear indication that evidence of intoxication will be found and there is reason to believe that the delay necessary to obtain a search authorization would result in the loss or destruction of the evidence sought.

(iii) Because warrantless searches are subject to close scrutiny by the courts, obtaining an authorization is highly preferable. Warrantless searches generally should be conducted only after coordination with the servicing staff judge advocate or legal officer, and attempts to obtain authorization from an appropriate official prove unsuccessful due to the unavailability of a commander or military magistrate.

(2) If authorization from the military magistrate or commander proves unsuccessful due to the unavailability of such officials, the commander of a medical facility is empowered by the Manual for Courts-Martial, United States, Military Rule of Evidence 315 (2002), to authorize such extraction from an individual located in the facility at the time the authorization is sought.

(i) Before authorizing the involuntary extraction, the commander of the medical facility should, if circumstances permit, coordinate with the servicing staff judge advocate or legal officer.

(ii) The medical facility commander authorizing the extraction under the Manual for Courts-Martial, United States, Military Rule of Evidence 315 (2002) need not be on duty as the attending physician at the facility where the extraction is to be performed and the actual extraction may be accomplished by other qualified medical personnel.

(iii) The authorizing official may consider his or her own observations of the individual in determining probable cause.

(c) *Role of medical personnel.* Authorization for the nonconsensual extraction of blood samples for evidentiary purposes by qualified medical personnel is independent of, and not limited by, provisions defining medical care, such as the provision for nonconsensual medical care pursuant to AR 600–20, section IV. Extraction of blood will be accomplished by qualified medical personnel. (See the Manual for Courts-Martial, United States, Military Rule of Evidence 312[g] [2002]).

(1) In performing this duty, medical personnel are expected to use only that amount of force that is reasonable and necessary to administer the extraction.

(2) Any force necessary to overcome an individual's resistance to the extraction normally will be provided by law enforcement personnel or by personnel acting under orders from the member's unit commander.

(3) Life endangering force will not be used in an attempt to effect nonconsensual extractions.

(4) All law enforcement and medical personnel will keep in mind the possibility that the individual may require medical attention for possible disease or injury.

(d) Nonconsensual extractions of blood will be done in a manner that will not interfere with or delay proper medical attention. Medical personnel will determine the priority to be given involuntary blood extractions when other medical treatment is required.

(e) Use of Army medical treatment facilities and personnel for blood alcohol testing has no relevance to whether or not the suspect is eligible for military medical treatment. The medical effort in such instances is in support of a valid military mission (law enforcement), not related to providing medical treatment to an individual.

§ 634.40 Testing at the request of the apprehended person.

(a) A person subject to tests under § 634.8 may request that an additional test be done privately. The person may choose a doctor, qualified technician, chemist, registered nurse, or other qualified person to do the test. The person must pay the cost of the test. The test must be a chemical test approved by the State or host nation in an overseas command.

(b) If the tests are requested, the apprehended person is responsible for making all arrangements.

(c) All tests will be completed without unnecessary delay, within two hours of detention if possible.

(d) If the suspect fails to or is unable to obtain any additional tests, the results of the tests that were done at the direction of a law enforcement official remain valid and may still be used to support actions under separate Service regulations, UCMJ, and the U.S. Magistrate Court.

§ 634.41 General off installation traffic activities.

In areas not under military control, civil authorities enforce traffic laws. Law enforcement authorities will establish a system to exchange information with civil authorities. Army and Air Force installation law enforcement authorities will establish a system to exchange information with civil authorities to enhance the chain of command's visibility of a soldier's and airman's off post traffic violations. These agreements will provide for the assessment of traffic points based on reports from state licensing authorities involving Army military personnel. The provisions of Subpart E of this part and the VRS automated system provide for the collection of off post traffic incident reports and data. As provided in AR 190–45, civilian law enforcement agencies are considered routine users of Army law enforcement data and will be granted access to data when available from Army law enforcement systems of records. Off-installation traffic activities in overseas areas are governed by formal agreements with the host nation government. Procedures should be established to process reports received from civil authorities on serious traffic violations, accidents, and intoxicated driving incidents involving persons subject to this part. The exchange of information is limited to Army and Air Force military personnel. Provost marshals will not collect and use data concerning civilian employees, family members, and contract personnel except as allowed by state and Federal laws.

§ 634.42 Compliance with State laws.

(a) Installation commanders will inform service members, contractors and DOD civilian employees to comply with State and local traffic laws when operating government motor vehicles.

(b) Commanders will coordinate with the proper civil law enforcement agency before moving Government vehicles that exceed legal limits or regulations or that may subject highway users to unusual hazards. (See AR 55–162/OPNAVINST 4600.11D/AFJI 24–216/MCO 4643.5C).

(c) Installation commanders will maintain liaison with civil enforcement agencies and encourage the following:

(1) Release of a Government vehicle operator to military authorities unless one of the following conditions exists.

(i) The offense warrants detention.

(ii) The person's condition is such that further operation of a motor vehicle could result in injury to the person or others.

(2) Prompt notice to military authorities when military personnel or drivers of Government motor vehicles have—

(i) Committed serious violations of civil traffic laws.

(ii) Been involved in traffic accidents.

(3) Prompt notice of actions by a State or host nation to suspend, revoke, or restrict the State or host nation driver's license (vehicle operation privilege) of persons who—

(i) Operate Government motor vehicles.

(ii) Regularly operate a POV on the installation. (See also § 634.16).

§ 634.43 Civil-military cooperative programs.

(a) *State-Armed Forces Traffic Workshop Program.* This program is an organized effort to coordinate military and civil traffic safety activities throughout a State or area. Installation commanders will cooperate with State and local officials in this program and provide proper support and participation.

(b) *Community-Installation Traffic Workshop Program.* Installation commanders should establish a local workshop program to coordinate the installation traffic efforts with those of local communities. Sound and practical traffic planning depends on a balanced program of traffic enforcement, engineering, and education. Civilian and military legal and law enforcement officers, traffic engineers, safety officials, and public affairs officers should take part.

Subpart E—Driving Records and the Traffic Point System

§ 634.44 Driving records.

Army installations will use DA Form 3626 (Vehicle Registration/Driver Record) to record vehicle traffic accidents, moving violations, suspension or revocation actions, and traffic point assessments involving military and DOD civilian personnel, their family members, and other personnel operating motor vehicles on a military installation. Other Services and DLA will use their service equivalent form for this purpose. Table 1 to part 634 prescribes mandatory minimum or maximum suspension or revocation periods. Traffic points are not assessed for suspension or revocation actions.

Table 1 to Part 634—Suspension/ Revocation of Driving Privileges (See Notes 1 and 2).

Assessment 1: Two-year revocation is mandatory on determination of facts by installation commander. (For Army, a five-year revocation is mandatory.)

Violation: Driving while driver's license or installation driving privileges are under suspension or revocation.

Assessment 2: One-year revocation is mandatory on determination of facts by installation commander.

Violation: Refusal to submit to or failure to complete chemical tests (implied consent).

Assessment 3: One-year revocation is mandatory on conviction.

Violation:

A. Manslaughter (or negligent homicide by vehicle) resulting from the operation of a motor vehicle.

B. Driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor (0.08% or greater on DOD installations; violation of civil law off post).

C. Driving a motor vehicle while under the influence of any narcotic, or while under the influence of any other drug (including alcohol) to the degree rendered incapable of safe vehicle operation.

D. Use of a motor vehicle in the commission of a felony. Fleeing the scene of an accident involving death or personal injury, *i.e.:* hit and run.

E. Perjury or making a false statement or affidavit under oath to responsible officials relating to the ownership or operation of motor vehicles.

F. Unauthorized use of a motor vehicle belonging to another, when the act does not amount to a felony.

Assessment 4: Suspension for a period of six months or less or revocation for a period not to exceed one year is discretionary.

Violation: A. Mental or physical impairment (not including alcohol or other drug use) to the degree rendered incompetent to drive.

B. Commission of an offense in another State which, if committed on the installation, would be grounds for suspension or revocation.

C. Permitting an unlawful or fraudulent use of an official driver's license.

D. Conviction of fleeing, or attempting to elude, a police officer.

E. Conviction of racing on the highway.

Assessment 5: Loss of OF 46 for minimum of six months is discretionary.

Violation: Receiving a second one-year suspension or revocation of driving privileges within five years.

Notes

1. When imposing a suspension or revocation because of an off-installation offense, the effective date should be the same as the date of civil conviction, or the date that State or host-nation driving privileges are suspended or revoked. This effective date can be retroactive.

2. No points are assessed for revocation or suspension actions. Except for implied consent violations, revocations must be based on a conviction by a civilian court or courts-martial, non-judicial punishment under Article 15, UCMJ, or a separate hearing as addressed in this part. If revocation for implied consent is combined with another revocation, such as one year for intoxicated driving, revocations may run consecutively (total of 24 months) or concurrently (total of 12 months). The installation commander's policy should be applied systematically and not on a case-by-case basis.

§ 634.45 The traffic point system.

The traffic point system provides a uniform administrative device to impartially judge driving performance of Service and DLA personnel. This system is not a disciplinary measure or a substitute for punitive action. Further, this system is not intended to interfere in any way with the reasonable exercise of an installation commander's prerogative to issue, suspend, revoke, deny, or reinstate installation driving privileges.

§ 634.46 Point system application.

(a) The Services and DLA are required to use the point system and procedures prescribed in this section without change.

(b) The point system in of this part applies to all operators of U.S. Government motor vehicles, on or off Federal property. The system also applies to violators reported to installation officials in accordance with § 634.46.

(c) Points will be assessed when the person is found to have committed a violation and the finding is by either the unit commander, civilian supervisor, a

military or civilian court (including a U.S. Magistrate), or by payment of fine, forfeiture of pay or allowances, or posted bond, or collateral.

Table 2 to Part 634—Point Assessment for Moving Traffic Violations (See Note 1).

A. Violation: Reckless driving (willful and wanton disregard for the safety of persons or property).
Points assessed: 6
B. Violation: Owner knowingly and willfully permitting a physically impaired person to operate the owner's motor vehicle.
Points assessed: 6
C. Violation: Fleeing the scene (hit and run)-property damage only.
Points assessed: 6
D. Violation: Driving vehicle while impaired (blood-alcohol content more than 0.05 percent and less than 0.08 percent).
Points assessed: 6
E. Violation: Speed contests.
Points assessed: 6
F. Violation: Speed too fast for conditions.
Points assessed: 2
G. Violation: Speed too slow for traffic conditions, and/or impeding the flow of traffic, causing potential safety hazard.
Points assessed: 2
H. Violation: Failure of operator or occupants to use available restraint system devices while moving (operator assessed points).
Points assessed: 2
I. Violation: Failure to properly restrain children in a child restraint system while moving (when child is 4 years of age or younger or the weight of child does not exceed 45 pounds).
Points assessed: 2
J. Violation: One to 10 miles per hour over posted speed limit.
Points assessed: 3
K. Violation: Over 10 but not more than 15 miles per hour above posted speed limit.
Points assessed: 4
L. Violation: Over 15 but not more than 20 miles per hour above posted speed limit.
Points assessed: 5
M. Violation: Over 20 miles per hour above posted speed limit.
Points assessed: 6
N. Violation: Following too close.
Points assessed: 4
O. Violation: Failure to yield right of way to emergency vehicle.
Points assessed: 4
P. Violation: Failure to stop for school bus or school-crossing signals.
Points assessed: 4
Q. Violation: Failure to obey traffic signals or traffic instructions of an enforcement officer or traffic warden; or any official regulatory traffic sign or device requiring a full stop or yield of right of way; denying entry; or requiring direction of traffic.
Points assessed: 4
R. Violation: Improper passing.
Points assessed: 4
S. Violation: Failure to yield (no official sign involved).
Points assessed: 4
T. Violation: Improper turning movements (no official sign involved).
Points assessed: 3
U. Violation: Wearing of headphones/earphones while driving motor vehicles (two or more wheels).
Points assessed: 3
V. Violation: Failure to wear an approved helmet and/or required protective equipment while operating or riding on a motorcycle, MOPED, or a three or four–wheel vehicle powered by a motorcycle–like engine.
Points assessed: 3
W. Violation: Improper overtaking.
Points assessed: 3
X. Violation: Other moving violations (involving driver behavior only).
Points assessed: 3
Y. Violation: Operating an unsafe vehicle. (See Note 2).
Points assessed: 2
Z. Violation: Driver involved in accident is deemed responsible (only added to points assessed for specific offenses).
Points assessed: 1

Notes:

1. When two or more violations are committed on a single occasion, points may be assessed for each individual violation.

2. This measure should be used for other than minor vehicle safety defects or when a driver or registrant fails to correct a minor defect (for example, a burned out headlight not replaced within the grace period on a warning ticket).

§ 634.47 Point system procedures.

(a) Reports of moving traffic violations recorded on DD Form 1408 or the CVB will serve as a basis for determining point assessment. For DD Form 1408, return endorsements will be required from commanders or supervisors.

(b) On receipt of DD Form 1408 or other military law enforcement report of a moving violation, the unit commander, designated supervisor, or person otherwise designated by the installation commander will conduct an inquiry. The commander will take or recommend proper disciplinary or administrative action. If a case involves judicial or non-judicial actions, the final report of action taken will not be forwarded until final adjudication.

(c) On receipt of the report of action taken (including action by a U.S. Magistrate Court on the CVB), the installation law enforcement officer will assess the number of points appropriate for the offense, and record the traffic points or the suspension or revocation of driving privileges on the person's driving record. Except as specified otherwise in this part and other Service/DLA regulations, points will not be assessed or driving privileges suspended or revoked when the report of action taken indicates that neither disciplinary nor administrative action was taken.

(d) Installation commanders may require the following driver improvement measures as appropriate:

(1) Advisory letter through the unit commander or supervisor to any person who has acquired six traffic points within a six-month period.

(2) Counseling or driver improvement interview, by the unit commander, of any person who has acquired more than six but less than 12 traffic points within a six-month period. This counseling or interview should produce recommendations to improve driver performance.

(3) Referral for medical evaluation when a driver, based on reasonable belief, appears to have mental or physical limits that have had or may have an adverse affect on driving performance.

(4) Attendance at remedial driver training to improve driving performance.

(5) Referral to an alcohol or drug treatment or rehabilitation facility for evaluation, counseling, or treatment. This action is required for active military personnel in all cases in which alcohol or other drugs are a contributing factor to a traffic citation, incident, or accident.

(e) An individual's driving privileges may be suspended or revoked as provided by this part regardless of whether these improvement measures are accomplished.

(f) Persons whose driving privileges are suspended or revoked (for one violation or an accumulation of 12 traffic points within 12 consecutive months, or 18 traffic points within 24 consecutive months) will be notified in writing through official channels (§ 634.11). Except for the mandatory minimum or maximum suspension or revocation periods prescribed above, the installation commander will establish periods of suspension or revocation. Any revocation based on traffic points must be no less than six months. A

longer period may be imposed on the basis of a person's overall driving record considering the frequency, flagrancy, severity of moving violations, and the response to previous driver improvement measures. In all cases, military members must successfully complete a prescribed course in remedial driver training before driving privileges are reinstated.

(g) Points assessed against a person will remain in effect for point accumulation purposes for 24 consecutive months. The review of driver records to delete traffic points should be done routinely during records update while recording new offenses and forwarding records to new duty stations. Completion of a revocation based on points requires removal from the driver record of all points assessed before the revocation.

(h) Removal of points does not authorize removal of driving record entries for moving violations, chargeable accidents, suspensions, or revocations. Record entries will remain posted on individual driving records for the following periods of time.

(1) Chargeable nonfatal traffic accidents or moving violations-3 years.

(2) Non-mandatory suspensions or revocations-5 years.

(3) Mandatory revocations-7 years.

§ 634.48 Disposition of driving records.

Procedures will be established to ensure prompt notice to the installation law enforcement office when a person assigned to or employed on the installation is being transferred to another installation, being released from military service, or ending employment.

(a) If persons being transferred to a new installation have valid points or other entries on the driving records, the law enforcement offices will forward the records to the law enforcement office of the gaining installation. Gaining installation law enforcement offices must coordinate with applicable commanders and continue any existing suspension or revocation based on intoxicated driving or accumulation of traffic points. Traffic points for persons being transferred will continue to accumulate as specified in § 634.46(g).

(b) Driving records of military personnel being discharged or released from active duty will be retained on file for two years and then destroyed. In cases of immediate reenlistment, change of officer component or military or civilian retirement when vehicle registration is continued, the record will remain active.

(c) Driving records of civilian personnel terminating employment will be retained on file for two years and then destroyed.

(d) Driving records of military family members containing point assessments or other entries will be forwarded to the sponsor's gaining installation in the same manner as for service members. At the new installation, records will be analyzed and made available temporarily to the sponsor's unit commander or supervisor for review.

(e) Driving records of retirees electing to retain installation driving privileges will be retained. Points accumulated or entries on the driver record regarding suspensions, revocations, moving violations, or chargeable accidents will not be deleted from driver records except per § 634.46(g) and (h).

(f) Army users will comply with paragraphs (a) and (d) of this section by mailing the individual's DA Form 3626 to the gaining installation Provost Marshal/Director of Emergency Services.

Subpart F—Impounding Privately Owned Vehicles

§ 634.49 General.

This Subpart provides the standards and procedures for law enforcement personnel when towing, inventorying, searching, impounding, and disposing of POVs. This policy is based on:

(a) The interests of the Services and DLA in crime prevention, traffic safety, and the orderly flow of vehicle traffic movement.

(b) The vehicle owner's constitutional rights to due process, freedom from unreasonable search and seizure, and freedom from deprivation of private property.

§ 634.50 Standards for impoundment.

(a) POVs should not be impounded unless the vehicles clearly interfere with ongoing operations or movement of traffic, threaten public safety or convenience, are involved in criminal activity, contain evidence of criminal activity, or are stolen or abandoned.

(b) The impoundment of a POV would be inappropriate when reasonable alternatives to impoundment exist.

(1) Attempts should be made to locate the owner of the POV and have the vehicle removed.

(2) The vehicle may be moved a short distance to a legal parking area and temporarily secured until the owner is found.

(3) Another responsible person may be allowed to drive or tow the POV with permission from the owner, operator, or person empowered to control the vehicle. In this case, the owner, operator, or person empowered to control the vehicle will be informed that law enforcement personnel are not responsible for safeguarding the POV.

(c) Impounding of POVs is justified when any of the following conditions exist:

(1) The POV is illegally parked—

(i) On a street or bridge, in a tunnel, or is double parked, and interferes with the orderly flow of traffic.

(ii) On a sidewalk, within an intersection, on a cross-walk, on a railroad track, in a fire lane, or is blocking a driveway, so that the vehicle interferes with operations or creates a safety hazard to other roadway users or the general public. An example would be a vehicle parked within 15 feet of a fire hydrant or blocking a properly marked driveway of a fire station or aircraft-alert crew facility.

(iii) When blocking an emergency exit door of any public place (installation theater, club, dining hall, hospital, and other facility).

(iv) In a ''tow-away'' zone that is so marked with proper signs.

(2) The POV interferes with—

(i) Street cleaning or snow removal operations and attempts to contact the owner have been unsuccessful.

(ii) Emergency operations during a natural disaster or fire or must be removed from the disaster area during cleanup operations.

(3) The POV has been used in a crime or contains evidence of criminal activity.

(4) The owner or person in charge has been apprehended and is unable or unwilling to arrange for custody or removal.

(5) The POV is mechanically defective and is a menace to others using the public roadways.

(6) The POV is disabled by a traffic incident and the operator is either unavailable or physically incapable of having the vehicle towed to a place of safety for storage or safekeeping.

(7) Law enforcement personnel reasonably believe the vehicle is abandoned.

§ 634.51 Towing and storage.

(a) Impounded POVs may be towed and stored by either the Services and DLA or a contracted wrecker service depending on availability of towing services and the local commander's preference.

(b) The installation commander will designate an enclosed area on the installation that can be secured by lock and key for an impound lot to be used by the military or civilian wrecker service. An approved impoundment area belonging to the contracted wrecker service may also be used provided the

area assures adequate accountability and security of towed vehicles. One set of keys to the enclosed area will be maintained by the installation law enforcement officer or designated individual.

(c) Temporary impoundment and towing of POVs for violations of the installation traffic code or involvement in criminal activities will be accomplished under the direct supervision of law enforcement personnel.

§ 634.52 Procedures for impoundment.

(a) *Unattended POVs.* (1) DD Form 2504 (Abandoned Vehicle Notice) will be conspicuously placed on POVs considered unattended. This action will be documented by an entry in the installation law enforcement desk journal or blotter.

(2) The owner will be allowed three days from the date the POV is tagged to remove the vehicle before impoundment action is initiated. If the vehicle has not been removed after three days, it will be removed by the installation towing service or the contracted wrecker service. If a contracted wrecker service is used, a DD Form 2505 (Abandoned Vehicle Removal Authorization) will be completed and issued to the contractor by the installation law enforcement office.

(3) After the vehicle has been removed, the installation law enforcement officer or the contractor will complete DD Form 2506 (Vehicle Impoundment Report) as a record of the actions taken.

(i) An inventory listing personal property will be done to protect the owner, law enforcement personnel, the contractor, and the commander.

(ii) The contents of a closed container such as a suitcase inside the vehicle need not be inventoried. Such articles should be opened only if necessary to identify the owner of the vehicle or if the container might contain explosives or otherwise present a danger to the public. Merely listing the container and sealing it with security tape will suffice.

(iii) Personal property must be placed in a secure area for safekeeping.

(4) DD Form 2507 (Notice of Vehicle Impoundment) will be forwarded by certified mail to the address of the last known owner of the vehicle to advise the owner of the impoundment action, and request information concerning the owner's intentions pertaining to the disposition of the vehicle.

(b) *Stolen POVs or vehicles involved in criminal activity.* (1) When the POV is to be held for evidentiary purposes, the vehicle should remain in the custody of the applicable Service or DLA until law enforcement purposes are served.

(2) Recovered stolen POVs will be released to the registered owner, unless held for evidentiary purposes, or to the law enforcement agency reporting the vehicle stolen, as appropriate.

(3) A POV held on request of other authorities will be retained in the custody of the applicable Service or DLA until the vehicle can be released to such authorities.

§ 634.53 Search incident to impoundment based on criminal activity.

Search of a POV in conjunction with impoundment based on criminal activity will likely occur in one of the following general situations:

(a) The owner or operator is not present. This situation could arise during traffic and crime-related impoundments and abandoned vehicle seizures. A property search related to an investigation of criminal activity should not be conducted without search authority unless the item to be seized is in plain view or is readily discernible on the outside as evidence of criminal activity. When in doubt, proper search authority should be obtained before searching.

(b) The owner or operator is present. This situation can occur during either a traffic or criminal incident, or if the operator is apprehended for a crime or serious traffic violation and sufficient probable cause exists to seize the vehicle. This situation could also arise during cases of intoxicated driving or traffic accidents in which the operator is present but incapacitated or otherwise unable to make adequate arrangements to safeguard the vehicle. If danger exists to the police or public or if there is risk of loss or destruction of evidence, an investigative type search of the vehicle may be conducted without search authority. (Air Force, see AFP 125–2).

§ 634.54 Disposition of vehicles after impoundment.

(a) If a POV is impounded for evidentiary purposes, the vehicle can be held for as long as the evidentiary or law enforcement purpose exists. The vehicle must then be returned to the owner without delay unless directed otherwise by competent authority.

(b) If the vehicle is unclaimed after 120 days from the date notification was mailed to the last known owner or the owner released the vehicle by properly completing DD Form 2505, the vehicle will be disposed of by one of the following procedures:

(1) Release to the lien holder, if known.

(2) Processed as abandoned property in accordance with DOD 4160.21–M.

(i) Property may not be disposed of until diligent effort has been made to find the owner; or the heirs, next of kin, or legal representative of the owner.

(ii) The diligent effort to find one of those mentioned in paragraph (a) of this section shall begin no later than seven days after the date on which the property comes into custody or control of the law enforcement agency.

(iii) The period for which this effort is continued may not exceed 45 days.

(iv) If the owner or those mentioned in § 634.53 are determined, but not found, the property may not be disposed of until the expiration of 45 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at their last known address.

(v) When diligent effort to determine those mentioned in paragraph (b)(2)(iv) of this section is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of more than $500, the law enforcement official may not dispose of the property until 45 days after the date it is received at the storage point.

(c) All contracts for the disposal of abandoned vehicles must comply with 10 U.S.C. 2575.

Subpart G—List of State Driver's License Agencies

§ 634.55 List of State driver's license agencies.

Notification of State Driver's License Agencies. The installation commander will notify the State driver's license agency of those personnel whose installation driving privileges are revoked for one year or more, following final adjudication of the intoxicated driving offense or for refusing to submit to a lawful blood-alcohol content test in accordance with § 634.8. This notification will include the basis for the suspension and the blood alcohol level. The notification will be sent to the State in which the driver's license was issued. A current listing of State driver's license agencies can be located on the worldwide web at *http://www.usa.gov/Topics/Motor-Vehicles.shtml.* State driver's license agencies are listed as follows:

Alabama: Motor Vehicle Division, 2721Gunter Park Drive, Montgomery, AL36101, (205) 271–3250.

Alaska: Motor Vehicle Division, P.O. Box 100960, Anchorage, AK 99510, (907) 269–5572.

Arizona: Motor Vehicle Division, 1801 West Jefferson Street Phoenix, AZ 85007, (602) 255–7295.

Arkansas: Motor Vehicle Division, Joel & Ledbetter Bldg., 7th and Wolfe Streets, Little Rock, AR 72203, (501) 371–1886.
California: Department of Motor Vehicles, P.O. Box 932340, Sacramento, CA 94232, (916) 445–0898.
Colorado: Motor Vehicle Division, 140 West Sixth Avenue, Denver, CO 80204, (303) 866–3158.
Connecticut: Department of Motor Vehicles, 60 State Street Wethersfield, CT 06109, (203) 566–5904.
Delaware: Motor Vehicle Director, State Highway Administration Bldg., P.O. Box 698, Dover, DE 19903, (302) 736–4421.
District of Columbia: Department of Transportation, Bureau of Motor Vehicles, 301 C Street NW., Washington, DC 20001, (202) 727–5409.
Florida: Division of Motor Vehicles, Neil Kirkman Building, Tallahassee, FL 32301, (904) 488–6921.
Georgia: Motor Vehicle Division, Trinity-Washington Bldg., Room 114, Atlanta, GA 30334, (404) 656–4149.
Hawaii: Division of Motor Vehicle and Licensing, 1455 S. Benetania Street, Honolulu, HI 96814, (808) 943–3221.
Idaho: Transportation Department, 3311 State Street, P.O. Box 34, Boise, ID 83731, (208) 334–3650.
Illinois: Secretary of State, Centennial Building, Springfield, IL 62756, (217) 782–4815.
Indiana: Bureau of Motor Vehicles, State Office Building, Room 901, Indianapolis, IN 46204, (317) 232–2701.
Iowa: Department of Transportation Office of Operating Authority, Lucas Office Bldg., Des Moines, IA 50319, (515) 281–5664.
Kansas: Department of Revenue, Division of Vehicles, Interstate Registration Bureau, State Office Bldg., Topeka, KS 66612, (913) 296–3681.
Kentucky: Department of Transportation, New State Office Building, Frankfort, KY 40622, (502) 564–4540.
Louisiana: Motor Vehicle Administrator, S. Foster Drive, Baton Rouge, LA 70800, (504) 925–6304.
Maine: Department of State, Motor Vehicle Division, Augusta, ME 04333, (207) 289–5440.
Maryland: Motor Vehicle Administration, 6601 Ritchie Highway NE., Glen Burnie, MD 21062, (301) 768–7000.
Massachusetts: Registry of Motor Vehicle, 100 Nashua Street, Boston, MA 02114, (617) 727–3780.
Michigan: Department of State, Division of Driver Licenses and Vehicle Records, Lansing, MI 48918, (517) 322–1486.
Minnesota: Department of Public Safety, 108 Transportation Building, St. Paul, MN 55155, (612) 296–2138.
Mississippi: Office of State Tax Commission, Woolfolk Building, Jackson, MS 39205, (601) 982–1248.
Missouri: Department of Revenue, Motor Vehicles Bureau, Harry S. Truman Bldg., 301 W. High Street, Jefferson City, MO 65105, (314) 751–3234.
Montana: Highway Commission, Box 4639, Helena, MT 59604, (406) 449–2476.
Nebraska: Department of Motor Vehicles, P.O. Box 94789, Lincoln, NE 68509, (402) 471–3891.
Nevada: Department of Motor Vehicles, Carson City, NV 89711, (702) 885–5370.
New Hampshire: Department of Safety, Division of Motor Vehicles, James H. Haynes Bldg., Concord, NH 03305, (603) 271–2764.
New Jersey: Motor Vehicle Division, 25 S. Montgomery Street, Trenton, NJ 08666, (609) 292–2368.
New Mexico: Motor Transportation Division, Joseph M. Montoya Building, Santa Fe, NM 87503, (505) 827–0392.
New York: Division of Motor Vehicles, Empire State Plaza, Albany, NY 12228, (518) 474–2121.
North Carolina: Division of Motor Vehicles, Motor Vehicles Bldg., Raleigh, NC 27697, (919) 733–2403.
North Dakota: Motor Vehicle Department, Capitol Grounds, Bismarck, ND 58505, (701) 224–2619.
Ohio: Bureau of Motor Vehicles, P.O. Box 16520, Columbus, OH 43216, (614) 466–4095.
Oklahoma: Oklahoma Tax Commission, Motor Vehicle Division, 2501 Lincoln Boulevard, Oklahoma City, OK 73194, (405) 521–3036
Oregon: Motor Vehicles Division, 1905 Lana Avenue NE., Salem, OR 97314, (503) 378–6903.
Pennsylvania: Department of Transportation, Bureau of Motor Vehicles, Transportation and Safety Bldg., Harrisburg, PA 17122, (717) 787–3130.
Rhode Island: Department of Motor Vehicles, State Office Building, Providence, RI 02903, (401) 277–6900.
South Carolina: Motor Vehicle Division, P.O. Drawer 1498, Columbia, SC 29216, (803) 758–5821.
South Dakota: Division of Motor Vehicles, 118 W. Capitol, Pierre, SD 57501, (605) 773–3501.
Tennessee: Department of Revenue, Motor Vehicle Division, 500 Deaderick Street, Nashville, TN 37242, (615) 741–1786.
Texas: Department of Highways and Public Transportation, Motor Vehicle Division, 40th and Jackson Avenue, Austin, TX 78779, (512) 475–7686.
Utah: Motor Vehicle Division State Fairgrounds, 1095 Motor Avenue, Salt Lake City, UT 84116, (801) 533–5311.
Vermont: Department of Motor Vehicles, State Street, Montpelier, VT 05603, (802) 828–2014.
Virginia: Department of Motor Vehicles, 2300 W. Broad Street, Richmond, VA 23220, (804) 257–1855.
Washington: Department of Licensing, Highways—Licenses Building, Olympia, WA 98504, (206) 753–6975.
West Virginia: Department of Motor Vehicles, 1800 Washington Street, East Charleston, WV 25317, (304) 348–2719.
Wisconsin: Department of Transportation Reciprocity and Permits, P.O. Box 7908, Madison, WI 53707, (608) 266–2585.
Wyoming: Department of Revenue, Policy Division, 122 W. 25th Street, Cheyenne, WY 82002, (307) 777–5273.
Guam: Deputy Director, Revenue and Taxation, Government of Guam, Agana, Guam 96910, (671) 635–7651
Puerto Rico: Department of Transportation and Public Works, Bureau of Motor Vehicles, P.O. Box 41243, Minillas Station, Santurce, Puerto Rico 00940, (809) 722–2823.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–1025]

RIN 1625–AA00

Safety Zone; JI Mei Design Construction Co., LTD, Hudson River, Manhattan, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain waters of the Hudson River. This action is necessary to provide for the safety of life on these navigable waters of the Hudson River near Hells Kitchen, NY during a fireworks display, on February 6, 2016. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port New York or a designated

representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before January 19, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2015–1025 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST1 Daniel Vazquez, Sector New York Waterways Management Division, U.S. Coast Guard; telephone 718–354–4154, email *Daniel.Vazquez@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
E.O. Executive order
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On October 7, 2015, the JI Mei Design Construction Co. notified the Coast Guard that it will be conducting a fireworks display from 8:00 to 9:30 p.m. on February 6, 2016. The fireworks are to be launched from five barges in the Hudson River bound by a box drawn from the following points: 40°46′24.41″ N., 074°00′16.14″ W. thence to 40°46′15.64′ N., 073°59′55.74′ W. thence to 40°45′28.60″ N., 074°00′30.84″ W. thence to 40°45′37.40″ N., 074°00′51.23″ W. thence to point of origin. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with this fireworks display be a safety concern for anyone within close proximity of the barges.

The purpose of this rulemaking is to ensure the safety of vessels on the navigable waters within close proximity of the fireworks barges before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 8:00 to 9:30 p.m. on February 6, 2016. The safety zone would cover all navigable waters in the Hudson River located approximately 375 yards west of Pier 94, Manhattan, NY and extending south to approximately 375 yards west of Pier 76, Manhattan, NY. The duration of the zone is intended to ensure the safety of vessels on these navigable waters before, during, and after the scheduled 8:00 p.m. to 9:30 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Hudson River for less than 2 hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian

tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than 2 hours that would prohibit entry within the proposed safety zone around all fireworks barges. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–1025 to read as follows:

§ 165.T01–1025 Safety Zone; JI Mei Design Construction Co., LTD, Hudson River, Manhattan, NY.

(a) *Regulated Area.* The following area is a temporary safety zone: all navigable waters of the Hudson River within a box bound by a line drawn from position 40°46′24.41″ N., 074°00′16.14″ W. thence to 40°46′15.64′ N., 073°59′55.74′ W., thence to 40°45′28.60″ N., 074°00′30.84″ W., thence to 40°45′37.40″ N., 074°00′51.23″ W., thence to point of origin.

(b) *Effective Period.* This section will be enforced from 8:00 p.m. until 9:30 p.m. on February 6, 2016.

(c) *Definitions.* The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP) Sector New York, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) *Regulations.*

(1) The general safety zone regulations contained in 33 CFR 165.23, as well as the following regulations apply.

(2) No vessels, except for the fireworks barges and the accompanying vessels, will be allowed to transit the safety zone without the permission of the COTP.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York Command Center) to obtain permission to do so.

Dated: November 25, 2015.

M.H. Day,

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

[FR Doc. 2015–31899 Filed 12–17–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–CALO–19111; PPWONRADE2, PMP00EI05.YP]

RIN 1024–AE24

Cape Lookout National Seashore, Off-Road Vehicle Management

AGENCY: National Park Service, Interior

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to designate routes for, and manage off-road vehicle use within Cape Lookout National Seashore, North Carolina. Under the National Park Service general regulations, the operation of motor vehicles off roads is prohibited unless authorized by special regulation. The proposed rule would authorize off-road vehicle use at the Seashore through a permit system and establish operational and vehicle requirements.

DATES: Comments must be received by February 16, 2016.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024–AE24, by any of the following methods:

- *Electronically:* Federal eRulemaking Portal*: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Hardcopy:* Mail or hand-deliver to: Superintendent, Cape Lookout National Seashore, 131 Charles St., Harkers Island, North Carolina 28531.

Instructions: All comments received must include the agency name and RIN for this rulemaking: 1024–AE24. Comments submitted through Federal eRulemaking Portal: *http://www.regulations.gov* or submitted by mail must be entered or postmarked before midnight (Eastern Daylight Time) February 16, 2016 Comments submitted by hand delivery must be received by the close of business hours (5 p.m. Eastern Daylight Time) February 16, 2016.

If you commented on the Draft ORV Management Plan/Draft Environmental Impact Statement, (plan/DEIS) your comments have been considered in drafting the proposed rule. Comments should focus on this proposed rule; comments that refer back to the draft Plan/DEIS will be untimely and will not be considered.

Comments will not be accepted by fax, email, or in any way other than those specified above, and bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Patrick Kenney, Superintendent, Cape Lookout National Seashore, 131 Charles St., Harkers Island, North Carolina 28531; phone 252–728–2250, extension 3014.

SUPPLEMENTARY INFORMATION:

Background

Description of Cape Lookout National Seashore

Authorized by Congress in 1966 (Pub. L. 89–366), and established as a unit of the National Park System in 1976 (41 FR 39363), Cape Lookout National Seashore (Seashore) is located approximately three miles off the mainland in the central coastal area of North Carolina. Consisting of more than 29,000 acres of land and water from Ocracoke Inlet to Beaufort Inlet, the 56 miles of barrier islands consist mostly of wide, bare beaches with low dunes covered by scattered grasses, flat grasslands bordered by dense vegetation, maritime forests, and large expanses of salt marsh alongside the sounds. The Seashore serves as a popular recreation destination where visitors participate in a variety of recreational activities. The Seashore also contains important habitat for wildlife created by the Seashore's dynamic environmental processes. Several species listed under the Endangered Species Act, including the piping plover, seabeach amaranth, red knot, and four species of sea turtles, are found within the Seashore.

Authority and Jurisdiction To Promulgate Regulations

In the statute commonly known as the NPS Organic Act (54 U.S.C. 100101), Congress granted the National Park Service (NPS) broad authority to regulate the use of areas under its jurisdiction. The Organic Act authorizes the Secretary of the Interior (Secretary), acting through the NPS, to ''prescribe such regulations as the Secretary considers necessary or proper for the use and management of [National Park] System units.'' 54 U.S.C. 100751(a). In the Seashore's enabling act, Congress directed the Secretary to administer the Seashore ''for the general purposes of public outdoor recreation, including conservation of natural features contributing to public enjoyment.'' 16 U.S.C. 459g–4.

Off-Road Motor Vehicle Regulation

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, was issued in 1972 in response to the widespread and rapidly increasing off-road driving on public lands ''often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity.'' Executive Order 11644 was amended by Executive Order 11989 in 1977, and together they are collectively referred to in this rule as ''E.O.'' The E.O. requires Federal agencies that allow motorized vehicle use in off-road areas to designate specific areas and routes on public lands where the use of motorized vehicles may be permitted. Specifically, section three of the E.O. requires agencies to develop and issue regulations that designate the specific areas and trails on public lands where off-road vehicle (ORV) use is permitted, and areas where ORV use is prohibited. The regulations must ensure that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations must also require that the designation of such areas and trails shall be in accordance with the following:

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of the National Park System, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

The NPS regulation at 36 CFR 4.10(b) implements the E.O. and requires that routes and areas designated for ORV use be promulgated as special regulations and that the designation of routes and

areas must comply with the E.O. It also states that ORV routes and use-areas may be designated only in national recreation areas, national seashores, national lakeshores, and national preserves. The proposed rule is consistent with these authorities and with Section 8.2.3.1 (Motorized Off-road Vehicle Use) of NPS Management Policies 2006, available at: *http://www.nps.gov/policy/mp/policies.html.*

ORV Use at Cape Lookout National Seashore

ORV use at the Seashore predates the authorization and establishment of the Seashore. Beginning in the 1930s, vehicles were transported to the islands by shallow draft ferries and were used to access fishing grounds.

Today, ORVs provide vehicular access to the Seashore beaches for recreational purposes. ORV routes have been designated and ORV use has been managed through the Superintendent's Compendium, which currently allows for ORV use from March 16 to December 31 (with a closure of the Seashore to ORVs from January 1 through March 15). The Cape Lookout National Seashore General Management Plan (NPS 1980) identified 47 of the 56 miles of the Seashore as appropriate for controlled ORV use. The remaining nine miles on Shackleford Banks is a proposed wilderness area under the Wilderness Act (Pub. L. 88–577) and is managed to preserve its wilderness character and is closed to recreational vehicle use. Currently, of the 47 miles identified as appropriate for ORV use, 2.2 miles are closed to ORV use year-round. Additional areas may be periodically closed to ORV use for resource protection during the bird nesting and fledgling season or turtle nesting and hatching season.

Draft ORV Management Plan/Draft Environmental Impact Statement

The plan/DEIS was released for public comment on May 23, 2014, with the public comment period extended twice through September 19, 2014. This long-term ORV planning effort is based on recognition by the NPS that if allowed, ORVs must be regulated in a manner that is consistent with applicable law and in a manner that appropriately addresses resource protection, potential conflicts among the various Seashore users, and visitor safety.

The plan/DEIS and other supporting documentation can be found online at *http://www.parkplanning.nps.gov/calo.*

The Proposed Rule

This proposed rule would establish a special regulation pursuant to the E.O. and 36 CFR 4.10(b) that would implement portions of the preferred alternative as described in the plan/DEIS. The proposed rule would:

- Designate ORV routes and pedestrian-only areas at the Seashore;
- Implement a permit system for ORVs with limits on the number of permits;
- Impose date and time restrictions on the use of ORVs to protect resources and enhance visitor experience; and
- Set vehicle and equipment standards, phasing out sport model All-Terrain Vehicles (ATVs) and Utility Vehicles (UTVs), and
- Allow an additional four ramps on North Core Banks and five ramps on South Core Banks where vehicle traffic could cross between the Beach Route and the Back Route could be constructed.

Based on review of public comments on the plan/DEIS (received through compliance with the National Environmental Policy Act), the proposed rule reflects input received during this planning effort, including the following:

- Closure dates would be consistent to eliminate confusion;
- Seven miles of existing pedestrian only areas would be changed from year-round to seasonal closures (Memorial Day–Labor Day);
- Creation of a designated route for ORVs in front of the Long Point and Great Island cabin camps;
- ORV permits would be valid for ORV use on both North and South Core Banks;
- An annual limit on the number of ORV permits that would be issued, would be determined based on 5 years of data instead of 3 years, and data from years with significant ORV closure events in excess of 14 days (such as a hurricane) would not be used to establish a vehicle cap;
- Night driving on beach ORV routes would not be allowed from 9:00 p.m.–6:00 a.m. from May 1 to September 14. However, driving on the back routes would be allowed from 5:00 a.m.–10:00 p.m., and at any time in the Great Island and Long Point cabin camps as defined on the map available at the office of the Superintendent and for review on the Seashore's Web site at *http://www.nps.gov/calo;*
- Vehicle length restriction would be removed and replaced with a wheelbase limit not to exceed 180 inches;
- Vehicles with a two-stroke engine would be prohibited immediately;
- ATV trailer length limit would be removed and made consistent with vehicle trailer lengths; and
- New prohibitions (including use of sport-model ATV/UTVs, trailers exceeding 30 feet in length and vehicles with wheel base exceeding 180 inches) would be phased in after a one year grace period.

The NPS intends to recover the costs of administering the ORV special use permit program under 54 U.S.C. 103104. In order to obtain a special use permit required to operate a motor vehicle on designated ORV routes in the Seashore, the proposed rule would require ORV operators to pay a permit fee.

The following explains some of the principal elements of the proposed rule in a question and answer format:

What is an ''Off-Road Vehicle'' (ORV)?

For the purposes of this regulation, an ''off-road vehicle'' or ''ORV'' means a motor vehicle used off of Seashore roads (off-road). ORVs authorized for use at the Seashore are subject to the vehicle requirements, prohibitions, and permitting requirements described in this proposed rule. However, certain ORVs would be prohibited at the Seashore by this rule; these include motorcycles, tracked vehicles, farm vehicles, vehicles with two-stroke engines, and amphibious ATVs.

In addition, although the Seashore allows ATV and UTV use for transportation within its boundaries, the seashore has determined that the use of these vehicles for performance riding is not consistent with the Seashore's purpose or NPS *Management Policies 2006* and has proposed phasing out the specific type of ATVs and UTVs that are designed and classified by manufacturers as high performance vehicles. These high performance vehicles are by design faster, noisier, and less safe than utility models. They are by design made for racing, jumping, and moving at high speeds, instead of used as a tool for access to the Seashore. The NPS will not issue ORV permits for these specific types of ATV and UTV vehicles after the expiration of the grace period.

Do I need a permit to operate a vehicle off road?

Yes. To obtain an ORV permit, you must complete a short educational program, acknowledge in writing that you understand and agree to abide by the rules governing ORV use at the Seashore, and pay the applicable permit fee. A permit fee schedule would be developed by the Superintendent. Implementation of the permit system would begin the first full calendar year after the final regulation becomes effective.

Is there a limit to the number of ORV permits that will be issued?

Yes. Initially, the maximum number of ORV permits that may be issued is 5,500. This number is based on current use levels. In order to ensure that ORV use does not exceed current levels, ORV use would be monitored for the first five years that permits are issued and thereafter capped at the five-year average use level (not to exceed 5,500). Any year in which there is a significant ORV closure (more than 14 days) will not be counted and an additional year of data would be collected and averaged to determine the cap. A permit would allow access to all routes where ORVs are permitted within the Seashore. Permits would be established on a first-come, first-served basis. An annual lottery may be established to equitably allocate permits.

My family has several ORVs that we would like to use on Seashore beaches. Do we need to get a permit for each vehicle?

Yes. You would need to get a permit for each vehicle you plan to use on ORV routes in the Seashore. You would also need to affix the permit to each vehicle in a manner specified by the Superintendent.

Where and when may I operate my ORV?

Once you obtain an ORV permit and an education certificate, you may operate your motor vehicle off road only on the routes described in the tables in the proposed rule. The Seashore would be closed to motor vehicles from December 16 through March 15 of each year. The tables in this rule also provide dates for seasonal restrictions for driving on designated routes. If deemed necessary by the Superintendent, seasonal closures for resource management could occur from March 16 through December 15. Some pedestrian only areas would be established from May 1–September 14, however some are year round. Maps of designated ORV routes will be available at the Office of the Superintendent and for review on the Seashore Web site at: *http://www.nps.gov/calo.*

Does the ORV permit guarantee that all designated ORV routes will be open for me to use?

No. In addition to the seasonal pedestrian-only restrictions from May 1–September 14, ORV routes may be subject to temporary resource and visitor safety closures. This authority would be exercised independent of the Superintendent's authority under 36 CFR 1.5 and would provide the park with greater flexibility to respond to the impacts of ORV use in designated routes and areas to prevent 'unacceptable impacts'. Public notice of any action taken under this authority would be given pursuant to one or more of the methods set forth in 36 CFR 1.7.

Are there any requirements for my ORV?

Yes. To receive a permit to operate a vehicle on designated ORV routes (except for ATVs and UTVs), your vehicle must be registered, licensed, and insured for highway use and comply with inspection regulations within the state, province or country, where the vehicle is registered. ORV operators (except for ATVs and UTVs) would be required to carry a low-pressure tire gauge, shovel, jack, and jack stand/board in the vehicle.

Can I drive my two-wheel-drive vehicle on designated ORV routes?

Yes. Four-wheel drive vehicles are recommended, but two-wheel drive vehicles would be allowed if, in the judgment of the vehicle operator, the vehicle is capable of over-sand travel.

Can I tow a trailer with my vehicle on designated ORV routes?

Yes. Trailers with one or two axles would be allowed. Trailers with more than two axles would be prohibited. Trailers cannot exceed 30 feet in length including all attachments. Restrictions on trailers would be implemented after a one-year grace period. Transporting passengers in a trailer would be prohibited.

Is there a vehicle length restriction?

No. The proposed rule would not institute a vehicle length restriction, but the NPS wants to ensure that all vehicles on the Seashore can safely navigate the back routes and properly stay in the track on designated routes. Therefore, the NPS would not issue ORV permits for vehicles with a wheelbase measurement that exceeds 180 inches. There would be a one year grace period before the wheelbase restriction is implemented.

May I ride my all-terrain vehicle (ATV) or utility vehicle (UTV) at the Seashore?

After a one year grace period, only non-sport model ATVs and UTVs would be allowed from March 16 through December 15 on designated routes within the Seashore provided the non-sport ATVs and UTVs have not been modified and still meet the manufacturer's original specifications for a non-sport or utility model. ATV/UTVs would be allowed a maximum of 3 axles, and would not need to be registered, licensed, insured for highway use, or comply with inspection regulations. ATV/UTV operators would not be required to carry in or on the vehicle a low-pressure tire gauge, shovel, jack, or jack stand/board. ATV operators must wear a U.S. Department of Transportation approved helmet and eye protection. All high-performance sport-model ATVs and UTVs would be prohibited after a one year grace period and can no longer receive the required ORV permit to ride at the seashore. While these high-performance sports model are generally identified by the manufactures, any questions concerning the models subject to this prohibition will be resolved by the Superintendent.

What is the speed limit on designated ORV routes?

The speed limit would be 25 miles per hour (unless otherwise designated). The speed limit would be reduced to 15 miles per hour when operating a vehicle within 100 feet of any person, another vehicle, a campsite, any structure or while towing a trailer.

May I drive on designated ORV routes at night?

Yes, but not at all times on all routes. Night driving on beach ORV routes would not be allowed from 9:00 p.m. until 6:00 a.m. from May 1 to September 14 to reduce impacts on wildlife. In addition, driving on the back routes would be allowed from 5:00 a.m.–10:00 p.m., and at any time in the Great Island and Long Point cabin camps (as defined by the map available at the office of the Superintendent and for review on the Seashore's Web site at *http://www.nps.gov/calo.*

May my ORV be parked on the beach if I don't drive it between 9 p.m. and 6 a.m. during the dates night driving restrictions are in effect?

Yes, if the ORV is attended and not driven on the beach during that time.

I have a family member who is disabled or mobility-impaired. Can I use my ORV to drive that family member to the beach where we are gathering, even if it is not designated as an ORV route?

Yes, such use could be accommodated on a case-by-case basis and would be subject to the conditions of a special use permit issued by the Superintendent.

Do concessionaires and commercial use authorization holders need a separate ORV permit?

No. Use of ORVs associated with businesses would be controlled through an NPS concession contract or commercial use authorization.

What is the relationship of NC Motor Vehicle Law to these Regulations?

NPS specifically adopts state motor vehicle laws at 36 CFR 4.2(a), and can deviate from these state laws by special regulation. Under N.C. General Statute 20–4.01(32)(b), beach areas are considered public vehicular areas, and are not necessarily subject to the broader set of registration and operation laws for state roads. This rule would specify that notwithstanding the definition of public vehicular area in North Carolina State law, the operator of any motor vehicle at the Seashore, whether the ORV is moving or parked, must at all times comply with North Carolina traffic laws that would apply as if operating on a North Carolina highway. This requirement would apply to ATVs/UTVs even though they are, for example, not required to be registered, inspected or display a license plate, nor allowed on highways under North Carolina law. However, this special regulation would allow ATV/UTV use as ORVs the same as other vehicles within the Seashore; the operation of all these vehicles must be in compliance with this and other applicable regulations such as operation and safety requirements, and non-conflicting North Carolina law.

Compliance With Other Laws, Executive Orders, and Department Policy

Use of Off-Road Vehicles on the Public Lands (Executive Order 11644)

Executive Order 11644, as amended by Executive Order 11989, was adopted to address impacts on public lands from ORV use. The Executive Order applies to ORV use on federal public lands that is not authorized under a valid lease, permit, contract, or license. Section 3(4) of E.O. 11644 provides that ORV ''areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.'' Since the E.O. clearly was not intended to prohibit all ORV use everywhere in these units, the term ''adversely affect'' does not have the same meaning as the somewhat similar terms ''adverse impact'' or ''adverse effect'' commonly used in the National Environmental Policy Act of 1969 (NEPA). Under NEPA, a procedural statute that provides for the study of environmental impacts, the term ''adverse effect'' refers to any effect, no matter how minor or negligible.

Section 3(4) of the E.O., by contrast, does not prescribe procedures or any particular means of analysis. It concerns substantive management decisions, and must instead be read in the context of the authorities applicable to such decisions. The Seashore is an area of the National Park System. Therefore, the NPS interprets the E.O. term ''adversely affect'' consistent with its NPS Management Policies 2006. Those policies require that NPS only allows ''appropriate use'' of parks, and avoids ''unacceptable impacts.''

Specifically, this rule would not impede the attainment of the Seashore's desired future conditions for natural and cultural resources as identified in the plan/DEIS. The NPS has determined this rule would not unreasonably interfere with the atmosphere of peace and tranquility, or the natural soundscape maintained in natural locations within the Seashore. Therefore, within the context of the E.O., ORV use on the ORV routes designated by this rule (which are also subject to safety and resource closures and other species management measures that would be implemented under the proposed rule) would not adversely affect the natural, aesthetic, or scenic values of the Seashore.

Section 8(a) of the E.O. requires the respective agency head to monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the basis of the information gathered, such agency head shall from time to time amend or rescind designations of areas or other actions taken pursuant to the E.O. as necessary to further the policy of the E.O. The plan/DEIS identifies monitoring and resource protection procedures, and desired future conditions to provide for the ongoing and future evaluation of impacts of ORV use on protected resources. The Park Superintendent would have authority under both this rule and under 36 CFR 1.5 to close portions of the Seashore as needed to protect park resources and values, and public health and safety.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on information contained in *a report entitled, ''Benefit Cost Analysis of Proposed ORV Use Regulation at Cape Lookout National Seashore, available for public review* at: *http://parkplanning.nps.gov/projectHome.cfm?projectID=15978.*

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2) of the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(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.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. The designated ORV routes are located entirely within the Seashore, and will not result in direct expenditure by State, local, or tribal governments. This rule addresses public use of NPS lands, and imposes no requirements on other agencies or governments. Therefore, a statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. Access to private property located within or adjacent to the Seashore will not be affected, and this rule does not regulate uses of private property. Therefore, a takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects use of NPS-administered lands and imposes no requirements on other agencies or governments. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.)

This rule does not contain any new collection of information that requires approval by OMB under the PRA of 1995. OMB has approved the information collection requirements associated with NPS special use permits and has assigned OMB control number 1024–0026 (expires 08/31/2016). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

This rule constitutes a major federal action with the potential to significantly affect the quality of the human environment. In accordance with NEPA, the NPS prepared the plan/DEIS, which was released for public comment on May 23, 2014, with the public comment period extended to September 4, 2014, then again to September 19, 2014. A full description of the alternatives that were considered, the environmental impacts associated with the project, and public involvement, and other supporting documentation, can be found online at http*://www.parkplanning.nps.gov/calo.* The NPS considered public comments made on the plan/DEIS in drafting this proposed rule. The NPS will evaluate substantive comments received on the proposed rule in developing the Final ORV Management Plan/Final Environmental Impact Statement, Record of Decision, and Final Rule.

Effects on the Energy Supply (Executive Order 13211)

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

Clarity of This Rule

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

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

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

Public Participation

All submissions received must include the agency name and RIN for this rulemaking: 1024–AE24. All comments received through the Federal eRulemaking portal at *http://www.regulations.gov* will be available without change. 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, we cannot guarantee that we will be able to do so. To view comments received through the Federal eRulemaking portal, go to *http://www.regulations.gov* and enter 1024–AE24 in the search box.

Drafting Information: The primary authors of this regulation are: Russel J. Wilson, Chief, Regulations, Jurisdiction, and Special Park Uses, and A.J. North, Regulations Coordinator, National Park Service, Washington, DC.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under DC Code 10–137 and DC Code 50–2201.07.

■ 2. In § 7.49, add paragraph (c) to read as follows:

§ 7.49 Cape Lookout National Seashore.

* * * * *

(c) Off-road motor vehicle use. (1) *Definitions.* In addition to the definitions found in § 1.4 of this chapter, the following terms apply in this paragraph (c):

All-terrain vehicle (ATV)—A motorized off-highway vehicle designed to travel on four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

Back Route—A marked and maintained ORV corridor located behind the dunes running parallel to the beach, known locally as the back road.

ORV means a motor vehicle used off of Seashore roads (off-road).

Utility Terrain Vehicle (UTV)—A motorized off-highway vehicle designed to travel on four low-pressure tires. Differs from ATVs in that UTVs

typically have a side-by-side seating arrangement, many have seat belts and roll-over protection, and most have a cargo box at the rear of the vehicle. UTVs generally have a higher payload capability and are longer and wider than ATVs.

(2) *ORV permits.* The Superintendent administers the NPS special park use permit system at the Seashore, including permits for ORV use, and charges fees to recover ORV program administration costs.

(i) A permit issued by the Superintendent is required to operate a vehicle on designated ORV routes at the Seashore. The Superintendent is responsible for determining or resolving the eligibility of a vehicle for an ORV permit. The cost of the permits will be set by the Superintendent.

(ii) Operation of a motor vehicle authorized under an ORV permit is limited to those routes designated in the table in paragraph (c)(7) of this section.

(iii) The Superintendent will establish an annual limit on the number of ORV permits that may be issued, not to exceed 5,500, and will notify the public under § 1.7 of this chapter.

(iv) In order to obtain a permit, an applicant must comply with vehicle and equipment requirements, obtain an education certificate, acknowledge in writing an understanding of the rules governing ORV use at the Seashore, and pay the permit fee.

(v) Each permit holder must affix the permit in a manner and location specified by the Superintendent to the vehicle authorized for off-road use.

(3) *Vehicle, operator and equipment requirements.* The following requirements apply for driving a motor vehicle off-road:

(i) The ORV (except ATVs and UTVs) must be registered, licensed, and insured for highway use and must comply with inspection regulations within the state, province, or country where the vehicle is registered.

(ii) The ORV (except ATVs and UTVs) must have no more than two axles, no more than six wheels and no less than four wheels. ATVs and UTVs may have no more than three axles, no more than six wheels and no less than four wheels. An ORV's wheelbase must not exceed 180 inches; this requirement will take effect one year after the effective date of the final rule.

(iii) A towed trailer must have no more than two axles and must not exceed 30 feet in length. This paragraph will take effect one year after the effective date of the Final Rule.

(iv) The ORV (except ATVs and UTVs) must carry a low-pressure tire gauge, shovel, jack, and jack stand or support board.

(v) ORV operators must possess a valid driver's license and an education certificate in addition to the vehicle being permitted.

(vi) ATV operators must wear a U.S. Department of Transportation approved helmet and eye protection.

(vii) Riding on the tailgate or roof or hanging outside of moving ORVs is prohibited.

(viii) While riding in a truck bed a person must be seated on the floor. Children under 16 years of age riding in truck beds must also be accompanied by an adult riding in the bed.

(ix) Passengers are prohibited from riding in or on a trailer, unless specifically authorized by the NPS in a permit, commercial use authorization or concession contract.

(4) *Vehicle inspection.* An authorized person may inspect the vehicle to determine compliance with the requirements of this regulation.

(5*) Prohibited vehicles.* Use of a motorcycle, tracked vehicle, farm vehicle, a vehicle with a two-stroke engine, and combination vehicles (*i.e.* amphibious ATVs) are prohibited in the Seashore. The use of high performance/sport model ATVs and UTVs will be prohibited one year after the effective date of the final rule.

(6) *Special use permits for off-road driving, temporary use.* The Superintendent may issue a special use permit for temporary off-road vehicle use to allow vehicular transport of mobility impaired individuals, subject to the conditions of the permit.

(7) *ORV routes.* (i) The Seashore is closed to ORV use from December 16 through March 15.

(ii) The Seashore is open to ORV use from March 16 through December 15, with seasonal closures for species management from March 16 through December15 and pedestrian-only areas from May 1–September 14.

(iii) The following tables designate ORV routes, ORV ramps, areas closed to ORVs, and pedestrian only areas. Maps depicting the designated routes and ramps, areas closed and pedestrian only areas are available in the Office of the Superintendent and for review on the Seashore Web site.

Designated ORV Beach Route

The oceanside beach of North and South Core Banks from the toe of the primary dune line or vegetation line to the water line on the seaward side, that is accessible and otherwise open (not closed due to pedestrian, safety or species resource protection closures). The ORV corridor would be marked on the landward side.

Designated ORV Back Route and Ramps

The back route is a marked route parallel to the ocean beach behind the primary dune on North Core and South Core Banks. Marked crossover routes or ''ramps'' between the ocean beach and back route are further described below.	
North Core Banks	Route would parallel the beach behind the primary dune line from approximately 0.5 miles south of Portsmouth Flats at mile marker 4 to 0.5 mile north of Old Drum Inlet at mile marker 18 with the exception there is no back route at Kathryn-Jane Flats from mile 6 to mile 7. South of Old Drum Inlet the back route would continue from approximately mile maker 19.5 to mile marker 21 immediately north of the Ophelia Inlet.
	Ramps: 4a, 4b, 5a, 5b, 6, 7a, 7b, 8a, 8b, 9, 10a, 10b, 11a, 11b, 12, 13a, 13b, 14, 15a, 15b, 16, 17a, 17b, 18a, 18b, 19, 20, 21.
South Core Banks	Route would parallel the beach behind the primary dune line approximately 1 mile south of Ophelia Inlet at mile marker 24 to the point of Cape Lookout at mile marker 44. Additionally, the back route on South Core Banks would be extended from mile marker 44a to mile marker 44b; this by-pass section of back route would only be open when the area of the Cape closes to through traffic.
	Ramps 24, 25, 26a, 26b, 27, 28, 29, 29a, 29b, 30, 31, 32, 33, 34, 35a, 35b, 36, 37a, 37b, 38, 39, 40, 41a, 41b, 42a, 42b, 43, 44a, 44b, 45.

Designated Miscellaneous ORV Routes

A marked route from the beach to the Portsmouth Village parking area through Portsmouth Flats.
Marked routes within the Long Point and Great Island Cabin Camp areas including vehicle ferry landings.
Designated parking areas at Long Point, Great Island, and the Cape Lookout Light Station area, and the marked routes to these areas.
Marked Routes within the Cape Lookout Village Historic District.
Marked sound-side access routes:
North Core Banks—mile marker 9, mile marker 12, mile marker 18.
South Core Banks—mile marker 26.5, mile marker 31.5, mile marker 35.5 (Codds Creek), mile marker 45.

Areas Closed to ORVs

Sections of the islands isolated from designated ferry landings through the formation of new inlets, such as Middle Core Banks.
All areas of the park not designated for ORV use.

Pedestrian-Only Areas

All other areas of the Seashore not designated for ORVs above, including Shackleford Banks.	Entire area, year round closure.
Long Point	Seasonal pedestrian only area May 1 to September 14, on the ocean beach at Long Point Cabin Camp from ramp 16 to ramp 17a (approximately 0.50 miles). An ORV route will be established through this area.
Great Island	Seasonal pedestrian only area May 1 to September 14, on the ocean beach at the Great Island Cabin Camp pedestrian-only area from ramp 29 to ramp 30 (approximately 1.9 miles), to be determined by beach profile. An ORV route will be established through this area.
Codds Creek	Seasonal pedestrian only area May 1 to September 14, on the ocean beach near Codds Creek for a total closure of 0.8 miles between mile marker/ramps 35a and 35b for pedestrians only.
Light Station	A year-round pedestrian-only area at the lighthouse would run from ramp 41a to ramp 41b for a total closure of approximately 0.7 miles.
Power Squadron Spit	A year-round pedestrian-only area at the lighthouse would run from Mile Marker 46.2 to the end of the Spit.

(8) *Superintendent's closures.* (i) The Superintendent may temporarily limit, restrict, or terminate access to routes or areas designated for off-road use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

(ii) The public will be notified of such closures through one or more of the methods listed in § 1.7 of this chapter.

(iii) Violation of any closure or restriction is prohibited.

(9) *Rules for vehicle operation.* (i) Notwithstanding North Carolina law, including the definition of ''Public Vehicular Area,'' the operator of an ORV anywhere in the Seashore, whether in motion or parked, must comply with all North Carolina traffic laws that would apply if the operator were operating the vehicle on a North Carolina highway. ATVs/UTVs are not allowed on highways under North Carolina traffic law. However, this special regulation would allow ATVs/UTVs use within the Seashore, and would require ATVs/UTVs operators to comply with this and other applicable regulations, and non-conflicting North Carolina law in the same manner as all other vehicles operating off-road.

(ii) In addition to the requirements of part 4 of this chapter, the following restrictions apply:

(A) A vehicle operator must yield to pedestrians on all designated ORV routes.

(B) The speed limit for off road driving is 25 mph, unless otherwise designated.

(C) A vehicle operator must slow to 15 mph when traveling within 100 feet or less of any person, vehicle, campsite, structure or while pulling a trailer.

(D) When driving on a designated route, an operator must lower the vehicle's tire pressure sufficiently to maintain adequate traction.

(E) Vehicles may only be transported to the Seashore by NPS authorized ferries.

(10) *Night driving restrictions.* (i) Hours of operation and night driving restrictions are listed in the following table:

Hours of Operation/Night Driving Restrictions

December 16 through March 15.	Seashore closed to recreational ORV use.
March 16 through April 30 and September 15 through December 15.	All designated ORV routes are open 24 hours a day.
May 1 through September 14.	Designated ORV routes are closed from 9 p.m. to 6 a.m. to reduce potential impacts to wildlife. The back route is open 5 a.m. to 10 p.m.
March 16 through December 15.	Designated ORV routes within cabin areas at Long Point and Great Island are open 24 hours a day.

(ii) Maps are available in the office of the Superintendent and on the Seashore's Web site that show routes closed due to resource and visitor protection.

(11) *Parking permit.* (i) A parking permit issued by the Superintendent is required for long-term vehicle parking at designated locations.

(ii) Long-term vehicle lots would be closed from December 16 through March 15.

(12) *Park violations.* (i) Violating any of the provisions of this paragraph, or the terms, conditions, or requirements of an ORV or other permit authorizing ORV use is prohibited.

(ii) A violation may also result in the suspension or revocation of a NPS permit by the Superintendent.

(13) *Information collection.* As required by 44 U.S.C. 3501 *et seq.* The

Office of Management and Budget has approved the information collection requirements contained in this paragraph. The OMB approval number is 1024–0026. The NPS is collecting this information to provide the Superintendent data necessary to issue ORV special use permits. The information will be used to grant a benefit. The obligation to respond is required to order to obtain the benefit in the form of the ORV permit.

Dated: December 9, 2015.

Karen Hyun,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–31793 Filed 12–17–15; 8:45 am]

BILLING CODE 4310–EJ–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375; FCC 15–136]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: In this document, the Commission seeks comment on ways to promote competition for Inmate Calling Services (ICS), video visitation, rates for international calls, and considers an array of solutions to further address areas of concern in the (ICS) industry.

DATES: Comments due January 19, 2016. Reply comments due February 1, 2016.

ADDRESSES: You may submit comments, identified by docket number 12–375 and/or rulemaking number 15–136, by any of the following methods:

- *Federal Communications Commission's Web site: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lynne Engledow, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1540 or *Lynne.Engledow@fcc.gov*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Further Notice of Proposed Rulemaking, WC Docket: 12–375, released November 5, 2015. The full text of this document may be downloaded at the following Internet Address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1105/FCC-15-136A1.pdf.*

The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request alternative formats for persons with disabilities (*e.g.* accessible format documents, sign language, interpreters, CARTS, etc.) send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

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

I. Discussion

A. Promoting Competition

1. While we adopted regulations in the November 5, 2015 Report and Order to correct failures in the ICS market, the Commission generally prefers to rely on competition over regulation. We seek additional comment on whether there are ways to promote competition within the ICS market to enable the Commission to sunset or eliminate our regulations adopted herein in the future. We also seek comment on the extent to which the reforms adopted today facilitate a properly functioning market.

2. In the *2012 NPRM,* (78 FR 4369) the Commission noted that the First Wright Petition asked the Commission to ''mandate the opening of the ICS market to competition.'' In the First Wright Petition, the Petitioners further requested that the Commission address high ICS rates by prohibiting exclusive ICS contracts and collect-call-only restrictions at privately administered prisons, and requiring such facilities to permit multiple long-distance carriers to interconnect with prison telephone systems. The Commission sought comment on these proposals but noted that ICS contracts ''are typically exclusive.'' In the *2013 Order (*78 FR 68005), the Commission observed that while it had previously held that competition existed among ICS providers to provide service to correctional facilities, facilities opposed the allowance of multiple providers due to security concerns. The Commission sought comment on whether security issues were still a legitimate reason for limiting competition within correctional facilities, and whether any technological advances had changed the justification for such exclusive use. The Commission asked similar questions in the *Second FNPRM,* and requested comment regarding any costs that may be incurred by the introduction of multiple providers within a single facility, any additional barriers to competition within a facility, and how to allow

greater competition without banning exclusive ICS contracts.

3. In response, commenters raised concern about requiring facilities to utilize multiple providers at the same location. Many commenters assert that security could be compromised if more than one ICS provider operated at a single facility. For instance, GTL notes that ''investigators would have to conduct duplicative search procedures'' which could compromise ''law enforcement's ability to monitor and track inmate calling for victim protection, investigative resources, and other public safety purposes.'' Securus warns that officers would need to be trained in every system and that having to check multiple systems could lead to a delay in officers' ability to react. Commenters also note potential increased administrative burdens and complexities for correctional facilities in order to install and maintain separate telephone systems. Securus asserts such complexities could include the need to create complex bids to allow for multiple providers, negotiate and oversee multiple contracts, review and process vendor payments and address vendor disputes. Commenters assert that these increased burdens to correctional facilities would likely lead to higher inmate ICS costs. Some commenters say that requiring multiple providers per facility could lead small facilities to eliminate ICS altogether. GTL states that, ''[i]f provision of ICS at facilities with multiple providers is not financially feasible for each provider, then facilities will not have multiple providers, regardless of what rules the Commission promulgates.'' Some commenters suggest that banning exclusive contracts would lead to lower capital investment resulting in lower and less predictable call quality. But HRDC suggests that ''[o]nly when consumers are afforded the choice to select telecommunications providers that offer the best service at the lowest price will a competitive and free market prevail in the ICS industry.''

4. We seek additional comment on this issue because the record also indicates there may be multiple providers in some facilities. How common is this practice? Does it indicate that not all facilities enter into exclusive ICS contracts? If the Commission finds it necessary to ban exclusive ICS contracts to encourage greater competition in providing ICS in correctional institutions, we seek comment on our legal authority to do so. Would such a ban serve the express purposes of section 276(b)(1), namely to promote competition and the widespread deployment of payphone services? How should existing, exclusive ICS contracts be treated if the Commission decided to ban exclusive contracts? Should they be abrogated, grandfathered, subject to a transition period or some other treatment? We seek information on the extent to which multiple providers currently serve different regions of the country. Specifically, are there even multiple ICS providers available to serve each correctional institution? Are there correctional facilities that can only be served by one ICS provider?

5. Are there ways to mitigate concerns raised in the record that multiple providers could increase burdens and make it ''more difficult . . . to maintain security''? How could allowing competition inside correctional institutions decrease end-user rates? Would facilities, as suggested in the record, eliminate ICS if the Commission banned exclusive contracts? If so, would it be necessary for the Commission to take action to prevent this practice? We seek comment on our legal authority to do so. Is it feasible for multiple providers to serve the same facility without having to build out their own separate infrastructure, for example by offering some form of secure, dial-around service? If so, could the Commission require ICS providers to offer such a service? Is it possible for multiple providers to co-exist at a single facility without compromising important security features and increasing infrastructure and personnel costs? Would technological advances address such concerns? Would requiring multiple providers in institutions, by prohibiting providers from bidding on exclusive contracts, lead to lower capital investment and ultimately affect call quality, as suggested by both GTL and Pay Tel? Finally, should the Commission, as suggested, first adopt rate and ancillary service charge reform and then determine if additional steps are necessary and perhaps revisit the idea of intra-facility competition then?

B. Video Calling and Other Advanced Inmate Communications Services

6. Our core goals for inmates and their families, friends, clergy and lawyers remain the same regardless of the technologies used—ensuring competition and continued widespread deployment of ICS and the societal benefits that they bring. Since the Commission adopted the *2013 Order,* we have seen an increase in the use of video calling, including video visitation. Given the lack of competitive pressures and the market failure the Commission has identified in the ICS market, we are concerned that rates for video calling and video visitation services that do not meet the definition of ICS could be used as a way to allow ICS providers to recover decreased rates as a result of the reforms adopted herein. We seek further comment on these newer technologies, to gain a better understanding of their use, the costs to providers and rates to consumers, and to identify any trend of moving away from more traditional ICS technologies. We seek comment on whether the incentives that allowed ICS rates to exceed just, reasonable, and fair levels might also occur for video calls and the action needed to address such issues.

7. *Background.* In the *Second FNPRM,* the Commission sought comment on ''the impact of technological advancements on the ICS industry.'' The Commission also invited comment on its legal authority to regulate the rates for services provided over newer technologies. The Commission received insight from commenters, but additional information was necessary to gain a fuller understanding of video visitation and other advanced services. Accordingly, the Commission asked supplemental questions about these services in the *Second FNPRM.* For example, the Commission specifically sought ''a greater factual understanding of the availability of these and other services,'' among other issues. The record received in response to the *Second FNPRM* provided us with further detail about the issues surrounding these services, but we again seek additional information on some questions addressed in both the *FNPRM* and *Second FNPRM,* as well as other areas that we have determined warrant further consideration. We specifically seek comment on video calls, including, but not limited to, video visitation, as the record indicates that such technology is growing in use in correctional institutions. We also ask questions about other advanced services described in the record.

8. *Discussion.* Video calling has become another way for inmates to make contact with the outside world in addition to in-person visits and ICS via telephones hanging on the wall. One commenter suggested that video visitation systems, ''which allow both video and non-video calls at unregulated rates, email, text messaging, face-to-face visits, mail and hearing-impaired systems,'' actually compete with ICS providers. We seek comment on how pervasive video visitation services are in prisons and jails. How many facilities allow such services? Is there a difference in availability between prisons and jails? How many providers offer these services? Are there

providers of video visitation that are not also providers of traditional ICS, or do the same companies offer both services? Do commenters believe certain forms of video visitation are in fact distinct from ICS? If so, what feature(s) make them distinct? For instance, might intra-institution video visitation facilities that require the friend or family member to come to the institution in order to have a video visit fall inherently outside the definition of ICS as compared to video visitation between the inmate in the institution and a friend or family member in a remote location? Do certain forms of video visitation use devices other than ''inmate telephones'' as the term is defined in our rules? We also ask commenters to provide data on the minutes of use for video calls and whether and how these minutes of use have grown over the last few years. How common are video visitation only companies, as compared to traditional ICS providers?

9. We are particularly interested in the rates that providers of video calls charge for this service compared to traditional ICS. How are these rates established? For example, the Illinois Campaign states that one provider ''typically charges a dollar a minute for a video visit.'' PPI suggests that the rate may fluctuate between as low as $0.33 per minute for certain providers up to $1.50 per minute for others. We seek detailed information about the rates video visitation providers charge for these services. What is a typical rate charged for video visitation? Does the rate differ between prisons and jails? How much, if at all, do the rates for video visitation fluctuate based on the type or size of the facility? If there is a difference between charges for facility type or size, what are the reasons for the differences? Are the rates for these services different from the rates for traditional ICS? If so, what is the justification for the difference? To the extent that video visitation providers are charging rates that exceed our interim caps, have those providers been able to explain why their services are not a form of ICS that is not subject to those caps? If there are strictly video visitation providers who do not provide other forms of ICS, do their rates differ from those set by traditional ICS providers? Does the end-user rate fluctuate by call volume or technology used?

10. What limits or protections would need to be implemented to provide relief from or prevent excessive rates for video visitation services, to the extent that they are not already being treated as forms of ICS? Are the ancillary service charges for video visitation comparable to those of traditional ICS? PPI explains that certain ICS providers that also provide video visitation charge different amounts for credit card transaction fees depending on the technology used by the inmate. Is this typical for ancillary fees and charges in general? Do video visitation providers bundle this service with traditional ICS or other services, and does that affect the rates users pay for video visitation? Do providers pay site commissions on video calls? If so, we ask commenters to file information on the magnitude of these payments.

11. News articles and commenters indicate that some ICS providers, as a condition for offering video calling, have eliminated in-person visitation entirely. We seek comment on how common conditions, such as eliminating in-person visits, are to offering video visitation services. What cost savings do institutions experience, if any, by moving away from in-person visits? What effects do conditions such as the elimination of in-person visitation have on inmates and their decisions to use video visitation or traditional ICS? Are inmates and their families given a choice? Do they have input into the decision to eliminate in-person visits? Does the practice of eliminating or reducing in-person visitation differ between jails and prisons? The record indicates that some video visitation contracts may also include a quota system, mandating a minimum number of usages of the technology per month. What are the consequences if such quotas are not met? How frequently are such conditions included in video visitation contracts? Are there other requirements like this that video visitation providers include in their contracts? One commenter, for example, hypothesized that ''if commissions on phone services are restricted, providers could include with the phone services a video visitation system and, as an incentive to select them, offer to charge for on-site visits while offering a large commission on the consumer paid visitation services to compensate for commissions restricted on the inmate phone calling.'' Is this a practice that occurs, or is likely to occur in some facilities offering video visitation?

12. We also seek comment on the benefits of video visitation as compared to traditional ICS. In facilities that offer both video visitation and traditional ICS, what percentage of inmates and their families utilize video visitation? For the inmates and families that do use video visitation, how frequent is their use? What is the comparative percentage between video visitation usage and traditional ICS usage? Are inmates and their families more apt to use video visitation in jails or prisons, or is there no notable difference based on the type or size of facility? We seek comment on the impact video calling has on inmate connectivity with friends and family. For example, is there evidence that video calling has reduced or increased the frequency of connectivity with friends and family because they may be charged by the minute, while friends and family do not have to pay for an in-person visit?

13. We seek general comment on the costs to providers of video visitation. Are there additional costs to ICS providers in developing, provisioning, or offering video visitation services? Are there costs to the correctional facilities for provisioning video visitation services? Do ancillary service charges and site commissions affect video visitation rates? If so, how?

14. We have made clear that our authority to regulate ICS is technology neutral. We also note that certain commenters have specifically agreed that we have authority to regulate video visitation. For example, PPI suggests that we should ''regulate the video visitation industry so that the industry does not shift voice calls to video visits.'' To the extent that video visitation is not already a form of ICS that is subject to our ICS rules, is this a suggestion we should pursue? Are there any barriers to the Commission specifically regulating video visitation service that do not constitute inmate telephone service under section 276?

15. HRDC and PPI have suggested that the same perverse incentives that have harmed the traditional ICS market also harm the video visitation market. We seek additional comment on whether there is a similar market failure for video visitation and other advanced services as the market failure described above for traditional ICS. Keeping in mind the Commission's stated goals of increased communication at just, reasonable, and fair rates, what steps can be taken to prevent or alleviate problems in video visitation that have prompted our action with regard to traditional ICS? Would adopting rate caps be effective to ensure just, reasonable, and fair rates for video visitation that does not meet the definition of ICS? To the extent the record indicates that a similar failure is occurring in the market for video calling as we witnessed for traditional ICS, we seek comment on adopting rate caps and reforms to ancillary service charges to ensure that video calls and video visitation do not create loopholes that providers may exploit and undermine the reforms adopted herein.

16. Some commenters are concerned that bundling regulated and unregulated products together harms the market for ICS. Would prohibiting IC providers' bundling of regulated and unregulated products together in contractual offerings alleviate some of the problems with current rates charged for advanced services? What other kinds of advanced services are available to inmates? Are they available commonly in most facilities, or only in certain ones? What is the demand for these services and what rates and fees are charged? What additional functionalities do they offer? Do they provide any greater benefits to inmates, their families, or others, than traditional services? What are ICS providers' rates for other services such as email, voicemail or text messaging? The record indicates that some ICS providers offer tablet computers and kiosks that allow inmates to access games, music, educational tools, law library tools and commissary ordering. What is the compensation mechanism for access to these offerings? What are ICS providers' rates for such services, including both service-specific rates and ''all-you-can-eat'' plans?

17. We also seek comment on the implications of offering video calls, including video visitation, for inmates who are deaf or hard of hearing. Increased deployment of video call systems has the potential to provide inmates who are able to communicate using American Sign Language (ASL) with the ability to access and use VRS, as well as providing direct communications with other ASL users who have video communications access. We note, however, that VRS and videophone users require a smooth, uninterrupted transmission of signal to communicate effectively in ASL. What range of bandwidths and broadband speeds are currently provided or planned for video call systems? What bandwidth and broadband speed are the minimum necessary for effective video communications between ASL users? In addition, what types of video technology are currently used in video call systems? To what extent are video call systems interoperable with the video communications systems used by VRS providers? Should such interoperability be required? If video call systems are used to provide accessible video communications services to deaf inmates, what steps need to be taken to ensure that any charges for such service are fair, just, and reasonable, given that for deaf inmates, such services are functionally equivalent to voice communication? Finally, we seek comment on how prevalent VRS is in correctional institutions.

C. Recurring Data Collection

18. As discussed above, we adopt a second, one-time Mandatory Data Collection to occur two years from the effective date of this Order. In this data collection, we will require all ICS providers to submit ICS cost, calling, company and contract information as well as facility, revenue, ancillary fee and advanced service information. We found the data received in response to the 2013 Mandatory Data Collection to be beneficial, and anticipate that the forthcoming additional data will also be helpful to ensure that ICS rates and practices remain just, reasonable, and fair, in keeping with our statutory mandate.

19. Throughout this proceeding, several commenters suggest that the Commission impose additional periodic reviews to ''ensure that the reforms create and maintain the proper incentives to drive ICS rates to competitive levels.'' We have found in the Order that for the time being, only a one-time additional collection is warranted. We seek comment, however, on extending in the future the Mandatory Data Collection adopted in this Order into a recurring data submission. Should providers be required to file the cost data described above in the Mandatory Data Collection annually? Why or why not? Do commenters agree that an ongoing annual data collection would provide the Commission with more fulsome data with which to help ''drive end user rates to competitive levels?'' Since ICS contracts typically run at least three to five years, with one-year extension options, is there benefit in collecting more than several years' worth of cost data in order to obtain a more accurate picture about ICS costs? Some commenters have asserted that upfront investment costs in certain ICS facilities are very high. Would collecting ICS cost data over more than one or two years lead to a more accurate economic picture for such investments? Would an ongoing ICS cost data collection provide the Commission a clearer picture of the industry than a one-time data collection? Would the benefit of such data submissions to the Commission, and its continued monitoring and regulation of the ICS industry, outweigh any potential burden on ICS providers?

D. Contract Filing Requirement

20. In the *2013 Order* the Commission reminded providers of their obligations to comply with existing rules, including rules requiring that ICS providers that are non-dominant interexchange carriers make their current rates, terms, and conditions available to the public via their company Web sites. In 2014, the Commission sought comment on ''how to ensure that rates and fees are more transparent to consumers'' and specifically on the requirement that ICS providers notify their customers regarding the ICS options available to them and the cost of those options.

21. Several commenters have expressed concern over a lack of transparency regarding ICS rates and fees. HRDC asserts ''almost a total lack of transparency on the part of both ICS providers and the government agencies from which they secure their monopoly contracts.'' HRDC further contends that ''state agencies often create obstacles to inhibit the public records process that require [sic] consumers and other organizations to unnecessarily expend time and money to obtain records designated by law to be ''public'' records.'' HRDC suggests that the Commission require ''all ICS providers to post their contracts with detention facilities on their Web sites where they are publicly available.'' Mr. Baker, of the Alabama PSC, asserts that ''lack of transparency in the ICS industry is problematic'' and recommends several solutions, including requiring providers to submit to the Commission and to state commissions ''upon request or routinely if requested, a copy of the contract from each facility serviced as well as the provider's response to any facility invitation to bid or request for proposal.''

22. Securus disagrees with these suggestions and asserts that what HRDC calls ''public documents often contain information that is protected from disclosure under the very statutes, like the Freedom of Information Act, 5 U.S.C. 552, that HRDC invokes'' as a reason for mandating their disclosure. Securus asserts that such protected information includes ''non-public financial data, proprietary information about patented and patentable technology, and the operation of crucial security features.'' Securus contends that requiring the production of ICS contracts ''could contravene federal and state disclosure statutes.'' Securus further asserts that, even if it were able to enact the ''appropriate, lawful redaction'' needed to protect sensitive and confidential data, the production of such contracts would be ''far too broad and too burdensome.'' Finally, Securus asserts that such contract production will be unnecessary if certain reform proposals are adopted, such the Joint Provider Proposal provision requiring all ICS providers to annually certify full

compliance with all federal and Commission rules and regulations.

23. Section 211 of the Act grants the Commission authority to require common carriers to ''file with the Commission copies of contracts and agreements relating to communications traffic.'' Section 43.51 of the Commission's rules specifies that any dominant communications common carrier ''must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto'' that relate to ''[t]he exchange of services'' and ''matters concerning rates.'' The Commission has also clarified that ''only non-dominant carriers treated with forbearance are not required to file contracts,'' whereas non-dominant carriers who are not treated with forbearance are still subject to filing requirements because ''material filed by [non-dominant] carriers subject to streamlined regulations may be useful in the performance of monitoring.''

24. We share commenters' concern that ICS contracts are not sufficiently transparent. We also share the concern of commenters who assert that members of the public must ''unnecessarily expend time and money to obtain records'' of ICS contracts. We also recognize the evidence suggesting that the information regarding ICS contracts and rates that is publically available may not be as reliable as the actual contract.

25. Should the Commission require ICS providers to file all contracts, including updates, under its section 211(b) authority? Does the annual reporting requirement meet this transparency objective? Are there any reasons such a requirement would not apply to all ICS providers or result in the filing of all ICS contracts? We seek comment on the costs and benefits related to contract filing. Would such a requirement be overly burdensome to ICS providers? Do the benefits outweigh the costs? Would such requirement conflict with any other state or federal laws or requirements, such as the Freedom of Information Act? How should the contracts be filed with the Commission? To allow greater public accessibility to ICS contracts, we seek comment on requiring ICS providers to file their contracts with the Commission, in a newly assigned docket, via the Commission's Electronic Comment Filing System (ECFS) within 30 days of entering into a new contract. What would trigger the need to file an updated contract and how quickly after execution should new or updated contracts be filed? In what format should contracts be filed? What are the best ways to handle issues related to confidentiality? Would the *Protective Order* in effect in this docket adequately cover any confidentiality issues that might arise surrounding contracts that might be filed with us? We seek comment on these and any other potential issues that may arise related to the potential filing of ICS contracts with the Commission. For example, should the Commission adopt additional tools to help it prevent contract-related gaming such as that described above? What do commenters suggest as additional means to combat such gaming?

E. International Calling Rates

26. In the *2013 FNPRM,* the Commission sought comment on the prevalence of international ICS calling and on the need to reform international ICS rates. The Commission also sought comment on its legal authority to regulate international ICS and on what rates should apply to international ICS, should the Commission assert jurisdiction. In the *Second FNPRM,* the Commission sought ''updated comment on international ICS and the need for Commission reform focused on such services.''

27. In response, several commenters urge the Commission to regulate international ICS rates. The record demonstrates that many inmates either lack access to international ICS or that such services are only available at very high rates. Numerous international ICS calling rates far exceed the rates permitted for interstate ICS calls, with some international rates from county correctional institutions set as high as $17.85 to $45 for a 15-minute call. Friends and family members who live outside the United States and who wish to stay in contact with those who are incarcerated pay the price of such high rates. Commenters also suggest that immigrant detainees are particularly vulnerable to high phone rates, due to several factors, including their need to stay in touch with family abroad and the centrality of phone access to immigration proceedings. We seek comment on whether and how we should act to improve inmates' and detainees' access to ICS for international calls, as well as what rates should apply to such calls. We seek comment on applying the adopted rate caps to all international calls.

28. *Legal Authority to Reform International Rates.* Longstanding precedent establishes the Commission's authority to ensure that payphone service providers—including providers of ICS—''are fairly compensated for international as well as interstate and intrastate calls.'' In addition, section 201 provides the Commission with the authority to ensure that carriers' rates and practices for interstate and ''foreign'' communications are just and reasonable, and grants the Commission authority to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.'' Based on these provisions, we tentatively conclude that the Commission has authority to reform international ICS rates as necessary to ensure that they are fair, just, and reasonable. We seek comment on this tentative conclusion.

29. *Rates for International Calling.* Although several parties note that rates for international ICS calls are very high in some facilities, the record contains relatively little information about the specific costs, if any, ICS providers incur in providing international calling or what would constitute just, reasonable, and fair compensation for international ICS calls. The Mandatory Data Collection required providers to submit their costs related to the provision of ICS, including the provision of international calling. Responses to the Mandatory Data Collection, however, did not separate out costs for international calls from costs for the provision of interstate and intrastate calls. Thus, we lack information about the costs providers incur in providing international ICS.

30. We seek comment on extending our rate caps for interstate and intrastate calls to international calls. Would establishing international rates at levels consistent with our rate caps ensure that ICS users do not pay rates that are unfair or that are unjustly or unreasonably excessive? Would capping rates for international calls at the same levels as we have established for interstate and intrastate calls allow providers to receive fair compensation? If not, why not? Would allowing a higher rate for international calls lead to over-recovery by providers, as their costs for international calls are already factored into the rate caps we set to govern interstate and intrastate ICS rates? Would the benefit of breaking out international calls be sufficient to justify the added complexity of adding a separate regime for international calls in addition to the rate caps we adopt in the accompanying Order? What percentage of ICS providers' minutes of use do international calling minutes constitute? For example, would a relatively low volume of international calls weigh against establishing a separate rate

regime for such calls, particularly given that the costs of international calls are already included in the costs we used to set the rate caps for interstate and intrastate ICS?

31. There is evidence that many of the approximately 400,000 immigrants detained in this country each year are held in local jails and prisons that have contracted with Immigration Customs and Enforcement (ICE). ICS rates and policies were discussed at the Commission's 2014 ICS Workshop. The record indicates that ICE ''detainees are charged . . . a uniform rate of 15 cents per minute for international calls to landlines and 35 cents per minute for international calls to mobile phones,'' with ''no additional connection fees or ancillary charges.'' We seek comment on these rates. Should the Commission establish separate rate caps for international calls that terminate to landline devices and for those that terminate to mobile devices? If so, what rates should apply to each type of call? How challenging would it be for ICS providers to bill different rates for different types of international calls? Is it administratively feasible for ICS providers to distinguish between calls to landline phones versus calls to mobile devices? Should rates vary depending on which foreign country the inmate is calling? Should there be a separate rate cap for international calls made by ICE detainees? Why or why not?

32. The ICE ICS contract provides for free telephone calling services to select numbers through a ''centralized pro bono platform which can be accessed at any detention facility.'' According to the record, since this ICE contract was awarded, ''the number of calls per detainee and minutes per detainee has increased substantially.'' The record also indicates that detainees may make calls to 200 different countries for the same per-minute rates. We seek additional comment on the rates available under the ICE contract. Are these rates a reasonable approximation of what the Commission should adopt for international rate caps? Is ICE able to attain economies of scale that other facilities are not? Would it be more appropriate for the Commission to: (1) Adopt the ICE rates for all international calls, (2) subject international ICS calls to the same rate caps we adopt for interstate and intrastate calls, or (3) adopt a different rate regime that is not based on either the ICE rates or the existing rate caps? Are any of these options supported by cost data or other data in the record? If not, is such data available? If the Commission adopts rate caps that are higher than those currently offered by ICE facilities, should those facilities be allowed to raise their rates? We seek comment on ICE's decision to apply different rates for international landline ($0.15/minute) and international mobile ($0.35/minute) calls. Are these rates a reasonable approximation of providers' costs? Is this cost differential a similar one to that which other providers have experienced?

33. We also seek further comment on other issues related to international calling from correctional facilities. The record indicates that although it is feasible for inmates to make international calls, international ICS calling is not always available. Commenters assert that the lack of availability of international calling is particularly burdensome to immigrant inmates and their families. We note that many immigration detainees are housed in county jails, rather than in ICE detention facilities. In addition, some inmates in jails and prisons have family and loved ones in countries outside the United States. Do most facilities allow international calling? If not, why not? Are any additional restrictions applied to such calls, such as time-of-day restrictions or prior-permission requirements? Should the Commission require the availability of international calls? If so, what legal authority would we rely on to adopt such a requirement? If we were to adopt such a requirement, what rates should apply to international calls and how should the Commission set such rates? Would subjecting international calls to the same rate caps that apply to interstate and intrastate ICS calls lead to providers or facilities discontinuing or restricting international ICS calls?

F. Third-Party Financial Transaction Fees

34. In the *Second FNPRM,* the Commission sought comment on third-party financial transactions, and asked how it should ensure that money transfer service fees paid by ICS consumers are just and reasonable and fair. In the ICS context, third-party financial transaction fees consist of two elements: A fee from a third party, such as Western Union or Money Gram to transfer funds from a consumer to an inmate's ICS account, and an additional charge by an ICS provider for processing the funds transferred via the third party for the purpose of paying for ICS calls. After carefully reviewing the record, we determine, in the Order above, that the first aspect of third-party financial transaction, *e.g.,* the money transfer or credit card payment, does not constitute an ''ancillary service,'' within the meaning of section 276. However, we assert jurisdiction over any additional fee or markup that the ICS provider might impose on the end user, and require ICS providers to pass third-party transaction fees to end users with no additional markup.

35. Several commenters express concern about an additional issue related to these transactions: Potential revenue-sharing arrangements between ICS providers and financial companies. ICSolutions, for example, states that, despite the Commission's cap on third-party financial transaction fees, providers and vendors have an incentive to enter into fee-sharing arrangements with financial services companies, ''thereby complying with the pass-through cost component, but still unnecessarily increasing consumers' cost.'' ICSolutions urges the Commission to address this practice by imposing limits on the fees third-party financial companies can charge end users in an effort to prevent ''secondary fee-sharing arrangements'' between these companies and ICS providers that can ''unnecessarily increase the cost of financial transactions to consumers.'' Similarly, CenturyLink asserts that ICS providers can ''divert transactions to certain third party processors, claiming high fees charged by the third party.'' CenturyLink states that, by using a third-party payment processor, an ICS provider can inflate ancillary fees through a revenue-sharing agreement that adds a ''direct or indirect markup'' to ancillary services. CenturyLink argues that providers should be ''permitted to use such services but not permitted to enter into arrangements that add a direct markup or indirect markup though a revenue sharing arrangement.'' Securus, however, defends these calling arrangements as ''innovative, valuable'' additions to ICS that benefit consumer by giving them more options.

36. We seek additional comment on the revenue-sharing issues discussed above. First, we seek comment on issues related to our jurisdiction over these transactions. Does the Commission have jurisdiction over third-party financial processor vendors, or over contracts between ICS providers and third-party vendors? Does our authority over ICS providers allow us to regulate providers' ability to enter into revenue-sharing arrangements with third-party vendors? Could these service charges constitute unjust and unreasonable practices, in violation of section 201(b), or a practice that would lead to unfair rates in violation of section 276, because, for example, the manner in which such charges are imposed artificially inflates the amounts that consumers pay to

access ICS? How can we ensure that these revenue sharing arrangements are not used to circumvent our rules prohibiting markups on third-party fees? How common are the revenue-sharing arrangements described by CenturyLink and others? Do providers have any control over the fees established by third parties, such as Western Union or credit card companies, for payment processing functions? Are these revenue-sharing arrangements used to add direct or indirect markups to ancillary services? Should the Commission distinguish between revenue-sharing arrangements between providers and affiliated companies versus arrangements between providers and unaffiliated third parties? If so, what would be the legal basis for such a distinction? Does the Commission have greater authority over arrangements between ICS providers and their affiliates than it does over agreements between providers and unaffiliated entities? Assuming the Commission were to regulate arrangements between providers and affiliated companies that offer financial services, how would such regulations work? Specifically, how could the Commission prevent an affiliate from sharing revenues (or profits) with an ICS provider? Are there other factual or legal considerations the Commission should consider in determining whether and how to address arrangements between ICS providers and financial services companies?

G. Cost/Benefit Analysis of Proposals

37. Acknowledging the potential difficulty of quantifying costs and benefits, we seek to determine whether each of the proposals above will provide public benefits that outweigh their costs. We also seek to maximize the net benefits to the public from any proposals we adopt. For example, commenters have argued that inmate recidivism decreases with regular family contact. This not only benefits the public broadly by reducing crimes, lessening the need for additional correctional facilities and cutting overall costs to society, but also likely has a positive effect on the welfare of inmates' children. We seek specific comment on the costs and benefits of the proposals above and any additional proposals received in response to this Third Further Notice. We also seek any information or analysis that would help us to quantify these costs or benefits. We request that interested parties discuss whether, how, and by how much they would be impacted in terms of costs and benefits of the proposals included herein. Additionally, we ask that parties consider whether the above proposals have multiplier effects beyond their immediate impact that could affect their interest or, more broadly, the public interest. Further, we seek comment on any considerations regarding the manner in which the proposals could be implemented that would increase the number of people who benefit from them, or otherwise increase their net public benefit. We recognize that the costs and benefits may vary based on such factors as the correctional facility served and ICS provider. We have received minimal cost benefit analysis in this proceeding. Therefore, we request again that parties file specific analyses and facts to support any claims of significant costs or benefits associated with the proposals herein.

II. Procedural Matters

A. Filing Instructions

38. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). Comments and reply comments on this *Third FNPRM* must be filed in WC Docket No. 12–375.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

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

B. Ex Parte Requirements

39. This proceeding shall 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. Memoranda must contain a summary of the substance of the *ex parte* presentation ad not merely a list of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the oral 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.

C. Paperwork Reduction Act Analysis

40. This Further Notice contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) 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 (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Initial Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this document, of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is available in Appendix F of the full-text copy of the Commission's Second Report and Order and Third Further Notice of Proposed Rulemaking, released November 5, 2015. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on or before the dates indicated on the first page of this document. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

III. Ordering Clauses

42. *Accordingly, it is ordered* that, pursuant to sections 1, 2, 4(i)–(j), 201(b), 215, 218, 220, 276, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 215, 218, 220, 276, 303(r), and 403 Third Further Notice of Proposed Rulemaking *is adopted.*

43. *It is further ordered,* that pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1) and 1.103(a), that this Third Further Notice of Proposed Rulemaking *shall be effective* 30 days after publication of a summary thereof in the **Federal Register** except as noted otherwise above.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015–31253 Filed 12–17–15; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 80, No. 243
Friday, December 18, 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

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet in Sedro-Woolley, Washington. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/;FSSRS/RAC_Page?id=001t0000002JcwIAAS.*

DATES: The meeting will be held January 29, 2016, from 8:00 a.m.–5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Mt. Baker Ranger District, 810 State Route 20, Sedro-Woolley, Washington.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Mt. Baker Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Erin Uloth, Designated Federal Officer, by phone at 360–854–2601 or via email at *euloth@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review project proposals; and
2. Make project recommendations for Title II funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by January 8, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Erin Uloth, Designated Federal Officer, 810 State Route 20, Sedro-Woolley, Washington 98284; by email to *euloth@fs.fed.us,* or via facsimile to 360–856–1934.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: December 8, 2015.

Erin Uloth,

Designated Federal Officer.

[FR Doc. 2015–31841 Filed 12–17–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyard Administration

Submission for OMB Review; Comment Request

December 14, 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), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received by January 19, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Grain Inspection, Packers and Stockyard Administration

Title: Survey of Customers of the Official Grain Inspection and Weighing System.

OMB Control Number: 0580–0018.

Summary of Collection: The United States Grain Standards Act, as amended (7 U.S.C. 71–87) (USGSA), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) (AMA), authorizes the Secretary of the United States Department of Agriculture to establish official inspection, grading,

and weighing programs for grains and other agricultural commodities. Under the USGSA and AMA, Grain Inspection, the Packers and Stockyard Administration's (GIPSA) Federal Grain Inspection Service (FGIS) offers inspecting, weighing, grading, quality assurance, and certification services for a user-fee to facilitate the efficient marketing of grain, oilseeds, rice, lentils, dry peas, edible beans, and related agricultural commodities in the global marketplace. The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high-quality, accurate, consistent, and professional services that facilitates the orderly marketing of grain and related commodities. FGIS will collect information using a link to the survey available on its main Web site.

Need and Use of the Information: The survey is separated into two parts, customers and non-customers. FGIS is seeking feedback from customers to evaluate the services provided by the official inspection, grading, and weighing programs. Information collected will help to determine where and to what extent services are satisfactory, and where and to what extent they can be improved. FGIS will collect information from entities, such as potential customers or industry representatives that are not currently utilizing FGIS services. Information collected from non-customers will assist FGIS in fully meeting the domestic and international needs of the grain industry as they evolve. The information will be shared with other managers and program leaders who will be responsible for making any necessary improvements at the office/agency, program, and project level.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government

Number of Respondents: 1,100.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 113.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–31914 Filed 12–17–15; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE365

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice; public hearings and webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold eight public hearings and a webinar to solicit public comments on Shrimp Amendment 17A.

DATES: The public hearings will be held January 5–14, 2016. The meetings will begin at 6 p.m. and will conclude no later than 9 p.m. For specific dates and times, see **SUPPLEMENTARY INFORMATION**. Written public comments must be received on or before 5 p.m. EST on Friday, January 15, 2016.

ADDRESSES: The public documents can be obtained by contacting the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; (813) 348–1630 or on their Web site at *www.gulfcouncil.org.*

Meeting addresses: The public hearings will be held in Ft. Myers and Tampa, FL; Palacios and Brownsville, TX; Biloxi, MS; Tillman's Corner, AL, Houma and Gretna, LA, and one webinar. For specific locations, see **SUPPLEMENTARY INFORMATION**.

Public comments: Comments may be submitted online through the Gulf Council's public portal by visiting *www.gulfcouncil.org* and clicking on ''CONTACT US''.

FOR FURTHER INFORMATION CONTACT: Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The agenda for the following eight hearings and one webinar are as follows: Council staff will brief the public on Amendment 17A to the Shrimp Fishery Management Plan. Shrimp Amendment 17A includes two actions. The first action addresses the expiration of the Federal shrimp permit moratorium in the Gulf of Mexico. The second action addresses the royal red shrimp endorsement currently required to harvest royal red shrimp from the Gulf EEZ. Staff will then open the meeting for questions and public comments. The schedule is as follows:

Locations, Schedules, and Agendas

Tuesday, January 5, 2016, Webinar—6 p.m. EST; register to participate *at https://attendee.gotowebinar.com/register/3167341526669430786*

Wednesday, January 6, 2016, Hampton Inn & Suites, 4350 Executive Circle, Fort Myers, FL 33916; telephone: (239) 931–5300.

Thursday, January 7, 2016, Hilton Tampa Airport Westshore Hotel, 2225 North Lois Avenue, Tampa, FL 33607; telephone: (813) 877–6688.

Monday, January 11, 2016, Port of Palacios, 1602 Main Street, Palacios, TX 77465; telephone: (361) 972–5556; IP Casino and Resort, 850 Bayview Avenue, Biloxi, MS; telephone: (228) 436–3000.

Tuesday, January 12, 2016, Courtyard by Marriott, 3955 North Expressway, Brownsville, TX 78520; telephone: (956) 350–4600; Holiday Inn Mobile, 5465 Highway 90 West, Mobile, AL 33619; telephone: (251) 666–5600.

Wednesday, January 13, 2016, Courtyard by Marriott, 142 Library Drive, Houma, LA 70360; telephone: (985) 223–8996.

Thursday, January 14, 2016, Holiday Inn New Orleans Westbank, 275 Whitney Avenue, Gretna, LA 70053; telephone: (504) 366–8535.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira (see **ADDRESSES**), at least 5 working days prior to the meeting date.

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

Dated: December 15, 2015.

Jeffrey N. Lonergan,

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

[FR Doc. 2015–31860 Filed 12–17–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE352

National Saltwater Angler Registry Program

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

ACTION: Notice.

SUMMARY: NMFS has established an annual fee of twenty-nine dollars

($29.00) for registration of anglers, spear fishers and for-hire fishing vessels to register under the National Saltwater Angler Registry Program.

DATES: The registration fee will be required effective January 1, 2016.

ADDRESSES: Gordon C. Colvin, NMFS ST–12453, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gordon C. Colvin; (240) 357–4524; email: *Gordon.Colvin@noaa.gov.*

SUPPLEMENTARY INFORMATION: The final rule implementing the National Saltwater Angler Registry Program, 50 CFR 600, subpart P, was published in the **Federal Register** on December 30, 2008. The final rule states that persons registering with NMFS must pay an annual fee effective January 1, 2011, and that NMFS will publish the annual schedule for such fees in the **Federal Register**. The current annual fee for registration was set at $25.00, effective August 1, 2013. NMFS policy requires that fees be reviewed every two years and be revised to reflect changes in estimated costs for administration of the program that requires the fees.

NMFS has completed its biennial review and has determined that the annual registration fee for anglers, spear fishers and for-hire fishing vessels will be raised to twenty-nine dollars ($29.00). All persons registering on or after January 1, 2016, will be required to pay that registration fee, unless they are exempt as indigenous people per the provisions of 50 CFR 600.1410(f).

Dated: December 11, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2015–31776 Filed 12–17–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE364

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a two-day meeting of its Standing and Special Reef Fish Scientific and Statistical Committee (SSC).

DATES: The meeting will convene on Tuesday, January 5, and Wednesday, January 6, 2016; starting 9 a.m. on Tuesday and 8:30 a.m. on Wednesday, and will adjourn approximately 2 p.m. on Wednesday.

ADDRESSES: The meeting will be held at the Hilton Westshore Tampa Airport Hotel, 2225 N. Lois Avenue, Tampa, FL 33607; telephone: (813) 877–6688.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; email: *steven.atran@gulfcouncil.org;* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

The Chairman will start the meeting with introductions and adoption of agenda, and approval of minutes from the September 1–2, 2015 Standing and Special Reef Fish Scientific and Statistical (SSC) meeting; and selection of an SSC representative to attend the January 2016 Council meeting. The Committee will review the National Marine Fisheries Service's (NMFS) assessment prioritization process and will discuss the concept of best scientific information available. The Committee will receive an update on SEDAR 43 Gray Triggerfish Projections from the Southeast Fisheries Science Center (SEFSC) and will make recommendations for a new rebuilding plan including the selection of a projected recruitment scenario, time to rebuild in the absence of fishing, determination of a maximum probability of overfishing (P*) when setting the allowable biological catch (ABC) and recommendations for the overfishing limit (OFL) and ABC. The Committee will discuss a constant catch vs. a constant fishing mortality rate (F) approach to setting catch limits with respect to stability of management; and will receive a projection from the Florida Fish and Wildlife Research Institute on constant catch overfishing limits (OFL) and acceptable biological catch (ABC) for west Florida shelf stock of hogfish. Next, the Committee will review the SEDAR 42 Red Grouper Benchmark Assessment. If the Committee accepts the assessment and sufficient information is available, the Committee will recommend overfishing limits (OFL) and acceptable biological catch (ABC) levels for constant F and constant catch for red grouper. The Committee will review an options paper for a possible framework action to adjust the recreational red snapper annual catch target (ACT) buffer; receive a presentation from the NMFS Southeast Regional Office on their methods for setting season length, and review methods for assigning probability of exceeding the annual catch limit (ACL) at a given ACT buffer. The Committee will receive a presentation from the SEFSC on Integrated Ecosystem Assessment and Management Strategy Evaluation as it pertains to multi-species; and will review Draft Amendment 44 regarding the setting of minimum stock size thresholds (MSST) and maximum sustainable yield (MSY) proxies. The Committee will review proposed revisions to the SEDAR process. The Committee will also review the terms of reference and project schedule for SEDAR 49—Gulf of Mexico Data-limited Species, and select appointees for the data, assessment and review groups. Lastly, the Committee will review the SSC meeting schedule for 2016; and will discuss other business, if any.

— Meeting Adjourns —

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. Click on the ''Library Folder'', then scroll down to ''SSC meeting-2016–01''.

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: December 15, 2015.

Jeffrey N. Lonergan,

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

[FR Doc. 2015–31859 Filed 12–17–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA602

Marine Mammals; File No. 16109

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that a major amendment to Permit No. 16109–02 has been issued to Versar, Inc. (formerly GeoMarine, Inc.) (Responsible Party: Susanne Bates), 700 International Parkway, Suite 104, Richardson, TX 75081.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Rosa L. González or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On February 11, 2014, notice was published in the **Federal Register** (79 FR 8159) that a request for an amendment Permit No. 16109–01 to conduct research on sea turtles and marine mammals had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*); the regulations governing the taking and importing of marine mammals (50 CFR part 216); the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*); and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The amended permit (No. 16109–02), issued December 2, 2015, authorizes the following changes to the permit: (1) Extended the action area north and south to include all U.S. waters from Maine to Florida; (2) added aerial surveys to the research methods; (3) added takes for Blainville's beaked whales (*Mesoplodon densirostris*), false killer whales (*Pseudorca crassidens*), hawksbill (*Eretmochelys imbricata*), loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), and green sea turtles (*Chelonia mydas*); (4) increased the number of marine mammals and sea turtles that could be harassed; and (5) changed the frequency of vessel based surveys from once per season to twice a month, year-round. The permit expires May 15, 2017.

An environmental assessment (EA) analyzing the effects of the permitted activities on the human environment was prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on December 1, 2015.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 15, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–31879 Filed 12–17–15; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the procurement list.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete products and a service previously furnished by such agencies.

DATES: *Comments must be received on or before:* 1/17/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products:

Product Name(s)—NSN(s): Pencil, Mechanical, Push Action; 7520–01–NIB–2331—Black, Fine Point (0.5 mm); 7520–01–NIB–2332—Black, Medium Point (0.7 mm).

Mandatory Source(s) of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX.

Mandatory Purchase For: Total Government Requirement.

Contracting Activity: General Services Administration, New York, NY.

Distribution: A-List.

Product Name(s)—NSN(s): Kit, Pipefitter Tools—5180–00–596–1501.

Mandatory Source(s) of Supply: Industries for the Blind, Inc., West Allis, WI.

Mandatory Purchase For: 100% of requirement of the U.S. Army.

Contracting Activity: U.S. Army Tank and Automotive Command, Warren, MI.

Distribution: C-List.

Services:

Service Type: Call Center Service.

Service is Mandatory For: OPM, Retirement Service, Retirement Operations, 1137 Branchton Road, Boyers, PA.

Mandatory Source(s) of Supply: Orion Career Works, Auburn, WA, Beacon Group SW., Inc., Tucson, AZ.

Contracting Activity: Office of Personnel Management, Boyers Region (Non FISD), Boyers, PA.

Service Type: Help Desk Support Service.

Service is Mandatory For: US Army, Army Training Support Center, Combined Arms Center for Training, 3306 Wilson Avenue, Joint Base Langley-Eustis, VA.

Mandatory Source(s) of Supply: ServiceSource, Inc., Alexandria, VA; Orion Career Works, Auburn, WA.

Contracting Activity: Dept of the Army, W6QM MICC–FDO Ft Eustis, Fort Eustis, VA.

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products:

Product Name(s)—NSN(s): Hood, Spray Painters Protective—4240–LL–L08–5010.

Mandatory Source(s) of Supply: Goodwill Contract Services of Hawaii, Inc., Honolulu, HI.

Contracting Activity: Dept of the Navy, Pearl Harbor Naval Shipyard IMF, Pearl Harbor, HI.

Product Name(s)—NSN(s):

Paper, Mimeograph and Duplicating—7530–00–285–3060, 7530–00–224–6754, 7530–00–239–9747, 7530–00–221–0805, 7530–01–074–1832, 7530–00–231–7125.

Paper, Bond & Writing—7530–00–160–9165, 7530–00–515–1086.

Paper, Duplicating, Liquid Process, White, 8 1/2'' x 11''—7530–00–240–4768.

Mandatory Source(s) of Supply: Louisiana Association for the Blind, Shreveport, LA.

Contracting Activity: General Services Administration, New York, NY.

Product Name(s)—NSN(s): Pen, Ball Point, Retractable, BIO–WRITE, Ergonomic, Cushion Grip, 7520–01–424–4856—Black Ink, Fine Point, 7520–01–424–4876—Black Ink, Medium Point, 7520–01–424–4873—Blue Ink, Fine Point, 7520–01–424–4854—Blue Ink, Medium Point.

Mandatory Source(s) of Supply: Industries for the Blind, Inc., West Allis, WI.

Contracting Activity: General Services Administration, New York, NY.

Product Name(s)—NSN(s): Module, Medical System—8465–00–NSH–0063.

Mandatory Source(s) of Supply: ServiceSource, Inc., Alexandria, VA.

Contracting Activity: W6QK ACC–APG Natick, Natick, MA.

Service:

Service Type: Janitorial/Custodial Service, U.S. Army Reserve, Lemma Whyman USARC, 145 Charlotte Street, Canandaigua, NY.

Mandatory Source(s) of Supply: NYSARC, Inc., Seneca-Cayuga Counties Chapter, Waterloo, NY.

Contracting Activity: Dept of the Army, W6QK ACC–PICA, Picatinny Arsenal, NJ.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–31855 Filed 12–17–15; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2014–0042]

Agency Information Collection Activities: Proposed Collection; Comment Request; Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Department of the Army has submitted a Generic Information Collection Request (Generic ICR): ''Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA).

DATES: Comments must be submitted January 19, 2016.

FOR FURTHER INFORMATION CONTACT: Frederick Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title: Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery—Defense Centers of Excellence (DCoE) Products.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency did not receive any comments in response to the 60-day notice published in the **Federal Register** of December 2, 2014 (79 FR 71404).

Current Actions: Processing a new Fast Track Generic.

Type of Review: New Collection.

Affected Public: Individuals or Households.

Respondent's Obligation: Voluntary.

Estimated Number of Respondents: 10,000.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of Activities: 40.

Average number of Respondents per Activity: 250.

Annual responses: 10,000.

Frequency of Response: On Occasion/Transaction based.

Average minutes per response: 10 minutes.

Burden hours: 1,668 hours.

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.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID 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.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: December 15, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–31826 Filed 12–17–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2015–0059]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; DFARS Part 242, Contract Administration and Related Clause in DFARS 252

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through April 30, 2016. DoD proposes that OMB extend its approval for three additional years.

DATES: DoD will consider all comments received by February 16, 2016.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0250, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0250 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Tresa Sullivan, OUSD(AT&L)DPAP(DARS), 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting, (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Tresa Sullivan, 571–372–6089.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Information Collection in Support of the Defense Federal Acquisition Regulation Supplement (DFARS) Part 242; Contract Administration and related clause in DFARS 252; OMB Control Number 0704–0250.

Needs and Uses: The Government requires this information in order to perform its contract administration functions. DoD uses the information as follows:

a. The information required by DFARS subpart 242.11 is used by contract administration offices to monitor contract progress, identify factors that may delay contract performance, and to ascertain potential contract delinquencies.

b. The information required by DFARS 252.242–7004 is used by contracting officers to determine if contractor material management and accounting systems conform to established DoD standards.

Affected Public: Businesses or other for-profit, and not-for-profit institutions.

Type of Request: Extension.

Number of Respondents: 7,418.

Responses per Respondent: 12.8.

Annual Responses: 94,963.

Average Burden per Response: 2.02 hours, approximately.

Annual Burden Hours: 192,372.

Reporting Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements relating to DFARS part 242, Contract Administration and Audit Services, and the related clause at DFARS part 252.

a. DFARS 242.11 requires DoD contract administration personnel to perform production surveillance to monitor contractor progress and identify any factors that may delay performance. The Government relies on the production progress reports provided by the contractor in the performance of this function.

(2) DFARS 252.242–7004 requires a contractor to establish and maintain a material management and accounting system for applicable contracts, to provide results of system reviews, and

disclose significant changes in its system.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–31848 Filed 12–17–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2015–0058]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Contract Financing

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by January 19, 2016.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and the Clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions; OMB Control Number 0704–0321.

Type of Request: Extension.

Number of Respondents: 124.

Responses per Respondent: Approximately 26.6.

Annual Responses: 3,300.

Average Burden per Response: 1.5 hours.

Annual Burden Hours: 4,950 (includes 1,650 response hours plus 3,300 recordkeeping hours).

Needs and Uses: Section 22 of the Arms Export Control Act (22 U.S.C. 2762) requires the U.S. Government to use foreign funds, rather than U.S. appropriated funds, to purchase military equipment for foreign governments. To comply with this requirement, the Government needs to know how much to charge each country. The clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, requires each contractor whose contract includes foreign military sales (FMS) requirements to submit a separate progress payment request for each progress payment rate, and to submit a supporting schedule that clearly distinguishes the contract's FMS requirements from U.S. requirements. The Government uses this information to determine how much of each country's funds to disburse to the contractor.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public 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 provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Public Collections Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Publication Collections Program, WHS/ESD Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–31846 Filed 12–17–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Joint Environmental Impact Statement/Environmental Impact Report and Conduct Scoping Meeting for the Corte Madera Creek Flood Control Project General Reevaluation Report and Integrated EIS/EIR, County of Marin, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The purpose of this notice is to initiate the scoping process for the preparation of an Integrated General Reevaluation Report and Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for channel modification opportunities to Unit 2, 3 and 4 of the Corte Madera Creek Flood Control Project in Marin County, CA.

DATES: A public scoping meeting will be held on January 14, 2016 from 6:00 to 8:00 p.m. (PST). Submit comments concerning this notice on or before February 1, 2016.

ADDRESSES: The scoping meeting location is: the Marin Arts and Garden Center, 30 Sir Francis Drake Boulevard, Ross, CA 94957–9601. Mail written comments concerning this notice to: U.S. Army Corps of Engineers, San Francisco District, Planning Branch, ATTN: Stephen M. Willis, 1455 Market Street, San Francisco, CA 94103–1398. Comment letters should include the commenter's physical mailing address, the project title and the Corps file number in the subject line.

FOR FURTHER INFORMATION CONTACT: Stephen M. Willis, U.S. Army Corps of Engineers, San Francisco District, Planning Branch, 1455 Market Street, San Francisco CA 94103–1398, (415) 503–6861, *stephen.m.willis2@usace.army.mil.*

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers intends to prepare an Environmental Impact Statement (EIS). The Corps will address channel modification opportunities to Unit 4 of Corte Madera Creek, Marin County, CA, in accordance with the Flood Control Act of 1962, Public Law 87–4, 87th Congress, 2nd Session, approved October 23, 1962, and amended by Section 204 of Public Law 89–789, the Flood Control Act of 1966, and the Water Resources Development Act of 1986. Modifications to Unit 4

may also require modifications to Units 2 and 3.

Pursuant to the California Environmental Quality Act (CEQA), Marin County Flood Control and Water Conservation District Zone 9 (MCFCWCD) is the lead agency and local sponsor in preparing an Environmental Impact Report (EIR). The Corps and MCFCWCD have agreed to jointly prepare a Draft EIS/EIR to optimize efficiency and avoid duplication. The Draft EIS/EIR is intended to be sufficient in scope to address the Federal, state and local requirements and environmental issues concerning the proposed activities and permit approvals.

The USACE's Corte Madera Creek Flood Control Project is consistent and compatible with the District's Ross Valley Flood Control Program, the purpose of which is to manage flood risk in the Ross Valley watershed.

Project Site and Background Information: Corte Madera Creek drains an area of approximately 28 square miles in Marin County, CA and discharges into the San Francisco Bay nine miles north of the Golden Gate Bridge. Unit 4 extends from downstream of the Lagunitas Road Bridge, near the upstream terminus of Unit 3, to the Sir Francis Drake Boulevard Bridge right before the Ross/San Anselmo town line. Although Units 1, 2, and 3 channel modifications were completed in 1971, public concerns led to a delay in the planned actions for Unit 4. In 1996, Marin County requested the completion of Unit 4 by the Corps, and damages incurred by the December 2005 flood also renewed public interest in finding solutions to minimize the risk of future floods.

Additional studies conducted by the Corps focused on evaluating the design performance of Units 3 and 4. These studies identified the abrupt transition between Units 3 and 4 created by the existing Denil fish ladder, the narrow channel condition on the east and west bank, and the Lagunitas Road Bridge as constrictions to flood flow. The Town of Ross replaced the Lagunitas Road Bridge in 2010 with a higher bridge profile to accommodate a greater flow capacity of approximately 5,400 cubic feet per second.

A charrette was held in 2013 to restart the project study under the Corps' SMART Planning principles. SMART Planning is intended to be Specific, Measureable, Attainable, Risk Informed, and Timely planning to complete USACE feasibility studies in a cost-effective and efficient manner. More information on the SMART Planning process is available at *http://planning.usace.army.mil/toolbox/smart.cfm.*

Additional information on this project can be found at *http://www.marinwatersheds.org/documents_and_reports/USACECorteMaderaCreekProject.html.*

Purpose and Need: The purpose of the project is to manage flood risk from Corte Madera Creek associated with Unit 4. The need of the project is to address channel modifications to Unit 4, from the upstream end of the existing Unit 3 concrete channel to Sir Francis Drake Boulevard at the border of Ross and San Anselmo, which may also require modifications to Units 3 and 2. Unit 3 extends from the upstream end of the concrete channel in Ross downstream to the College Avenue Bridge. Unit 2 extends from College Avenue Bridge downstream to Bon Air Bridge in Larkspur.

Issues: Potentially significant issues associated with the project may include: hydrology, geology, land use and planning, population and housing, water and air quality, climate change, biological resources, transportation, noise, aesthetics, utilities and service systems, cultural resources, human health and safety, and social and economic effects, as well as cumulative impacts from past, present and reasonably foreseeable future projects. Alternative actions will be evaluated that will consider fish passage for threatened and endangered fish species that migrate through the project area, riparian habitat, as well as other potential environmental issues of concern.

Scoping Process: The Corps is seeking participation of all interested Federal, state, and local agencies, Native American groups, and other concerned private organizations or individuals through this public notice.

The purpose of the public scoping meeting is to solicit comments regarding the potential impacts, environmental issues, and alternatives associated with the proposed action to be considered in the Draft EIS/EIR. The meeting place, date and time will be advertised in advance in local newspapers, and meeting announcement letters will be sent to interested parties. The Draft Integrated General Reevaluation Report and EIS/EIR is expected to be available for public review and comment in the Fall of 2016 and a public meeting will be held after its publication.

John C. Morrow,

Lieutenant Colonel, U.S. Army District Engineer.

[FR Doc. 2015–31804 Filed 12–17–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Feasibility Study and Environmental Impact Statement (EIS) for Navigational Improvements to Manatee Harbor in Manatee County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The purpose of the feasibility study is to improve navigation in Manatee Harbor.

ADDRESSES: U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019.

FOR FURTHER INFORMATION CONTACT: Dr. Aubree Hershorin at (904) 232–2136 or email at *Aubree.G.Hershorin@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Description of the Proposed Action.* Proposed navigational improvements to Manatee Harbor include deepening the harbor up to minus 43 feet and widening the harbor.

2. *Reasonable Alternatives.* Various increments of widening and deepening, as well as other alternatives will be evaluated. The dredged material is expected to be suitable for placement in the Ocean Dredged Material Disposal Site (ODMDS) located approximately 30 miles from the mouth of Tampa Bay. Some material may be suitable for placement in dredged holes and for other purposes, and the study may evaluate the expansion of existing dredged material management areas. Other alternatives as identified during the scoping and plan formulation process will be considered.

3. *Scoping Process:*

a. Public and Agency Involvement. A scoping letter is being sent to agencies, commercial interests, and the public.

b. Issues to be Analyzed in Depth in the DEIS. Important issues expected include impacts to protected species, seagrass, hardgrounds, socio-economic factors, and any other factors that might be determined during the scoping and plan formulation process.

c. Possible Assignments for Input into the EIS among Lead and Potential Cooperating Agencies.

—U.S. Fish and Wildlife Service: Input concerning listed species, critical habitat, and other fish and wildlife resources.

—National Marine Fisheries Service: Input concerning listed species,

critical habitat, and essential fish habitat.

—U.S. Environmental Protection Agency: Input concerning disposal in the Tampa ODMDS.

—The U.S. Army Corps of Engineers is the Lead agency and, together with the non-federal sponsor (Port Manatee), will assume responsibility for all other aspects of the EIS.

d. Other Environmental Review and Consultation Requirements. The proposed action is subject to the requirements of the Endangered Species Act, Marine Mammal Protection Act, Essential Fish Habitat requirements, National Historic Preservation Act, numerous other laws and executive orders, and any other requirements that might be identified during the scoping and plan formulation process.

4. *Scoping Meeting.* A public scoping meeting will be held on January 20, 2016, from 3:30 to 6:30 p.m. at the Port Manatee Intermodal Center, 1905 Intermodal Circle, Palmetto, FL 34221.

5. *Date the DEIS Will Be Made Available to the Public.* Dependent on the issues, alternatives, investigations, and other requirements identified during the scoping and plan formulation process; the Draft EIS should be available by November 2017.

Dated: December 10, 2015.

Eric P. Summa,

Chief, Planning Division.

[FR Doc. 2015–31807 Filed 12–17–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Intent To Compromise Claim Against the State of Washington Department of Services for the Blind

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The United States Department of Education (Department) intends to compromise a claim against the State of Washington Department of Services for the Blind (Washington) now pending before the Office of Administrative Law Judges (OALJ), Docket No. 15–30–R. Before compromising a claim, the Department must publish its intent to do so in the **Federal Register** and provide the public an opportunity to comment on this action.

DATES: We must receive your comments on the proposed action on or before February 1, 2016.

ADDRESSES: Address all comments concerning the proposed action to Marcus Hedrick, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., Room 6E220, Washington, DC 20202–2110.

FOR FURTHER INFORMATION CONTACT: Marcus Hedrick. Telephone: 202–401–8316 or by email: *marcus.hedrick@ed.gov*.

If you use a telecommunications device for the deaf or a text telephone, you may call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation To Comment: We invite you to submit comments regarding this proposed action. During and after the comment period you may inspect all public comments in Room 6E312, FB–6, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing Comments: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On March 10, 2015, the Acting Assistant Secretary for Special Education and Rehabilitative Services (Assistant Secretary) issued two program determination letters (PDLs) seeking to recover a total of $730,053 of Vocational Rehabilitation (VR) State grant funds from Washington. Based on findings in single audits of Washington (Audit Control Numbers 10–12–38440 and 10–13–48310), these funds were determined by the Assistant Secretary to have been expended, during the fiscal years 2012 and 2013, in violation of the indirect cost provisions under the Education Department General Administrative Regulations at 34 CFR 76.560. Specifically, the PDLs indicated that Washington had charged indirect costs to the VR grant program without an approved indirect cost agreement, and identified $621,871 for recovery in fiscal year 2012 and $108,182 for recovery in fiscal year 2013.

Washington filed *Applications for Review* of these PDLs with the OALJ on May 14, 2015. On June 9, 2015, the OALJ proposed processing the two appeals under one docket number, and with consent of the parties subsequently combined the appeals. On June 27, 2015, the OALJ granted the parties' *Joint Motion to Request Mediation, Waive 81.39(a) and Suspend the Procedural Schedule (Joint Motion).* Since the *Joint Motion* was granted, Washington and the Department have engaged in facilitated mediation to attempt to resolve the recovery action.

The Department proposes to compromise the total claim to $530,053 (the fiscal year 2012 recovery will be reduced to $451,605 and the fiscal year 2013 recovery will be reduced to $78,447). The Department has determined that it would not be practical or in the public interest to continue proceeding, based on litigation risks and the cost of proceeding through the administrative, and possible court, process for this appeal. Also, in light of corrective actions Washington has taken, the Department does not anticipate this violation of the indirect cost provisions will recur. As a result, under the authority in 20 U.S.C. 1234a(j), the Department has determined that compromise of this claim to $530,053 is appropriate and in the public interest. The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by calling or writing the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audio tape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1234a(j).

Delegation of Authority: The Secretary of Education has delegated authority to Thomas P. Skelly to perform the

functions and duties of the Chief Financial Officer of the Department of Education.

Date: December 11, 2015.

Thomas P. Skelly,

Delegated to perform the functions and duties of the Chief Financial Officer.

[FR Doc. 2015–31900 Filed 12–17–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0142]

Agency Information Collection Activities; Comment Request; Federal Direct Consolidation Loan Program Application Documents

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 16, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0142. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jon Utz, 202–377–4040.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Direct Consolidation Loan Program Application Documents.

OMB Control Number: 1845–0053.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households, Private Sector.

Total Estimated Number of Annual Responses: 3,454,476.

Total Estimated Number of Annual Burden Hours: 817,429.

Abstract: This is collection of information includes the following documents: (1) Federal Direct Consolidation Loan Application and Promissory Note (Application and Promissory Note); (2) Instructions for Completing the Federal Direct Consolidation Loan Application and Promissory Note (Instructions); (3) Additional Loan Listing Sheet; (4) Request to Add Loans; and (5) Loan Verification Certificate (LVC). The Application and Promissory Note serves as the means by which a borrower applies for a Federal Direct Consolidation Loan and promises to repay the loan. The Instructions explain to the borrower how to complete the Application and Promissory Note. The Additional Loan Listing Sheet provides additional space for a borrower to list loans that he or she wishes to consolidate, if there is insufficient space on the Application and Promissory Note. The Request to Add Loans serves as the means by which a borrower may add other loans to an existing Federal Direct Consolidation Loan within a specified time period. The LVC serves as the means by which the U.S. Department of Education obtains the information needed to pay off the holders of the loans that the borrower wants to consolidate. This revision updates the forms to reflect regulatory changes, and revises language for greater clarity.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–31773 Filed 12–17–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings; and Notice of Floodplain and Wetlands Involvement; Colusa-Sutter 500-Kilovolt Transmission Line Project, Colusa and Sutter Counties, California (DOE/EIS–0514)

AGENCY: Western Area Power Administration, Department of Energy (DOE).

ACTION: Notice of Intent.

SUMMARY: Western Area Power Administration (Western) and the Sacramento Municipal Utility District (SMUD) are jointly proposing the new 500-kilovolt (kV) Colusa-Sutter (CoSu) Transmission Line Project (Project) to be located within Colusa and Sutter Counties, California. The Project would interconnect the California-Oregon Transmission Project (COTP) transmission system, near either Arbuckle or Maxwell, California, to the Central Valley Project (CVP) transmission system near Yuba City, California. This notice announces Western's decision to jointly prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) in conjunction with SMUD's preparation of a California Environmental Quality Act (CEQA) environmental impact report (EIR). The joint EIS/EIR will examine the potential environmental effects of the CoSu Project.

The joint EIS/EIR will address Western's proposed action of constructing the CoSu Project as well as making any necessary modifications to Western facilities to accommodate the new line; and SMUD's proposed action of whether or not to fund the proposed Project.

This notice starts a 60-day public scoping period that will assist in the preparation of a Draft EIS/EIR. During

the public scoping period, Western and SMUD are seeking public comments including issues, concerns, and opportunities that should be considered in the analysis of the proposed Project.

DATES: The scoping period begins with the publication of this notice and closes on February 16, 2016.

To provide the public an opportunity to review, discuss, and comment on the proposed Project, Western and SMUD will hold four public meetings during January 12–14, 2016. See *Public Participation* in **SUPPLEMENTARY INFORMATION** section for public scoping meeting dates and locations.

ADDRESSES: Written comments on the proposed scope of the Draft EIS/EIR for the CoSu Project may be mailed or emailed to: Mr. Andrew M. Montaño, Western Area Power Administration, Headquarters, P.O. Box 281213, Lakewood, CO 80228–8213, email: *montano@wapa.gov.* Comments on issues, potential impacts, or suggestions for additional alternatives may be provided at the public scoping meeting or submitted in writing to the address listed. To be considered in the Draft EIS/EIR, comments must be received prior to the close of the scoping period.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, please contact Andrew M. Montaño, at (720) 962–7253 or at the address listed in the **ADDRESSES** section. For the most recent information and for announcements, please visit the Project Web site at: *www.CoSuLine.com.*

For general information on DOE's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (202) 586–4600 or (800) 472–2756; or email: *askNEPA@hq.doe.gov.*

For general information on the SMUD CEQA review procedures or status of the CEQA review, please contact Ms. Emily Bacchini, Environmental Management Specialist, Sacramento Municipal Utility District, 6201 S. Street, Mailstop H201, Sacramento, CA 95852–1830; telephone (916) 732–6334; email: *emily.bacchini@smud.org.*

SUPPLEMENTARY INFORMATION: Western is a Federal agency under the U.S. Department of Energy (DOE) that markets and transmits wholesale electrical power through an integrated 17,000-plus circuit mile, high-voltage transmission system across 15 central and western states.

Western, the lead Federal agency for the EIS, will coordinate with appropriate Federal, State and local agencies and potentially affected Native American tribes during the preparation of the EIS/EIR. Western will coordinate with SMUD in the preparation of the joint EIS/EIR. Agencies with legal jurisdiction or special expertise are invited to participate as cooperating agencies, as defined in 40 CFR 1501.6, in preparation of the EIS. Such agencies may make a request to Western to be a cooperating agency. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified in 40 CFR 1501.6(b).

SMUD is the primary distributor of electric power within an area of approximately 900 square miles in Sacramento County and a portion of Placer County, and serves over 624,000 electric customers. SMUD owns and operates an integrated electric system that includes transmission, distribution and generation facilities. SMUD is a member of the Transmission Agency of Northern California, which holds significant entitlements to obtain energy through the COTP. To use these rights, SMUD has long-term transmission service agreements with Western. SMUD's transmission system also contributes to and is affected by voltage stability, transmission system reliability, and security of the greater Sacramento-area transmission system. These imports allow higher demand levels to be reliably served at lower internal generation requirements, reducing carbon emissions from SMUD's natural gas generation facilities.

Project Description and Alternatives

SMUD submitted a transmission service request to Western under Western's Open Access Transmission Tariff for service between the COTP and SMUD's transmission system. Western did not have available transmission capacity to meet the service request on its existing facilities in the area; so SMUD proposed the construction of the CoSu Project. Western would build the Project as allowed by law pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388); August 26, 1937 (50 Stat. 844, 850); August 4, 1939 (53 Stat. 1187); and August 4, 1977 (91 Stat. 565); as supplemented and amended. The CoSu Project would provide SMUD access to existing renewable resources in the Pacific Northwest and other markets, provide regional voltage support, and assist SMUD in planning for anticipated load growth. In addition, the CoSu Project would improve the network transmission infrastructure and import capability into the Sacramento area and ensures the continued safe and reliable operation of the regional transmission system.

The proposed corridors to be studied and evaluated are within Colusa and Sutter Counties, California. The proposed Project would consist of the following primary components:

1. *Northern Corridor Alternative:* constructing a new transmission line (approximately 44 miles in length) adjacent to Western's existing 230-kV Olinda-O'Banion and Keswick-O'Banion double circuit transmission lines. The Northern Corridor Alternative would interconnect the existing COTP transmission line system near the existing COTP's Maxwell Series Compensation Substation to Western's CVP transmission system near the existing Western's O'Banion Substation. The new transmission line would require the construction of an additional substation adjacent to the existing Maxwell Series Compensation Substation and an additional substation adjacent to the existing O'Banion Substation.

2. *Southern Corridor Alternative:* constructing a new transmission line (approximately 27 miles in length) so that it interconnects along the existing COTP transmission line system approximately 8 miles northwest of the community of Arbuckle, California, and proceeds eastwardly towards the existing O'Banion Substation. The Southern Corridor Alternative would also require the construction of an additional substation adjacent to the existing COTP transmission line northwest of Arbuckle and an additional substation adjacent to the existing O'Banion Substation.

3. Additionally, a *Segment 1 Alternative* also has been identified (approximately 9 miles in length) just west of the existing O'Banion Substation to provide an alternate north-to-south route for the Northern Corridor Alternative. Instead of following Western's existing 230-kV Olinda-O'Banion and Keswick-O'Banion double circuit transmission lines to the O'Banion substation, this segment would extend south, at a location approximately 30 miles from the Maxwell Substation, and then continue due east to connect to the O'Banion substation. Under this segment alternative, the new line would be located further away from the Sutter National Wildlife Refuge.

Western will consider a No Action Alternative in the EIS/EIR. Under the No Action Alternative, for the purpose of establishing a baseline for impact analysis and comparison in the EIS/EIR, Western would not construct the proposed Project and the environmental

impacts associated with construction and operation would not occur.

Agency Responsibilities

Western has determined that an EIS is appropriate under DOE NEPA implementing procedures, 10 CFR part 1021.[1] Western would be the lead Federal agency for preparing the EIS, as defined at 40 CFR 1501.5. The proposed Project would include construction of a new single-circuit 500-kV transmission line and associated substations on mostly private land. Western will invite other Federal, State, local, and tribal agencies with jurisdiction by law or special expertise with respect to environmental issues to be cooperating agencies on the EIS, as defined at 40 CFR 1501.6. Such agencies also may make a request to Western to be a cooperating agency by contacting Mr. Montaño at the address listed in the **ADDRESSES** section. Because the proposed Project may involve action in floodplains or wetlands, this NOI also serves as a notice of proposed floodplain or wetland action, in accordance with DOE regulations for Compliance with Floodplain and Wetlands Environmental Review Requirements at 10 CFR part 1022. The EIS will include a floodplain/wetland assessment and, if required, a floodplain/wetland statement of findings will be issued with the Final EIS or the Western Record of Decision (ROD).

Environmental Issues

This notice is to inform agencies and the public of Western's and SMUD's intent to prepare a joint EIS/EIR and solicit comments and suggestions for consideration in the EIS/EIS. To help the public frame its comments, the following list contains potential environmental issues preliminarily identified for analysis in the EIS/EIR:

- Impacts on protected, threatened, endangered, or sensitive species of animals or plants;
- Impacts on migratory birds;
- Introduction of noxious weeds, invasive and non-native species;
- Impacts on recreation and transportation;
- Impacts on land use, wilderness, farmlands, and environmentally-sensitive areas;
- Impacts on cultural or historic resources and tribal values;
- Impacts on human health and safety;
- Impacts on air, soil, and water resources (including air quality and surface water impacts);
- Visual impacts; and
- Socioeconomic impacts and disproportionately high and adverse impacts to minority and low-income populations (*i.e.,* environmental justice).

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Western invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS/EIR.

Public Participation

The EIS/EIR process includes a public scoping period; public scoping meetings; publication and public review of the Draft EIS/EIR; publication of a Final EIS/EIR; and publication of a ROD.

Western and SMUD will hold four public scoping meetings at the following times and locations:

(1) Tuesday, January 12, 2016, from 4:00 p.m. to 7:00 p.m. at the Colusa Casino Community Room, 3770 California 45, Colusa, CA 95932;

(2) Wednesday, January 13, 2016, from 8:00 a.m. to 11:00 a.m. at the Colusa Casino Community Room, 3770 California 45, Colusa, CA 95932;

(3) Wednesday, January 13, 2016, from 4:00 p.m. to 7:00 p.m. at the Sutter Youth Organization Center, 7740 Butte House Road, Sutter, CA 95982;

(4) Thursday, January 14, 2016, from 8:00 a.m. to 11:00 a.m. at the Sutter Youth Organization Center, 7740 Butte House Road, Sutter, CA 95982.

The meetings will be informal, and attendees will be able to speak directly with Western and SMUD representatives about the proposed Project. Attendees also may provide comments at these meetings. For the most recent information and for announcements, please visit the Project Web site at: *www.CoSuLine.com.*

At the conclusion of the NEPA process, Western will prepare a ROD. Persons interested in receiving future notices, proposed Project information, copies of the EIS/EIR, and other information on the NEPA review process should contact Mr. Montaño at the address listed in the **ADDRESSES** section.

The purpose of the scoping meetings is to provide information about the proposed Project, review Project maps, answer questions, and take oral and written comments from interested parties. All meeting locations will be handicapped-accessible. Anyone needing special accommodations should contact Mr. Montaño to make arrangements.

The public will have the opportunity to provide written comments at the public scoping meetings. Written comments may also be sent to Mr. Montaño by email or U.S. Postal Service mail. To help define the scope of the EIS/EIR, comments should be received by Western no later than February 16, 2016.

Dated: November 25, 2015.

Mark A. Gabriel,

Administrator.

[FR Doc. 2015–31902 Filed 12–17–15; 8:45 am]

BILLING CODE 6450–01–P

[1] On November 16, 2011, DOE's Acting General Counsel restated the delegation to Western Area Power Administration's Administrator of all the authorities of the General Counsel with respect to environmental impact statements. See ''Restatement of Delegations of Environmental Impact Statement Authorities,'' November 16, 2011.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–OW–2015–0346; FRL–9940–34–Region 8]

Issuance of NPDES General Permits for Wastewater Lagoon Systems Located in Indian Country in Region 8

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of NPDES general permits under the authority of Section 402 of the Clean Water Act.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is hereby giving notice of its issuance of six National Pollutant Discharge Elimination System (NPDES) lagoon general permits for wastewater lagoon systems located in Indian country in Region 8 (CO, MT, ND, SD, UT, & WY). These general permits are similar to the existing permits and will authorize the discharge of wastewater from lagoons located in Region 8 Indian country in accordance with the terms and conditions described therein.

DATES: The general permits become effective on January 1, 2016 and will expire five years from that date. For purposes of seeking review of this permit pursuant to 40 CFR 124.19(o) and 33 U.S.C. 1369(b)(1), the 120 day time period for appeal to the federal court will begin on January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permits may be obtained from VelRey Lozano, EPA Region 8, Wastewater Unit (8P–W–WW), 1595 Wynkoop Street, Denver, CO 80202–1129, telephone 303–312–6128 or email at *lozano.velrey@epa.gov.*

The administrative record is available by appointment for review and copying, fee for copies may be required, at the EPA Region 8 offices during the hours

of 10:00 a.m. to 4:00 p.m. Monday through Friday, Federal holidays excluded. The final general permits, the fact sheet, and additional information may be downloaded from the EPA Region 8 Web page at *http://www2.epa.gov/region8/npdes-permits-document-download*. Please allow one week after date of this publication for items to be uploaded to the Web page.

SUPPLEMENTARY INFORMATION: Proposed issuance of the general permits was published in the **Federal Register** on June 30, 2015, 80 FR 37255. The public comment period closed on July 30, 2015. A summary of comments received and Region 8's response to the comments are given in a separate document, ''Response to Comments Received During the 2015 Public Notice of Draft NPDES General Permits for Wastewater Lagoon Systems Located in Indian country''.

These permits authorize the discharge of wastewater in accordance with the terms and conditions described therein. The fact sheet for the permits is provide for downloading concurrently with the permits and provides detailed information on: The decisions used to set limitations; the specific geographic areas covered by the permits; information on monitoring schedules; inspection requirements, and other regulatory decisions or requirements.

Issuance of the general permits covers discharges from wastewater lagoon systems located in Indian country in Region 8. The general permits are grouped geographically by state, with the permit coverage being for specified Indian reservations located within a state boundary [specific permit coverage areas below]; any land held in trust by the United States for an Indian tribe; and any other areas which are Indian country within the meaning of 18 U.S.C. 1151.

Colorado: The COG587### permit covers the Southern Ute and the Ute Mountain Reservations, including those portions of the Reservation located in New Mexico and Utah.

Montana: MTG589### This permit covers the Blackfeet Indian Reservation of Montana; the Crow Indian Reservation; the Flathead Reservation; the Fort Belknap Reservation of Montana; the Fort Peck Indian Reservation; the Northern Cheyenne Indian Reservation; and the Rocky Boy's Reservation.

North Dakota: NDG589### This permit covers the Fort Berthold Reservation; the Spirit Lake Indian Reservation; the Standing Rock Sioux Reservation; and the Turtle Mountain Reservation.

This permit includes that portion of the Standing Rock Sioux Reservation and associated Indian country located within the State of South Dakota. It does not include any land held in trust by the United States for the Sisseton-Wahpeton Oyate or any other Indian country associated with that Tribe, which is covered under general permit SDG589###.

South Dakota: SDG589### This permit covers the Cheyenne River Reservation; Crow Creek Reservation; the Flandreau Santee Sioux Indian Reservation; the Lower Brule Reservation; the Pine Ridge Reservation (including the entire Reservation, which is located in both South Dakota and Nebraska); the Rosebud Sioux Indian Reservation; and the Yankton Sioux Reservation.

This permit includes any land in the State of North Dakota that is held in trust by the United States for the Sisseton-Wahpeton Oyate or any other Indian country associated with that Tribe. It does not include the Standing Rock Sioux Reservation or any associated Indian country, which is covered under general permit NDG589###.

Utah: UTG589### This permit covers the Northwestern Band of Shoshoni Nation of Utah Reservation (Washakie); the Paiute Indian Tribe of Utah Reservation; the Skull Valley Indian Reservation; and Indian country lands within the Uintah & Ouray Reservation. It does not include any portions of the Navajo Nation or the Goshute Reservation.

Wyoming: WYG589### This permit covers the Wind River Reservation.

Coverage under the general permits is limited to lagoon systems treating primarily domestic wastewater and includes two categories of coverage; discharging lagoons, and lagoons expected to have no discharge. The effluent limitations for discharging lagoons are based on the Federal Secondary Treatment Regulation (40 CFR part 133) and best professional judgement. The fact sheet also addresses situations in which more stringent and/or additional effluent limitations are determined necessary to comply with applicable water quality standards. Lagoon systems under the no discharge category are required to have no discharge except in accordance with the bypass provisions of the permit. Self-monitoring requirements and routine inspection requirements are included in the permits.

Where the Tribes have Clean Water Act § 401(a)(1) certification authority; Blackfeet Indian Reservation, Flathead Indian Reservation, the Fort Peck Indian Reservation, Northern Cheyenne Indian Reservation, and the Ute Mountain Indian Reservation; EPA has requested certification that the permits comply with the applicable provisions of the CWA and tribal water quality standards.

Other Legal Requirements

Economic Impact (Executive Order 12866): EPA has determined that the issuance of this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these proposed general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 501, *et seq*. The information collection requirements of these permits have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Regulatory Flexibility Act (RFA): 5 U.S.C. 601 *et seq*., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA): The RFA requires that the EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permits proposed today, however, are not a ''rule'' subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the RFA.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' defined to be the same as ''rules'' subject to the Regulatory Flexibility Act (RFA)) on tribal, state, local governments and the private sector. The permit proposed today, however, is not a rule and is therefore not subject to the requirements of the UMRA.

Authority: Clean Water Act, 33 U.S.C. 1251, *et seq.*

Dated: December 3, 2015.

Darcy O'Connor,

Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. 2015–31916 Filed 12–17–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9024–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements

Filed 12/07/2015 Through 12/11/2015 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search.*

EIS No. 20150350, Draft, NMFS, FL, Regional Management of Recreational Red Snapper Amendment 39 to the Fishery Management Plan for the Reef Fish Resources in the Gulf of Mexico, Comment Period Ends: 02/01/2016, Contact: Roy E. Crabtree 727–824–5301.

EIS No. 20150351, Final, USFWS, TX, Southern Edwards Plateau Habitat Conservation Plan, Review Period Ends: 01/19/2016, Contact: Adam Zerrenner 512–490–0057.

EIS No. 20150352, Final, USFS, MT, Montanore Project, Review Period Ends: 01/19/2016, Contact: Lynn Hagarty 406–283–7642.

EIS No. 20150353, Draft, FRA, MD, Draft Section 4(f) Evaluation for the Baltimore & Potomac Tunnel Project, Comment Period Ends: 02/05/2016, Contact: Michelle W. Fishburne 202–293–0398.

EIS No. 20150354, Final, BR, CA, Upper Truckee River and Marsh Restoration Project, Review Period Ends: 01/19/2016, Contact: Rosemary Stefani 916–978–5045.

EIS No. 20150355, Final, USN, OR, Military Readiness Activities at Naval Weapons Systems Training Facility Boardman, OR, Review Period Ends: 01/19/2016, Contact: Amy Burt 360–396–0403.

EIS No. 20150356, Final, APHIS, PRO, Carcass Management During a Mass Animal Health Emergency, Review Period Ends: 01/19/2016, Contact: Lori P. Miller 301–851–3512.

Amended Notices

EIS No. 20150357, Adoption, NOAA, OR, ADOPTION—Southern Flow Corridor Project, Contact: Patricia A. Montanio 301–427–8600.

The U.S. Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) is adopting the Federal Emergency Management Agency's FEIS #20150296, filed 10/22/2015 with EPA. NOAA was a cooperating agency for the above project, therefore recirculation of the document is not necessary under Section 1506.3(c) of the Council on Environmental Quality Regulations.

Dated: December 15, 2015.

Karin Leff,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–31903 Filed 12–17–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

[File No. 151–0048]

Drug Testing Compliance Group, LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 13, 2016.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/dtcgroup consent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Drug Testing Compliance Group—Consent Agreement; File No. 151–0048'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/dtcgroupconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Drug Testing Compliance Group—Consent Agreement; File No. 151–0048'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: William Lanning (202–326–3361), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 14, 2015), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 13, 2016. Write ''Drug Testing Compliance Group—Consent Agreement; File No. 151–0048'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices,

manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/dtcgroupconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Drug Testing Compliance Group—Consent Agreement; File No. 151–0048'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 13, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing consent order (''Consent Agreement'') from Drug Testing Compliance Group, LLC (''DTC Group''). The Commission's Complaint alleges that DTC Group violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by inviting a competitor to enter a customer allocation agreement.

Under the terms of the proposed Consent Agreement, DTC Group is required to cease and desist from communicating with its competitors about customers and prices. The Consent Agreement also prohibits DTC Group from entering into, participating in, inviting, or soliciting an agreement with any competitor to allocate customers, to divide markets, or to fix prices.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order (''Proposed Order'').

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

I. The Complaint

The allegations of the Complaint are summarized below:

DTC Group markets and sells an array of services to commercial drivers, commercial trucking firms, and other persons that facilitate compliance with various regulations administered by the Department of Transportation and the Federal Motor Carrier Safety Administration, including regulations relating to drug and alcohol testing, safety audits, and driver qualifications.

DTC Group primarily utilizes telemarketing and the internet to market and sell its services. DTC Group competes with several firms throughout the United States offering similar services.

DTC Group and Competitor A market and sell similar services in direct competition. Beginning in 2013 and continuing to date, DTC Group and Competitor A have competed for one another's customers by offering lower prices for the services they sell. In some instances, one firm can induce a customer, whose contract is terminable at will, to switch service providers by offering lower prices.

On or about June 27, 2014, the president of DTC Group, David Crossett, contacted Competitor A to complain that Competitor A's sales personnel had induced a DTC Group customer to switch service providers. Mr. Crossett requested a meeting with Competitor A to discuss the matter.

Mr. Crossett met with the principals of Competitor A on July 10, 2014. Mr. Crossett proposed that the firms agree not to solicit or compete for one another's customers. Specifically, Mr. Crossett proposed that DTC Group and Competitor A should reciprocally agree to refrain from selling or attempting to sell a service to a customer if the rival firm had previously arranged to sell the same service to the customer. Mr. Crossett referred to this arrangement as ''First Call Wins,'' and explained that such agreement would permit each company to sell its services to customers without fearing that its rival would later undercut it with a lower price offer.

II. Analysis

Mr. Crossett's communication to Competitor A is an attempt to arrange a customer allocation agreement between the two companies. The invitation, if accepted, would be a *per se* violation of the Sherman Act.[2] The Commission has long held that invitations to collude violate Section 5 of the FTC Act, and this is unaltered by the Commission's recent Statement on Section 5. In that Statement, the Commission explained that unfair methods of competition under Section 5 ''must cause, or be likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications.'' [3] Potential violations are

[2] *United States* v. *Coop. Theatres of Ohio, Inc.,* 845 F.2d 1367, 1372 (6th Cir. 1988) (''[A] horizontal agreement between two competitors to refrain from seeking business from each other's existing accounts . . . is plainly a form of customer allocation and, hence, is the type of 'naked restraint' which triggers application of the *per se* rule of illegality.''); *United States* v. *Cadillac Overall Supply Co.,* 568 F.2d 1078 (10th Cir.), *cert. denied,* 437 U.S. 903 (1978).

[3] Fed. Trade Comm'n, Statement of Enforcement Principles Regarding ''Unfair Methods of Competition'' Under Section 5 of the FTC Act (Aug. 13, 2015) (Section 5 Unfair Methods of Competition Policy Statement), *available at https://www.ftc.gov/system/files/documents/public_statements/735201/150813section5enforcement.pdf.* Commissioner

evaluated under a ''framework similar to the rule of reason.'' [4] Competitive effects analysis under the rule of reason depends upon the nature of the conduct that is under review.[5]

An invitation to collude is ''potentially harmful and . . . serves no legitimate business purpose.'' [6] For this reason, the Commission treats such conduct as ''inherently suspect'' (that is, presumptively anticompetitive).[7] This means that an invitation to collude can be condemned under Section 5 without a showing that the respondent possesses market power.[8]

The Commission has long held that an invitation to collude violates Section 5 of the FTC Act even where there is no proof that the competitor accepted the invitation.[9] First, unaccepted solicitations may facilitate coordination between competitors because they reveal information about the solicitor's intentions or preferences. Second, it can be difficult to discern whether a competitor has accepted a solicitation. Third, finding a violation may deter similar conduct that has no legitimate business purpose.[10]

III. The Proposed Consent Order

The Proposed Order has the following substantive provisions:

Section II, Paragraph A of the Proposed Order enjoins DTC Group from communicating with its competitors about rates or prices, with a proviso permitting public posting of rates.

Section II, Paragraph B prohibits DTC Group from entering into, participating in, maintaining, organizing, implementing, enforcing, inviting, offering, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices.

Section II, Paragraph C bars DTC Group from urging any competitor to raise, fix, or maintain its price or rate levels, or to limit or reduce service terms or levels.

Sections III–VI of the Proposed Order impose reporting and compliance requirements on DTC Group.

The Proposed Order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–31822 Filed 12–17–15; 8:45 am]

BILLING CODE 6750–01–P

Ohlhausen dissented from the issuance of the Section 5 Unfair Methods of Competition Policy Statement. *See https://www.ftc.gov/public-statements/2015/08/dissenting-statement-commissioner-ohlhausen-ftc-act-section-5-policy.*

[4] Section 5 Unfair Methods of Competition Policy Statement.

[5] *See, e.g., California Dental Ass'n* v. *FTC,* 526 U.S. 756, 781 (1999) (''What is required . . . is an enquiry meet for the case, looking to the circumstances, details, and logic of a restraint.'').

[6] *In re Valassis Commc'ns, Inc.,* 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment); *see also* Address by FTC Chairwoman Edith Ramirez, Section 5 Enforcement Principles, George Washington University Law School at 5 (Aug. 13, 2015), *available at https://www.ftc.gov/system/files/documents/public_statements/735411/150813section5speech.pdf.*

[7] *See, e.g., In re North Carolina Bd. of Dental Examiners,* 152 F.T.C. 640, 668 (2011) (noting that inherently suspect conduct is such that can be ''reasonably characterized as 'giv[ing] rise to an intuitively obviously inference of anticompetitive effect.' '') (citation omitted).

[8] *See, e.g., In re Realcomp II, Ltd.,* 148 F.T.C. ____, Docket No. 9320, 2009 FTC LEXIS 250, at *51 (Oct. 30, 2009) (Comm'n Op.) (explaining that if conduct is ''inherently suspect'' in nature, and there are no cognizable procompetitive justifications, the Commission can condemn it ''without proof of market power or actual effects'').

[9] *See, e.g., In re Valassis Commc'ns, Inc.,* 141 F.T.C. 247 (2006); *In re Stone Container,* 125 F.T.C. 853 (1998); *In re Precision Moulding,* 122 F.T.C. 104 (1996). *See also In re McWane, Inc.,* Docket No. 9351, *Opinion of the Commission on Motions for Summary Decision* at 20–21 (F.T.C. Aug. 9, 2012) (''an invitation to collude is 'the quintessential example of the kind of conduct that should be . . . challenged as a violation of Section 5' '') (citing the Statement of Chairman Leibowitz and Commissioners Kovacic and Rosch, *In re U-Haul Int'l, Inc.,* 150 F.T.C. 1, 53 (2010)). This conclusion has been endorsed by leading antitrust scholars. *See* P. Areeda & H. Hovenkamp, VI ANTITRUST LAW ¶ 1419 (2003); Stephen Calkins, *Counterpoint: The Legal Foundation of the Commission's Use of Section 5 to Challenge Invitations to Collude is Secure,* Antitrust, Spring 2000, at 69. In a case brought under a state's version of Section 5, the First Circuit expressed support for the Commission's application of Section 5 to invitations to collude. *See Liu* v. *Amerco,* 677 F.3d 489 (1st Cir. 2012).

[10] *In re Valassis Commc'ns, Inc.,* 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7039–N]

Health Insurance Marketplace℠, Medicare, Medicaid, and the Children's Health Insurance Program; Meeting of the Advisory Panel on Outreach and Education (APOE), January 13, 2016

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the new meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of Health Insurance Marketplace℠,[1] Medicare, Medicaid, and Children's Health Insurance Program (CHIP) consumer education strategies. This meeting is open to the public.

DATES: *Meeting Date:* Wednesday, January 13, 2016 8:30 a.m. to 4 p.m. Eastern Standard Time (EST).

Deadline for Meeting Registration, Presentations and Comments: Wednesday, December 30, 2015, 5 p.m., EST.

Deadline for Requesting Special Accommodations: Wednesday, December 30, 2015, 5:00 p.m., e.s.t.

ADDRESSES: *Meeting Location:* U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 425A, Conference Room, Washington, DC 20201.

Presentations and Written Comments: Presentations and written comments should be submitted to: Abigail Huffman, Designated Federal Official (DFO), Division of Forum and Conference Development, Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–05–06, Baltimore, MD 21244–1850 or via email at *Abigail.Huffman1@cms.hhs.gov*.

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the Web site *https://www.regonline.com/apoejan2016meeting* or by contacting the DFO as listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Abigail Huffman, Designated Federal Official, Office of Communications, CMS, 7500 Security Boulevard, Mail Stop S1–05–06, Baltimore, MD 21244, 410–786–0897, email *Abigail.Huffman1@cms.hhs.gov*. Additional information about the APOE is available on the Internet at: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.html*.

[1] Health Insurance Marketplace℠ and Marketplace℠ are service marks of the U.S. Department of Health and Human Services.

Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory Panel on Medicare Education [2] (the predecessor to the APOE) on January 21, 1999 (64 FR 7899, February 17, 1999) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105–33).

The Medicare Modernization Act of 2003 (MMA) (Pub. L. 108–173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. We have had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Affordable Care Act (Patient Protection and Affordable Care Act, Pub. L. 111–148, and Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and the Children's Health Insurance Program (CHIP). Qualified individuals and qualified employers are now able to purchase private health insurance coverage through competitive marketplaces called Affordable Insurance Exchanges, or ''Exchanges'' (we also call an Exchange a Health Insurance Marketplace℠ or Marketplace℠). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through an Exchange. The APOE (the Panel) allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 21, 2015, and will terminate on January 21, 2017 unless renewed by appropriate action.

Under the current charter, the APOE will advise the Secretary and the Administrator on optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), or coverage available through a Health Insurance Marketplace℠.
- Enhancing the federal government's effectiveness in informing Health Insurance Marketplace℠, Medicare, Medicaid, and CHIP consumers, issuers, providers, and stakeholders, through education and outreach programs, on issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Health Insurance Marketplace℠, Medicare, Medicaid, and CHIP education programs.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel are: Kellan Baker, Associate Director, Center for American Progress; Robert Blancato, President, Matz, Blancato & Associates; Dale Blasier, Professor of Orthopaedic Surgery, Department of Orthopaedics, Arkansas Children's Hospital; Deborah Britt, Executive Director of Community & Public Relations, Piedmont Fayette Hospital; Deena Chisolm, Associate Professor of Pediatrics & Public Health, The Ohio State University, Nationwide Children's Hospital; Josephine DeLeon, Director, Anti-Poverty Initiatives, Catholic Charities of California; Robert Espinoza, Vice President of Policy, Paraprofessional Healthcare Institute; Jennifer Gross, Manager of Political Field Operations, Planned Parenthood of Montana; Louise Scherer Knight, Director, The Sidney Kimmel Comprehensive Cancer Center at Johns Hopkins; Miriam Mobley-Smith, Dean, Chicago State University, College of Pharmacy; Roanne Osborne-Gaskin, M.D., Senior Medical Director, MDWise, Inc.; Cathy Phan, Outreach and Education Coordinator, Asian American Health Coalition DBA HOPE Clinic; Kamila Pickett, Litigation Support, Independent Contractor; Brendan Riley, Outreach and Enrollment Coordinator, NC Community Health Center Association; Jeanne Ryer, Director, New Hampshire Citizens Health Initiative, University of New Hampshire; Alvia Siddiqi, Medicaid Managed Care

[2] We note that the Citizen's Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR 4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

Community Network (MCCN) Medical Director, Advocate Physician Partners, Carla Smith, Executive Vice President, Healthcare Information and Management Systems Society (HIMSS); Tobin Van Ostern, Vice President and Co-Founder, Young Invincibles Advisors; and Paula Villescaz, Senior Consultant, Assembly Health Committee.

II. Provisions of This Notice

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the January 13, 2016 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (October 7, 2015) meeting
- Affordable Care Act initiatives
- An opportunity for public comment
- Meeting summary, review of recommendations, and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

Dated: December 10, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–31861 Filed 12–17–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–855S, CMS–10142 and CMS–R–262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *January 19, 2016*:

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application—Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Suppliers; *Use:* The primary function of the CMS 855S Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) supplier enrollment application is to gather information from a supplier that tells us who it is, whether it meets certain qualifications to be a health care supplier, where it renders its services or supplies, the identity of the owners of the enrolling entity, and information necessary to establish correct claims payment.

The goal of this revision of the CMS–855S is to simplify and clarify the current data collection and to remove obsolete and/or redundant questions. Grammar and spelling errors were corrected. Limited informational text has been added within the application form and instructions in conjunction with links to Web sites when detail is needed by the supplier. To clarify current data collection differentiations and to be in sync with accreditation coding, section 3D (''Products and Services Furnished by This Supplier'') has been updated. This revision does not offer any new material data collection. CMS received one comment in response to the 60-day notice. *Form Number:* CMS–855S (OMB Control Number: 0938–1056); *Frequency:* Annually; *Affected Public:* Private sector (, Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 31,915; *Total Annual Responses:* 31,915; *Total Annual Hours:* 36,842. (For policy questions regarding this collection contact Kimberly McPhillips at 410–786–5374.)

2. *Type of Information Collection Request:* Revision of a currently

approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* We require that Medicare Advantage organizations and Prescription Drug Plans complete the BPT as part of the annual bidding process. During this process, organizations prepare their proposed actuarial bid pricing for the upcoming contract year and submit them to us for review and approval. The purpose of the BPT is to collect the actuarial pricing information for each plan. The BPT calculates the plan's bid, enrollee premiums, and payment rates. We publish beneficiary premium information using a variety of formats (*www.medicare.gov*, the Medicare & You handbook, Summary of Benefits marketing information) for the purpose of beneficiary education and enrollment. The package has been revised subsequent to the publication of the 60-day **Federal Register** notice (September 24, 2015; 80 FR 57619). *Form Number:* CMS–10142 (OMB control number 0938–0944); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 555; *Total Annual Responses:* 4,995; *Total Annual Hours:* 149,850. (For policy questions regarding this collection contact Rachel Shevland at 410–786–3026).

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Contract Year 2017 Plan Benefit Package (PBP) Software and Formulary Submission; *Use:* We require that Medicare Advantage and Prescription Drug Plan organizations submit a completed PBP and formulary as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to us for review and approval. We publish beneficiary education information using a variety of formats. The specific education initiatives that utilize PBP and formulary data include web application tools on *www.medicare.gov* and the plan benefit insert in the Medicare & You handbook. In addition, organizations utilize the PBP data to generate their Summary of Benefits marketing information. The package has been revised subsequent to the publication of the 60-day Federal Register notice (September 24, 2015; 80 FR 57619). *Form Number:* CMS–R–262 (OMB control number 0938–0763); *Frequency:* Yearly; *Affected Public:* Private sector (business or other for-profits and not-for-profit institutions); *Number of Respondents:* 552; *Total Annual Responses:* 5,448; *Total Annual Hours:* 52,902. (For policy questions regarding this collection contact Kristy Holtje at 410–786–2209).

Dated: December 15, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–31887 Filed 12–17–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Disaster Information Collection Form.

OMB No.: 0970—NEW.

Description: This is a request by the Administration for Children and Families (ACF) for a generic clearance for the Disaster Information Collection Form. An approval for a generic clearance is being requested because each of the thirteen program offices within ACF has a slightly different need for information about program impact information collection during a disaster.

ACF oversees more than 60 programs that affect the normal day to day operations of families, children, individuals and communities in the United States. Many of these programs encourage grantees or state administrators to develop emergency preparedness plans, but do not have statutory authority to require these plans be in place. ACF facilitates the inclusion of emergency preparedness planning and training efforts for ACF programs.

Presidential Policy Directive–8 (PPD–8) provides federal guidance and planning procedures under established phases—protection, preparedness, response, recovery, and mitigation. The Disaster Information Collection Forms addressed in this clearance process provide assessment of ACF programs in disaster response, and recovery.

ACF/Office of Human Services Emergency Preparedness and Response (OHSEPR) has a requirement under PPD–8, the National Response Framework, and the National Disaster Recovery Framework to report disaster impacts to ACF-supported human services programs to the HHS Secretary's Operation Center (SOC) and interagency partners. ACF/OHSEPR works in partnership with the Assistant Secretary for Preparedness and Response (ASPR), and the Federal Emergency Management Agency (FEMA) to report assessments of disaster impacted ACF programs and the status of continuity of services and recovery.

Respondents: State administrators, and/or ACF grantees.

Annual Burden Estimates: The burden cap for the Disaster Information Collection Form is estimated based on a single disaster per year. The estimate is for approximately 10 state administrators, or grantees to go through all of the applicable questions with the Regional and Central Office staff. Some ACF programs have more questions and may have more respondents.

Instrument	Number of respondents	Number of responses per respondent	Burden hours per response	Total burden hours
Disaster Information Collection Form	10	15	0.08 hours (5 minutes)	1.25 hours (75 minutes).

An estimate of the number of disasters that would warrant data collection is difficult to calculate due to the unpredictable nature of disasters. For example, in 2012, there were 95 disasters nationwide but OHSEPR did not collect data on all of them because they had minimal effects on ACF programs.

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. 2015–31774 Filed 12–17–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 22, 2016, from 8 a.m. to 5:30 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Moon Hee V. Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *PCNS@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application 206488, eteplirsen injection for intravenous infusion, sponsored by Sarepta Therapeutics, Inc., for the treatment of Duchenne muscular dystrophy (DMD) in patients who have a confirmed mutation of the DMD gene that is amenable to exon 51 skipping.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 7, 2016. Oral presentations from the public will be scheduled between approximately 12:40 p.m. and 2:40 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 29, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 30, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Moon Hee V. Choi at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 11, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–31825 Filed 12–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–E–0474]

Determination of Regulatory Review Period for Purposes of Patent Extension; XTANDI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for XTANDI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by February 16, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by

June 15, 2016. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–E–0474 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; XTANDI.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product XTANDI (enzalutamide). XTANDI is indicated for the treatment of patients with metastatic castration-resistant prostate cancer who have previously received docetaxel. Subsequent to this approval, the USPTO received a patent term restoration application for XTANDI (U.S. Patent No. 8,183,274) from The Regents of the University of California, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2013, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of XTANDI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for XTANDI is 1,892 days. Of this time, 1,790 days occurred during the testing phase of the regulatory review period, while 102 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* June 29, 2007. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 29, 2007.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* May 22, 2012. FDA has verified the applicant's claim that the new drug application (NDA) for XTANDI (NDA 203–415) was initially submitted on May 22, 2012.

3. *The date the application was approved:* August 31, 2012. FDA has verified the applicant's claim that NDA 203–415 was approved on August 31, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 101 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 14, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–31824 Filed 12–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Intent To Establish the 2018 Physical Activity Guidelines Advisory Committee and Solicitation of Nominations for Appointment to the Committee Membership

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the intent to establish a Physical Activity Guidelines Advisory Committee (Committee). It is planned for the Committee to be established in calendar year 2016. This notice also serves to announce that an invitation is being extended for nominations of qualified candidates to be considered for appointment as a member of the Committee.

DATES: Nominations for membership on the Committee must be submitted by 6:00 p.m. ET on Friday, February 5, 2016.

ADDRESSES: Nominations should be submitted by email to *PAGACnominations@hhs.gov.* This address can be accessed online at the following address: *www.health.gov/paguidelines.* Nominations may also be sent to the following address: Richard D. Olson, M.D., M.P.H., Designated Program Official, 2018 Physical Activity Guidelines Advisory Committee; HHS/OASH/ODPHP; 1101 Wootton Parkway, Suite LL–100; Rockville, MD 20852; Telephone: (240) 453–8280.

FOR FURTHER INFORMATION CONTACT: Designated Program Official, 2018 Physical Activity Guidelines Advisory Committee, Richard D. Olson and/or Alternate Designated Program Official, Katrina L. Piercy, Ph.D., R.D., HHS/OASH/ODPHP; 1101 Wootton Parkway, Suite LL–100; Rockville, MD 20852; Telephone: (240) 453–8280. Additional information is available at *www.health.gov/paguidelines.*

SUPPLEMENTARY INFORMATION:

Purpose: The inaugural *Physical Activity Guidelines for Americans* (PAG), issued in 2008, represents the first major federal review of the benefits of physical activity. The PAG provides science-based advice on how physical activity can help promote health and reduce the risk of chronic disease. The PAG serves as the benchmark and primary, authoritative voice of the federal government for providing science-based guidance on physical activity, fitness, and health in the United States. Five years after the first edition of the PAG was released, ODPHP, in collaboration with the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), and the President's Council on Fitness, Sports, and Nutrition (PCFSN) led development of the *PAG Midcourse Report: Strategies to Increase Physical Activity Among Youth.* The 2nd edition of the *Physical Activity Guidelines* will build upon the 1st edition and provide a foundation for federal recommendations and education for physical activity programs for Americans, including those at risk for chronic disease.

The Committee will be established as a discretionary federal advisory committee and governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.). The work of the Committee will be solely advisory in nature and time-limited. Formation of the Committee is necessary and in the public interest. The Committee will examine the current PAG, take into consideration new scientific evidence and current resource documents, and then develop a scientific advisory report to be submitted to the Secretary of HHS that outlines its science-based recommendations and rationale. The scientific report will be used by the federal government to develop the 2nd edition of the *Physical Activity Guidelines for Americans.* The Committee's duties do not include developing the policy, a draft of the policy, or determining how future policy might be implemented by the federal government. For those interested in reviewing the *Physical Activity Guidelines for Americans,* the 2008 Advisory Committee Scientific Report, or the PAG Midcourse Report, they are available at *www.health.gov/paguidelines.*

The Committee is expected to begin meeting in summer of 2016. The Committee is expected to meet approximately five times during the course of its operation. Pursuant to FACA, all meetings of the full Committee will be open to the public.

Individuals selected for appointment to the Committee will be invited to serve as members until the charter expires or the Committee accomplishes its mission. In keeping with FACA, the charter will expire two years from the date it is established. The Committee will operate until its report is delivered to the Secretary or the charter expires, whichever comes first. There will be no

stipend authorized to be paid to the members for performance of their official duties. However, Committee members will be authorized to receive per diem and reimbursement for travel expenses incurred for attending public meetings.

Structure: It is proposed that the Committee will consist of 11–17 members; one or two members will be selected to serve as the Chair, Vice Chair, and/or Co-Chairs. To be eligible for consideration of appointment to the Committee, individuals should be knowledgeable of current scientific research in human physical activity and be respected and published experts in their fields. They should be familiar with the purpose, communication, and application of federal physical activity guidelines and have demonstrated interest in the public's health and well-being through their research and/or educational endeavors. Expertise is sought in specific specialty areas related to physical activity and health promotion or disease prevention, including but not limited to: Health promotion and chronic disease prevention; bone, joint, and muscle health and performance; obesity and weight management; physical activity and risk of musculoskeletal injury; physical activity and cognition; physical activity within specific settings, such as preschool/childcare, schools (*e.g.,* activity breaks, physical education), or the community/built environment; physical activity dose-response; sedentary behavior; behavior change; systematic reviews; and special populations including children, older adults, individuals with disabilities, or women who are pregnant.

Nominations: HHS will consider nominations, including self-nominations, for Committee membership of individuals qualified to carry out the above-mentioned tasks. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) The name, address, daytime telephone number, and email address of the nominator and the individual being nominated; (2) a letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee that the nominee is willing to serve as a member of the Committee; and (3) a current copy of the nominee's curriculum vitae (CV) no more than 10 pages in length. Inclusion of the following is requested in the CV: (1) Current and/or past grant awards; (2) publications showing both breadth and experience in areas of specialization; (3) paid and non-paid board and advisory appointments; and (4) education and occupational history.

All nominations must include the required information. Incomplete nominations will not be processed for consideration. Federal employees should not be nominated for consideration of appointment to this Committee.

Equal opportunity practices regarding membership appointments to the Committee will be aligned with HHS policies. When possible, every effort will be made to ensure that the Committee is a diverse group of individuals with representation from various geographic locations, racial and ethnic minorities, all genders, and persons with disabilities. Individuals will be appointed to serve as members of the Committee to represent balanced viewpoints of the scientific evidence, not to represent the viewpoints of any specific group.

Members of the Committee will be classified as special government employees (SGEs) during their term of appointment to the Committee, and as such are subject to the ethical standards of conduct for federal employees. Upon entering the position and annually throughout the term of appointment, members of the Committee will be required to complete and submit a report of their financial holdings, consultancies, and research grants and/or contracts. The purpose of this report is to determine if the individual has any interest and/or activities in the private sector that may conflict with performance of their official duties as a member of the Committee.

Dated: December 15, 2015.

Don Wright,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2015–31837 Filed 12–17–15; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and 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 Advisory Council for Nursing Research.

Date: January 26–27, 2016.

Open: January 26, 2016, 1:00 p.m. to 4:45 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A, Convent Drive, Room 620/630, Bethesda, MD 20892.

Closed: January 27, 2016, 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A, Convent Drive, Room 620/630, Bethesda, MD 20892.

Contact Person: Ann R. Knebel, DNSC, RN, FAAN, Deputy Director, National Institute of Nursing Research, National Institutes of Health, 31 Center Drive, Building 31, Room 5B05, Bethesda, MD 20892, 301–496–8230, *knebelar@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nih.gov/ninr/aadvisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–31768 Filed 12–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Interagency Coordinating Committee on the Validation of Alternative Methods Communities of Practice Webinar on Fundamentals of Using Quantitative Structure–Activity Relationship Models and Read-across Techniques in Predictive Toxicology; Notice of Public Webinar; Registration Information

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) announces a public webinar ''Fundamentals of Using Quantitative Structure—Activity Relationship Models and Read-Across Techniques in Predictive Toxicology.'' The webinar is organized on behalf of ICCVAM by the National Toxicology Program Interagency Center for the Evaluation Alternative Toxicological Methods (NICEATM) and hosted by the U.S. Environmental Protection Agency's (EPA's) National Center for Computational Toxicology (NCCT). Interested persons may participate via Adobe® Connect™. Time is allotted for questions from the audience.

DATES: *Webinar:* January 26, 2016, 1 p.m. to approximately 2:30 p.m. Eastern Standard Time (EST).

Registration for Webinar: December 18, 2015 until January 26, 2016 at 2:30 p.m.

ADDRESSES: Webinar Web page: *http://ntp.niehs.nih.gov/go/commprac-2016*.

FOR FURTHER INFORMATION CONTACT: Dr. Warren S. Casey, Director, NICEATM; email: *warren.casey@nih.gov;* telephone: (919) 316–4729.

SUPPLEMENTARY INFORMATION:

Background: ICCVAM promotes the development and validation of toxicity testing methods that protect human health and the environment while replacing, reducing, or refining animal use. ICCVAM also provides guidance to test method developers and facilitates collaborations that promote the development of new test methods. To address these goals, ICCVAM is organizing a webinar on ''Fundamentals of Using Quantitative Structure—Activity Relationship Models and Read-across Techniques in Predictive Toxicology.''

Many commercial and environmental chemicals lack toxicity data necessary for users and risk assessors to make informed decisions about their potential health effects. Computational methods use data about structure, properties, and toxicity from tested chemicals to make predictions about the characteristics of untested chemicals. These include quantitative structure-activity relationship (QSAR) models, which predict the activities of chemicals with unknown properties by relating them to properties of known chemicals, and read-across, which uses toxicity data from a known (source) chemical to predict toxicity for another (target) chemical, usually but not always on the basis of structural similarity. Predictions made using these methods about toxicity of untested chemicals can help set priorities for future *in vitro* or *in vivo* testing, ensuring that the most important hazards are characterized first and that testing resources are used efficiently.

The ICCVAM webinar will feature presentations by two experts in the development and application of QSAR models and read-across techniques. Alex Tropsha, Ph.D., associate dean for pharmacoinformatics and data science at the University of North Carolina at Chapel Hill, will discuss fundamentals of QSAR models. Louis (Gino) Scarano, Ph.D., of the EPA's Office of Pollution Prevention and Toxics, will describe read-across techniques and discuss the regulatory applications of QSAR models and read-across techniques.

Webinar and Registration: This webinar is open to the public with time scheduled for questions by attendees following each presentation. Registration for the webinar is required and is open from December 18, 2015, through 2:30 p.m. on January 26, 2016. A link to registration is available at *http://ntp.niehs.nih.gov/go/commprac-2016*. Registrants will receive instructions on how to access and participate in the webinar in the email confirming their registration.

The preliminary agenda is available at *http://ntp.niehs.nih.gov/go/commprac-2016*. Interested individuals are encouraged to visit this Web page to stay abreast of the most current webinar information.

Individuals with disabilities who need accommodation to participate in this event should contact Ms. LaCresha Styles at phone: (919) 541–3282 or email: *styles.lacresha@epa.gov*. TTY users should contact the Federal TTY Relay Service at (800) 877–8339. Requests should be made at least five business days in advance of the event.

Background Information on ICCVAM and NICEATM: ICCVAM is an interagency committee composed of representatives from 15 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) establishes ICCVAM as a permanent interagency committee of the National Institute of Environmental Health Sciences and provides the authority for ICCVAM's involvement in activities relevant to the development of new and revised toxicological tests.

ICCVAM conducts technical evaluations of new, revised, and alternative test methods and testing strategies with regulatory applicability and promotes the scientific validation and regulatory acceptance of test methods that both more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine (enhance animal well-being and lessen or avoid pain and distress) animal use. ICCVAM acts to ensure that new and revised test methods are validated to meet the needs of federal agencies, to increase the efficiency and effectiveness of federal agency test method review, and to optimize utilization of scientific expertise outside the federal government. Additional information about ICCVAM can be found at *http://ntp.niehs.nih.gov/go/iccvam*.

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM activities, and conducts analyses and evaluations and coordinates independent validation studies on novel and high-priority alternative testing approaches. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods and strategies applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM can be found at *http://ntp.niehs.nih.gov/go/niceatm*.

Dated: December 15, 2015.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2015–31832 Filed 12–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed 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; AGING STUDY.

Date: January 20, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carmen Moten, Ph.D., M.P.H., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 11, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–31771 Filed 12–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of a Small Molecule Farnesoid X Receptor Inhibitor

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Cancer Institute (NCI), National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following U.S. Patents and Patent Applications to Heliome Biotech, Inc. (''Heliome'') located in New York, NY, USA.

Intellectual Property:

1. United States Provisional Patent Application No. 61/861,109, filed August 1, 2013 ''Inhibitors of the Farnesoid X Receptor and Use Thereof in the Prevention of Weight Gain'' [HHS Reference No. E–508–2013/0–US–01];
2. United States Provisional Patent Application No. 62/004,436, filed May 29, 2014, entitled ''Methods of Treating or Preventing Obesity, Insulin Resistance and Non-Alcoholic Fatty Liver Disease'' [HHS Reference No. E–508–2013/1–US–01]; and
3. PCT Patent Application No. PCT/US2014/49460 filed August 1, 2014 ''Inhibitors of the Farnesoid X Receptor and Uses in Medicine'' [HHS Reference No. E–508–2013/2–PCT–01].

The patent rights in these inventions have been assigned to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of the Licensed Patent Rights to make or have made, use and sell a small molecule farnesoid X receptor inhibitor for all metabolic diseases.

DATES: Only written comments and/or applications for a license which are received by the NCI Technology Transfer Center on or before January 4, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated exclusive license should be directed to: Thomas Clouse, J.D., Senior Licensing and Patenting Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530 MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702 Telephone: (240)–276–5530; Facsimile: (240)–276–5504 Email: *thomas.clouse@nih.gov*.

SUPPLEMENTARY INFORMATION: Remodeling the gut microbiota using specific compounds can affect high fat diet-induced obesity through signal transduction mediated by the nuclear receptor farnesoid X receptor (FXR). FXR is inhibited due to the altered gut microbiota as a result of lack of metabolism (bile salt hydrolase activity) of a potent FXR antagonist tauro-β-muracholic acid (TβMCA) that is produced in the liver and secreted to the intestine. The technology identifies a class of compounds that specifically decrease levels of Lactobacillus-associated bile salt hydrolase activity resulting in accumulation of intestinal TβMCA which is now identified as an antagonist of FXR. The technology has the potential of being developed into a therapeutic for various metabolic disorders associated with inhibition of the farnesoid X receptor pathway, including Non-Alcoholic Fatty Liver Disease (NAFLD), Type 2 Diabetes, and non-alcoholic steatohepatitis (NASH).

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NCI receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 15, 2015.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2015–31831 Filed 12–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. Attendance is limited by the space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will also be videocast and can

be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov/*).

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 Advisory General Medical Sciences Council.

Date: January 28–29, 2016.

Closed: January 28, 2016, 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Open: January 29, 2016, 8:30 a.m. to Adjournment.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, Ph.D., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24B, MSC 6200, Bethesda, MD 20892, (301) 594–4499, *hagana@nigms.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's home page (*http://www.nigms.nih.gov/About/Council/*) where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 11, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–31772 Filed 12–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

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

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

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

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

Date: January 12, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3G61, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Dharmendar Rathore, Ph.D., Senior Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G30, National Institues of Health/NIAID, 5601 Fishers Lane, Drive, MSC 9823, Bethesda, MD 20892–9823, 240–669–5058, *rathored@mail.nih.gov*.

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

Dated: December 14, 2015.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–31770 Filed 12–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

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

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

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Biology.

Date: January 5, 2016.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

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

Contact Person: Syed M. Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov*.

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

Dated: December 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–31767 Filed 12–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Workshop on Addressing Challenges in the Assessment of Botanical Dietary Supplement Safety; Notice of Public Meeting; Registration Information

SUMMARY: The National Toxicology Program (NTP) announces the public workshop, ''Addressing Challenges in the Assessment of Botanical Dietary Supplement Safety.'' Presenters from academia, government, and industry will introduce the challenges in assessing botanical dietary supplement safety and present various approaches that could facilitate progress in three focus areas. The workshop will consist of plenary presentations and panel discussions. Information about the meeting and registration is available at (*http://ntp.niehs.nih.gov/go/workshop_botanicals*).

DATES: Meeting: April 26–27, 2016, from 9 a.m. to approximately 5 p.m. Eastern Daylight Time (EDT).

Meeting Registration: Registration is open through April 12, 2016; registration will close earlier if space capacity is reached. Registration to view the workshop via webcast is required.

ADDRESSES: Meeting Location: Lister Hill Auditorium, National Library of Medicine, 8600 Rockville Pike, NIH Building 38A, Bethesda, MD 20894

Meeting Web page: The preliminary agenda and registration are at (*http://ntp.niehs.nih.gov/go/workshop_botanicals*).

Webcast: The meeting will be webcast; the URL will be provided to those who register to view.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Rider, NTP Toxicologist, NIEHS, P.O. Box 12233, MD K2–12, Research Triangle Park, NC 27709. Telephone: (919) 541–7638, email: *cynthia.rider@nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The safety of botanical dietary supplements, hereafter referred to as botanicals, is an important public health issue. According to the 2012 National Health Interview Survey, 17.7 percent of Americans reported having used nonvitamin, nonmineral dietary supplements (including botanicals) in the past 12 months (Clarke et al., 2015). Botanicals pose several unique challenges to efficacy and safety evaluation because of their inherent complexity and potential for wide variability in nominally related products. The interrelated challenges associated with the evaluation of botanicals include: (1) Developing methods and criteria for assessing phytoequivalence (*i.e.*, similarity in chemical composition and biological activity) of botanicals, (2) identifying the active constituent(s) or patterns of biological response of botanicals, and (3) assessing absorption, distribution, metabolism, and elimination (ADME) of botanicals. This workshop will engage experts from multiple disciplines to focus on practical approaches for addressing these challenges.

Multiple factors contribute to the variability in botanicals including complex and inconsistent source material, manufacturing processes, formulation, and storage. Botanicals in commerce often display a wide range in the concentration of known constituents. Robust procedures for comparing constituent profiles across multiple botanicals are needed to determine how broadly safety or efficacy evaluations with a specific product can be applied to related products. Topics for discussion at the workshop include definition of important chemical and biological activity features, statistical methods for comparing across complex mixtures, and how to define ''similarity'' across botanicals (*i.e.*, how similar do botanicals have to be in order to apply safety data from a reference botanical to nominally-related botanicals).

Botanicals are often perceived to have significant health benefits with low risk of harm. Since botanicals are complex natural products, the particular constituent(s) responsible for biological activity, as related to efficacy or toxicity, is often unknown. Participants at the workshop will discuss the relative merits of dedicating scientific attention to identifying the active constituent(s) in botanicals and identifying biological signatures that are predictive of adverse events (biomarkers of effect). Furthermore, presentations will address promising approaches (*e.g.*, high throughput screening, computational tools) and accompanying challenges for using these approaches to advance our understanding of the risks associated with botanical use.

Understanding the ADME of botanicals is critical to evaluating their safety. However, evaluating ADME in humans and animal models is complicated in the case of botanicals by the large number of constituents, the wide range of concentrations, potential interactions (botanical-botanical and botanical-drug interactions), as well as interindividual and animal-to-human differences in pharmacokinetics. The workshop will include discussion of knowledge gaps and available options for assessing ADME of botanicals to inform future safety evaluations.

Meeting and Registration

This meeting is open to the public, free of charge, with attendance limited only by the space available. Individuals who plan to attend in person should register at (*http://ntp.niehs.nih.gov/go/workshop_botanicals*) by April 12, 2016, to facilitate meeting planning. Registration will close earlier if space capacity is reached. Registration is required to view the Webcast; the URL for the Webcast will be provided in the email confirming registration. A preliminary agenda and additional information are available at (*http://ntp.niehs.nih.gov/go/workshop_botanicals*). Interested individuals are encouraged to access the Web site to stay abreast of the most current information regarding the workshop.

Visitor and security information for those attending in person is available at *https://www.nih.gov/about-nih/visitor-information/campus-access-security*. Individuals with disabilities who need accommodation to participate in this event should contact Dr. Rider at telephone: (919) 541–7638 or email: *cynthia.rider@nih.gov.* TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Background Information on the NTP

NTP is an interagency program established in 1978 (43 FR 53060) to strengthen the Department of Health and Human Services' activities in toxicology research and testing, and develop and validate new and better testing methods. Other activities of the program focus on strengthening the science base in toxicology and providing information about potentially toxic chemicals to health regulatory and research agencies, scientific and medical communities, and the public. NTP is located administratively at the National Institute of Environmental Health Sciences (NIEHS). Information about NTP and NIEHS is found at *http://ntp.niehs.nih.gov* and *http://www.niehs.nih.gov*, respectively.

Reference

Clarke, T.C. et al. Trends in the use of complementary health approaches among adults: United States, 2002–2012, in National health statistics reports. 2015. National Center for Health Statistics: Hyattsville, MD.

Dated: December 15, 2015.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2015–31833 Filed 12–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

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

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

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A.

Date: February 22–23, 2016.

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

Agenda: To review and evaluate grant applications.

Place: Best Western Tuscan Inn, 425 North Point Street, San Francisco, CA 94133.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–402–0288, *Natalia.strunnikova@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders C.

Date: February 23–24, 2016.

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

Agenda: To review and evaluate grant applications.

Place: JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders B.

Date: February 25, 2016.

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

Agenda: To review and evaluate grant applications.

Place: JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130,

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, *neuhuber@ninds.nih.gov*.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Subcommittee.

Date: March 7–8, 2016.

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

Agenda: To review and evaluate grant applications.

Place: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov*.

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

Date: March 14–15, 2016.

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

Agenda: To review and evaluate grant applications.

Place: Pier 2620 Hotel, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: Elizabeth A Webber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–1917, *webbere@mail.nih.gov*.

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

Dated: December 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–31769 Filed 12–17–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–1050]

Cooperative Research and Development Agreement: Diesel Outboard Engine Development

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

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

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before January 19, 2016.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before January 19, 2016.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact LT Keely Higbie, Project Official, Surface Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2815, email *Keely.J.Higbie@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Comments should be marked with docket number USCG–2015–1050 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Instead, submit

them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) How well they address the following criteria:

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

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

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

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

Dated: December 2, 2015.

Dennis C. Evans,

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

[FR Doc. 2015–31909 Filed 12–17–15; 8:45 am]

BILLING CODE 9110–04–P

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

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0054]

Agency Information Collection Activities: Exportation of Used Self-Propelled Vehicles

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: Exportation of Used Self-Propelled Vehicles. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 16, 2016 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: Exportation of Used-Propelled Vehicles

OMB Number: 1651–0054

Abstract: CBP regulations require an individual attempting to export a used self-propelled vehicle to furnish documentation to CBP, at the port of export, the vehicle and documentation describing the vehicle, which includes the Vehicle Identification Number (VIN) or, if the vehicle does not have a VIN, the product identification number. Exportation of a vehicle will be permitted only upon compliance with these requirements. This requirement does not apply to vehicles that were entered into the United States under an in-bond procedure, a carnet or temporary importation bond. The required documentation includes, but is not limited to, a Certificate of Title or a Salvage Title, the VIN, a Manufacture's Statement of Origin, etc. CBP will accept originals or certified copies of Certificate of Title. The purpose of this information is to help ensure that stolen vehicles or vehicles associated with other criminal activity are not exported.

Collection of this information is authorized by 19 U.S.C.1627a which provides CBP with authority to impose export reporting requirements on all used self-propelled vehicles and by title IV, section 401 of the Anti-Car Theft Act of 1992, 19 U.S.C. 1646(c) which requires all persons or entities exporting a used self-propelled vehicle to provide to the CBP, at least 72 hours prior to export, the VIN and proof of ownership of each automobile. This information collection is provided for by19 CFR part 192. Further guidance regarding these requirements is provided at: *http://www.cbp.gov/xp/cgov/trade/basic_trade/export_docs/motor_vehicle.xml.*

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: Individuals and Businesses.

Estimated Number of Respondents: 750,000.

Estimated Number of Total Annual Responses: 750,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 125,000.

Dated: December 14, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–31912 Filed 12–17–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2015–0019; OMB No. 1660–0108]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Emergency Family Registry and Locator System (NEFRLS)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before January 19, 2016.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3100, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on October 6, 2015 at 80 FR 60397 with a 60 day public comment period. FEMA received one comment which included the following statements regarding NEFRLS:

1. ''Shelters are not jails, the evacuees come and go after arriving, often without the knowledge of the shelter managers. Therefore using the Safe and Well program is but a small way of contacting evacuees.''

2. ''Some will intentionally hide their identity for a myriad of reasons. (abusive spouse, warrants, debts, don't want the government to know where they are, no legal citizens).''

3. ''There is no single collection point for several states to share data of missing persons after a catastrophic event that covers several states.''

4. ''In Texas and other larger western states the travel times are considerable, so would like to have vehicles able to have reports of who is on board said vehicles.''

5. ''Integration with other local (state level) software solutions via API such as WebEOC is a must.''

6. ''One system at the federal level—this should replace NSS or integrate into it (single sign on).''

FEMA evaluated the comment received regarding the NEFRLS. As mandated by Congress, NEFRLS is intended to be a system that survivors and people searching for them can use voluntarily on an individual basis. It is not intended to be a comprehensive data collection tool for responders and/or governments nor is it intended to be inclusive of all disaster survivors but only those who voluntarily choose to register. NEFRLS is not an evacuation tracking tool that can be used to create manifests. FEMA has developed the National Mass Evacuation Tracking System (NMETS) that is available to States at no charge that can perform this function. Information about NMETS can be found at the following link, *http://www.fema.gov/individual-assistance-national-mass-evacuation-tracking-system.* FEMA routinely explores options to increase interoperability and data sharing where applicable. FEMA always appreciates feedback from members of the emergency management community.

The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: National Emergency Family and Registry System (NEFRLS).

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0108.

Form Titles and Numbers: FEMA Form 528–2.

Abstract: NEFRLS is a Web-based database enabling FEMA to provide a nationally available and recognized database allowing adults (including medical patients) that have been displaced by a Presidentially declared major disaster or emergency to voluntarily register via the Internet or a toll-free number. This database allows designated individuals to search for displaced friends, family, and household members. Congress mandated that FEMA establish NEFRLS in the Post Katrina Emergency Management Reform Act of 2006, (PKEMRA) section 689c.

Affected Public: State, Local or Tribal Government, Federal Government, and Individuals or Households.

Estimated Number of Respondents: 56,000.

Estimated Total Annual Burden Hours: 10,640.

Estimated Cost: $241,634. There are no recordkeeping, capital, start-up or maintenance costs associated with this information collection.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015–31870 Filed 12–17–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0052]

Chemical Facility Anti-Terrorism Standards Personnel Surety Program

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Implementation of the CFATS Personnel Surety Program.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP) is providing notice to the public and chemical facilities regulated under the Chemical Facility Anti-Terrorism Standards (CFATS) that it is commencing implementation of the CFATS Personnel Surety Program. CFATS requires regulated chemical facilities to implement security measures designed to ensure that certain individuals with or seeking access to the restricted areas or critical assets at those chemical facilities are screened for terrorist ties. The CFATS Personnel Surety Program enables regulated chemical facilities to meet this requirement.

DATES: This notice is effective as of the date of publication.

ADDRESSES: Questions about this notice may be directed by mail to the DHS/NPPD/IP/Infrastructure Security Compliance Division CFATS Program Manager at the Department of Homeland Security, 245 Murray Lane, SW., Mail Stop 0610, Arlington, VA 20528–0610. Questions, which include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),[1] Sensitive Security Information (SSI),[2] or Protected Critical Infrastructure Information (PCII),[3] should be properly safeguarded.

Table of Contents

I. Notice of Implementation

The Department is publishing this notice to inform Tier 1 and Tier 2 high-risk chemical facilities regulated under CFATS of the implementation of the CFATS Personnel Surety Program.[4] High-risk chemical facilities will be individually notified as to when the Department will expect each high-risk

[1] For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at *http://www.dhs.gov/xlibrary/assets/chemsec_cvi_proceduresmanual.pdf.*

[2] For more information about SSI see 49 CFR part 1520 and the SSI Program Web page at *www.tsa.gov.*

[3] For more information about PCII see 6 CFR part 29 and the PCII Program Web page at *http://www.dhs.gov/protected-critical-infrastructure-information-pcii-program.*

[4] The Department intends to expand the scope of the CFATS Personnel Surety Program to include Tier 3 and Tier 4 high-risk chemical facilities after implementing the CFATS Personnel Surety Program at Tier 1 and Tier 2 high-risk chemical facilities. Any expansion to include Tier 3 and Tier 4 high-risk chemical facilities will require updates to the CFATS Personnel Surety Program Information Collection Request. The Department will publish another notice to inform Tier 3 and Tier 4 high-risk chemical facilities of program expansion after making necessary updates to the CFATS Personnel Surety Program Information Collection Request.

chemical facility to begin implementing risk based performance standard (RBPS) 12(iv) in accordance with its Site Security Plan (SSP).[5]

II. Statutory and Regulatory History of the CFATS Personnel Surety Program

Section 550 of the Department of Homeland Security Appropriations Act of 2007, Public Law 109–295 (2006) (''Section 550''), provided the Department with the authority to identify and regulate the security of high-risk chemical facilities using a risk-based approach. On April 9, 2007, the Department issued the CFATS Interim Final Rule (IFR) implementing this statutory mandate. *See* 72 FR 17688.

Section 550 required that the Department establish risk-based performance standards for high-risk chemical facilities, and through the CFATS regulations the Department promulgated 18 RBPSs, including RBPS 12—Personnel Surety. Under RBPS 12, high-risk chemical facilities regulated under CFATS are required to account for the conduct of certain types of background checks in their Site Security Plans. Specifically, RBPS 12 requires high-risk chemical facilities to:

> Perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets, including, (i) Measures designed to verify and validate identity; (ii) Measures designed to check criminal history; (iii) Measures designed to verify and validate legal authorization to work; and (iv) Measures designed to identify people with terrorist ties[.]

6 CFR 27.230(a)(12).

The first three aspects of RBPS 12 (checks for identity, criminal history, and legal authorization to work) have already been implemented, and high-risk chemical facilities have addressed these aspects of RBPS 12 in their Site Security Plans. This notice announces to the public and chemical facilities that it is commencing implementation of the CFATS Personnel Surety Program, which requires Tier 1 and Tier 2 facilities to implement security measures designed, to ensure that certain individuals with or seeking access to the restricted areas or critical assets at those chemical facilities are screened for terrorist ties.

Identifying affected individuals who have terrorist ties is an inherently governmental function and requires the use of information held in government-maintained databases that are unavailable to high-risk chemical facilities. *See* 72 FR 17688, 17709 (April 9, 2007). Thus, under RBPS 12(iv), the Department and high-risk chemical facilities must work together to satisfy the ''terrorist ties'' aspect of the Personnel Surety performance standard. To implement the provisions of RBPS 12(iv), and in accordance with the Homeland Security Act as amended by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, Public Law 113–254,[6] the following options will be available to enable high-risk chemical facilities to facilitate terrorist-ties vetting of affected individuals.

Option 1. High-risk chemical facilities may submit certain information about affected individuals that the Department will use to vet those individuals for terrorist ties. Specifically, the identifying information about affected individuals will be compared against identifying information of known or suspected terrorists contained in the federal government's consolidated and integrated terrorist watchlist, the Terrorist Screening Database (TSDB), which is maintained by the Department of Justice (DOJ) Federal Bureau of Investigation (FBI) in the Terrorist Screening Center (TSC).[7]

Option 2. High-risk chemical facilities may submit information about affected individuals who already possess certain credentials that rely on security threat assessments conducted by the Department. *See* 72 FR 17688, 17709 (April 9, 2007). This will enable the Department to verify the continuing validity of these credentials.

Option 3. High-risk chemical facilities may comply with RBPS 12(iv) without submitting to the Department information about affected individuals who possess Transportation Worker Identification Credentials (TWICs), if a high-risk chemical facility electronically verifies and validates the affected individual's TWICs through the use of TWIC readers (or other technology that is periodically updated using the Canceled Card List).

Option 4. High-risk chemical facilities may visually verify certain credentials or documents that are issued by a Federal screening program that periodically vets enrolled individuals against the Terrorist Screening Database (TSDB). The Department continues to believe that visual verification has significant security limitations and, accordingly, encourages high-risk chemical facilities choosing this option to identify in their Site Security Plans the means by which they plan to address these limitations.

Each of these options is described in further detail below in Section III.D.

III. Contents and Requirements of the CFATS Personnel Surety Program

The CFATS Personnel Surety Program enables the Department and high-risk chemical facilities to mitigate the risk that certain individuals with or seeking access to restricted areas or critical assets at high-risk chemical facilities may have terrorist ties.

A. Who Must be Checked for Terrorist Ties?

RBPS 12(iv) requires that certain individuals with or seeking access to restricted areas or critical assets at high-risk chemical facilities be checked for terrorist ties. These individuals are referred to as ''affected individuals.'' Specifically, affected individuals are facility personnel or unescorted visitors with or seeking access to restricted areas or critical assets at high-risk chemical facilities. High-risk facilities may classify particular contractors or categories of contractors either as ''facility personnel'' or as ''visitors.'' This determination should be a facility-specific determination, and should be based on facility-security considerations, operational requirements, and business practices.

There are also certain groups of persons, which the Department does not consider to be affected individuals, such as (1) federal officials who gain unescorted access to restricted areas or critical assets as part of their official duties; (2) state and local law enforcement officials who gain unescorted access to restricted areas or critical assets as part of their official duties; and (3) emergency responders at the state or local level who gain unescorted access to restricted areas or critical assets during emergency situations.

B. Checking for Terrorist Ties During an Emergency or Exigent Situation

In some emergency or exigent situations, access to restricted areas or critical assets by other individuals who have not had appropriate background checks under RBPS 12 may be necessary. For example, emergency

[5] Throughout this notice any reference to SSPs also refers to Alternative Security Programs submitted by high-risk chemical facilities as described in 6 CFR 27.235.

[6] Section 2 of Public Law 113–254 adds a new Title XXI to the Homeland Security Act of 2002. Title XXI contains new sections numbered 2101 through 2109. Citations to the Homeland Security Act of 2002 throughout this document reference those sections of Title XXI. In addition to being found in amended versions of the Homeland Security Act of 2002, those sections of Title XXI can also be found in section 2 of the CFATS Act of 2014, or in 6 U.S.C. 621–629.

[7] For more information about the TSDB, see DOJ/FBI—019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007).

responders who are not emergency responders at the state or local level may require such access as part of their official duties under appropriate circumstances. If high-risk chemical facilities anticipate that an individual will require access to restricted areas or critical assets without visitor escorts or without the background checks listed in RBPS 12 under exceptional circumstances (*e.g.,* foreseeable but unpredictable circumstances), high-risk chemical facilities may describe such situations and the types of individuals who might require access in those situations in their SSPs. The Department will assess the situations described, and any security measures the high-risk chemical facility plans to take to mitigate vulnerabilities presented by these situations, as it reviews each high-risk chemical facility's SSP.

C. High-Risk Chemical Facilities Have Flexibility When Implementing the CFATS Personnel Surety Program

A high-risk chemical facility will have flexibility to tailor its implementation of the CFATS Personnel Surety Program to fit its individual circumstances and, in this regard, to best balance who qualifies as an affected individual, unique security issues, costs, and burden. For example a high-risk chemical facility may, in its Site Security Plan:

- Restrict the numbers and types of persons allowed to access its restricted areas and critical assets, thus limiting the number of persons who will need to be checked for terrorist ties.
- Define its restricted areas and critical assets, thus potentially limiting the number of persons who will need to be checked for terrorist ties.
- Choose to escort visitors accessing restricted areas and critical assets in lieu of performing terrorist ties background checks under the CFATS Personnel Surety Program. The high-risk chemical facility may propose in its SSP traditional escorting solutions and/or innovative escorting alternatives such as video monitoring (which may reduce facility security costs), as appropriate, to address the unique security risks present at the facility.

D. Options Available to High-Risk Chemical Facilities To Comply With RBPS 12(iv)

The Department has developed a CFATS Personnel Surety Program that provides high-risk chemical facilities several options to comply with RBPS 12(iv). In addition to the alternatives expressly described in this notice, the Department will also permit high-risk chemical facilities to propose alternative measures for terrorist ties identification in their SSPs, which the Department will consider on a case-by-case basis in evaluating high-risk chemical facilities' SSPs. Of note, and as discussed further below, a high-risk chemical facility may choose one option or a combination of options to comply with RBPS 12(iv).

Overview of Option 1

The first option allows high-risk chemical facilities (or designee(s))[8] to submit certain information about affected individuals to the Department through a Personnel Surety Program application in an online technology system developed under CFATS called the Chemical Security Assessment Tool (CSAT). Access to and the use of CSAT is provided free of charge to high-risk chemical facilities (or their designee(s)).

Under this option, information about affected individuals submitted by, or on behalf of, high-risk chemical facilities will be compared against identifying information of known or suspected terrorists contained in the TSDB.[9]

If Option 1 is selected by a high-risk chemical facility in its SSP, the facility (or its designee(s)) must submit the following information about an affected individual to satisfy RBPS 12(iv):

- For U.S. Persons (U.S. citizens and nationals as well as U.S. lawful permanent residents):
  - Full name
  - Date of Birth
  - Citizenship or Gender
- For Non-U.S. Persons:
  - Full Name
  - Date of Birth
  - Citizenship
  - Passport information and/or alien registration number

To reduce the likelihood of false positives in matching against records in the Federal Government's consolidated and integrated terrorist watchlist, high-risk chemical facilities (or their designee(s)) are encouraged, but not required, to submit the following optional information about each affected individual:

- Aliases
- Gender (for Non-U.S. Persons)
- Place of Birth
- Redress Number[10]

If a high-risk chemical facility chooses to submit information about an affected individual under Option 1, the following table summarizes the biographic data that would be submitted to the Department.

TABLE 01—AFFECTED INDIVIDUAL REQUIRED AND OPTIONAL DATA UNDER OPTION 1

Data elements submitted to the department	For a U.S. person	For a non-U.S. person
Full Name	Required	
Date of Birth	Required	
Gender	Must provide Citizenship or Gender	Optional.
Citizenship		Required.
Passport Information and/or Alien Registration Number	N/A	Required.
Aliases	Optional	
Place of Birth	Optional	
Redress Number	Optional	

[8] A designee is a third party that submits information about affected individuals to DHS on behalf of a high-risk chemical facility.

[9] Detailed information about the submission of information about affected individuals under Option 1 to the Department for vetting purposes via CSAT can be found in the CSAT Personnel Surety Program User Manual available on *www.dhs.gov/chemicalsecurity.*

[10] For more information about Redress Numbers, please go to *http://www.dhs.gov/one-stop-travelers-redress-process#1.*

Overview of Option 2

The second option also allows high-risk chemical facilities (or designee(s)) to submit certain information about affected individuals to the Department through the CSAT Personnel Surety Program application.[11] This option allows high-risk chemical facilities and the Department to take advantage of the vetting for terrorist ties already being conducted on affected individuals enrolled in the TWIC Program, Hazardous Materials Endorsement (HME) Program, as well as the NEXUS, Secure Electronic Network for Travelers Rapid Inspection (SENTRI), Free and Secure Trade (FAST), and Global Entry Trusted Traveler Programs.

Under Option 2, high-risk chemical facilities (or designee(s)) may submit information to the Department about affected individuals possessing the appropriate credentials to enable the Department to electronically verify the affected individuals' enrollments in these other programs. The Department will subsequently notify the Submitter[12] of the high-risk chemical facility whether or not an affected individual's enrollment in one of these other DHS programs was electronically verified. The Department will also periodically re-verify each affected individual's continued enrollment in one of these other programs, and notify the high-risk chemical facility and/or designee(s) of significant changes in the status of an affected individual's enrollment (*e.g.,* if an affected individual who has been enrolled in the HME Program ceases to be enrolled, then the Department would change the status of the affected individual in the CSAT Personnel Surety Program application and notify the Submitter).[13] Electronic verification and re-verification ensure that both the Department and the high-risk chemical facility can rely upon the continuing validity of an affected individual's credential or endorsement. As a condition of choosing Option 2, a high-risk chemical facility must describe in its SSP what action(s) it, or its designee(s), will take in the event the Department is unable to verify, or no longer able to verify, an affected individual's enrollment in the other DHS program. The high-risk facility must take some action and not leave the situation unresolved.

If Option 2 is selected by a high-risk chemical facility in it SSP, the high-risk chemical facility (or designee(s)) must submit the following information about an affected individual to satisfy RBPS 12(iv):

- Full Name;
- Date of Birth; and
- Program-specific information or credential information, such as unique number, or issuing entity (*e.g.,* State for Commercial Driver's License (CDL) associated with an HME).

To further reduce the potential for misidentification, high-risk chemical facilities (or designee(s)) are encouraged, but not required, to submit the following optional information about affected individuals to the Department:[14]

- Aliases
- Gender
- Place of Birth
- Citizenship

If a high-risk chemical facility chooses to submit information about an affected individual under Option 2, the following table summarizes the biographic data that would be submitted to the Department.

TABLE 02—AFFECTED INDIVIDUAL REQUIRED AND OPTIONAL DATA UNDER OPTION 2

Data elements submitted to the department	For affected individual with a TWIC	For affected individual with an HME	For affected individual enrolled in a trusted traveler program (NEXUS, SENTRI, FAST, or Global Entry)
Full Name	Required		
Date of Birth	Required		
Expiration Date	Required		
Unique Identifying Number	TWIC Serial Number: Required	CDL Number: Required	PASS ID Number: Required.
Issuing State of CDL	N/A	Required	N/A.
Aliases	Optional		
Gender	Optional		
Place of Birth	Optional		
Citizenship	Optional		

Overview of Option 3

Under Option 3—Electronic Verification of TWIC, a high-risk chemical facility (or its designee(s)) will not submit to the Department information about affected individuals in possession of TWICs, but rather will electronically verify and validate the affected individuals' TWICs[15] through the use of TWIC readers (or other technology that is periodically updated with revoked card information). Any

[11] Detailed information about the submission of information about affected individuals under Option 2 to the Department via CSAT can be found in the CSAT Personnel Surety Program User Manual available on *www.dhs.gov/chemicalsecurity.*

[12] A Submitter is a person who is responsible for the submission of information through the CSAT system as required in 6 CFR 27.200(b)(3).

[13] When the Department notifies the Submitter of the high-risk chemical facility of significant changes in the status of an affected individual's enrollment, such a notification should not be construed to indicate that an individual has terrorist ties or be treated as derogatory information.

[14] The CSAT Personnel Surety application will be constructed to enable submission of these optional data elements in the future. However, the ability to submit them in the initial phases of implementation of the program may be limited.

[15] Electronic verification and validation of an affected individual's TWIC requires authentication that the affected individual's TWIC (1) is a valid credential issued by TSA, and (2) has not been cancelled by the TSA, and (3) the biometric live sample matches the biometric template on the TWIC.

high-risk chemical facility that chooses this option must describe in its SSP the process and procedures it will follow if it chooses to use TWIC readers, including what action(s) it, or its designee(s), will take in the event the high-risk chemical facility is unable to verify the TWIC, or subsequently unable to verify an affected individual's TWIC. For example, if a TWIC cannot be verified through the use of a TWIC Reader, the high-risk chemical facility may choose to verify the affected individual's enrollment in TWIC under Option 2, or submit information about the affected individual under Option 1.

Overview of Option 4

Option 4—Visual Verification Of Credentials Conducting Periodic Vetting complies with section 2102(d)(2) of the Homeland Security Act and allows a high-risk chemical facility to satisfy its obligation under 6 CFR 27.230(a)(12)(iv) to identify individuals with terrorist ties using any Federal screening program that periodically vets individuals against the TSDB if:

- The Federal screening program issues a credential or document,[16]
- The high-risk chemical facility is presented [17] a credential or document by the affected individual,[18] and
- The high-risk chemical facility verifies the credential or document is current in accordance with its SSP.[19]

As a result, a high-risk chemical facility may verify that a credential or document is current based upon visual inspection, if the processes for conducting such visual inspections are described in its SSP. When developing such processes, the Department encourages high-risk chemical facilities to consider any rules, processes, and procedures prescribed by the entity issuing the credential or document. The Department believes that visual verification has inherent limitations and provides less security value than the other options available under the CFATS Personnel Surety Program. The Department encourages every high-risk chemical facility to consider a means of verification that is consistent with its specific circumstances and its assessment of the threat posed by the acceptance of such credentials. If a facility chooses to use Option 4, in whole or in part, it should also identify in its Site Security Plan the means by which it plans to address these limitations.

An example of Option 4 that could be implemented by a high-risk chemical facility is to leverage the vetting conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) on affected individuals who are employee possessors of a Federal explosives licensee/permittee. For example, a high-risk chemical facility may rely on a ''letter of clearance'' issued by ATF when presented by an affected individual who is also an employee-possessor of explosives. The high-risk chemical facility should describe in its SSP the procedures it will use to verify the letter of clearance is current. The Department will consider high-risk chemical facilities' proposals in the course of evaluating individual SSPs.

E. High-Risk Chemical Facilities May Use More Than One Option

High-risk chemical facilities have discretion as to which option(s) to use for an affected individual. For example, if an affected individual possesses a TWIC or some other credential or document, a high-risk chemical facility could choose to use Option 1 for that individual. Similarly, a high-risk chemical facility, at its discretion, may choose to use Option 1 or Option 2 rather than Option 3 or Option 4 for affected individuals who have TWICs or some other credential or document. High-risk chemical facilities also may choose to combine Option 1 with Option 2, Option 3, and/or Option 4, as appropriate, to ensure that adequate terrorist ties checks are performed on different types of affected individuals (*e.g.*, employees, contractors, unescorted visitors). Each high-risk chemical facility must describe how it will comply with RBPS 12(iv) in its SSP.

F. High-Risk Chemical Facilities May Propose Additional Options

In addition to the options described above for satisfying RBPS 12(iv), a high-risk chemical facility is welcome to propose alternative or supplemental options not described in this document in its SSPs. The Department will assess the adequacy of such alternative or supplemental options on a facility-by-facility basis, in the course of evaluating each facility's SSP.

G. Security Considerations for High-Risk Chemical Facilities To Weigh in Selecting Options

The Department believes the greatest security benefit is achieved when a high-risk chemical facility selects either Option 1 and/or Option 2. Option 3 also provides significant security benefit. Option 4 provides some security benefit but less than Option 1, Option 2, or Option 3.

Option 1 and Option 2 provide the greatest security benefit because the information submitted about each affected individual will be recurrently vetted against the TSDB. Recurrent vetting is a Department best practice and compares an affected individual's information against new and/or updated TSDB records as such records become available. Further, in the event that an affected individual with terrorist ties has or is seeking access to restricted areas or critical assets, if information about that affected individual is submitted to the Department under Option 1 or Option 2, the Department will be able to ensure that an appropriate Federal law enforcement agency is notified and that, as appropriate and consistent with law-enforcement and intelligence requirements, the facility receives notification as well.

Option 3 also provides significant security benefit because information about affected individuals with TWICs is recurrently vetted against the TSDB. However, since the Department does not receive information about these affected individuals from high-risk chemical facilities under Option 3, the Department cannot ensure that the appropriate Federal law enforcement agency is provided information about the high-risk chemical facility at which any such affected individual with terrorist ties has or is seeking access.

Finally, Option 4 provides a more-limited security benefit, as some Federal screening programs do not conduct recurrent vetting. Recurrent vetting compares an affected individual's information against new and/or updated TSDB records as those new and/or updated records become available. Recurrent vetting is a Department best practice because often records about terrorists are either created or updated in the TSDB after the initial vetting has already occurred. Consequently, recurrent vetting results in additional

[16] This requirement is derived from section 2102(d)(2)(B)(i) of the Homeland Security Act.

[17] The Department considers records of credentials or documents maintained by the high-risk chemical facility, or designee, as having been presented by the affected individual. For example, if high-risk chemical facility (or designee) has in its personnel or access control files a photocopy of an affected individual's CDL with an HME, the high-risk chemical facility may consider the copy in its files as having been presented by the affected individual.

[18] Section 2102(d)(2)(B)(i)(II)(aa) of the Homeland Security Act requires high-risk chemical facilities to accept the credential or document from any federal screening program that conducts periodic vetting against the TSDB. Under Option 4, a high-risk chemical facility may contact the Department when drafting its SSP to determine if a specific credential or document is from a federal screening program that conducts periodic vetting against the TSDB.

[19] This requirement is derived from section 2102(d)(2)(B)(i)(II)(bb) of the Homeland Security Act.

matches and provides substantial security value.

In addition, relying on a visual inspection of a credential or document is not as secure as electronic verification because visual inspection may make it more difficult to ascertain whether a credential or document has expired, been revoked, or is fraudulent. For example, the visual verification of a TWIC will not reveal whether the TWIC has been revoked by the Transportation Security Administration. Similarly, visual verification of a Hazardous Material Endorsement on a commercial driver's license will not reveal if the endorsement has expired or been revoked.

Finally, since the Department will not receive from high-risk chemical facilities information about affected individuals whose credentials are visually verified, the Department will be unable to ensure the appropriate Federal law enforcement agency is provided information regarding the risks posed to a high-risk chemical facility by any such affected individual with terrorist ties, nor will it be able to ensure that the facility receives appropriate notification of the risk.

For the reasons described above, Option 4 provides less security value than the other options available to high-risk chemical facilities under the CFATS Personnel Surety Program.

H. When the Check for Terrorist Ties Must Be Completed

The Department will notify high-risk chemical facilities, individually, when it will require each to address RBPS 12(iv) in its SSP. After that notification, a facility must update or draft its SSP to address RBPS 12(iv), as appropriate, prior to authorization or approval by the Department. After authorization or approval, a high-risk chemical facility (as described in its authorized or approved SSP) must complete the terrorist ties check required to be conducted on a particular affected individual by 6 CFR 27.230(a)(iv) prior to the affected individual being granted access to any restricted area or critical asset.[20] For affected individuals with existing access, the Department will expect, unless otherwise noted in an authorized or approved SSP or ASP, that the terrorist ties check will be completed within 60 days after receiving authorization or approval of an SSP requiring the facility to implement measures to comply with RBPS 12(iv). A high-risk chemical facility may suggest an alternative schedule based on its unique circumstances in its SSP. Table 3 below outlines the four primary options, and the expected time a high-risk chemical facility will have to complete the required activity(ies) outlined in the authorized or approved SSP to comply with RBPS 12(iv) for new affected individual as well as affected individuals with existing access.

TABLE 3—SUMMARY OF OPTIONS TO CHECK FOR TERRORIST TIES

Option for compliance	Facility activity description	Timeline for new affected individuals	Timeline for affected individuals with existing access
OPTION 1—Direct Vetting	Facility submits information to the Department.	Unless otherwise noted in an authorized or approved SSP, the Department expects that this activity will be completed prior to the affected individual being granted access to any restricted area or critical asset.	Unless otherwise noted in an authorized or approved SSP, the Department expects that this activity will be completed within 60 days after receiving authorization or approval of an SSP requiring the facility to implement measures to comply with RBPS 12(iv).
OPTION 2—Use of Vetting Conducted Under Other DHS Programs.	Facility submits information to the Department.		
OPTION 3—Electronic Verification of TWIC.	Facility uses a TWIC Reader.		
OPTION 4—Visual Verification of Credentials Conducting Periodic Vetting.	Facility conducts visual verifications by examining affected individuals' credentials or documents.		
Facility-Proposed Alternative	Details about facility-proposed alternatives could vary significantly from facility to facility.	Details about facility-proposed alternatives could vary significantly from facility to facility.	Details about facility-proposed alternatives could vary significantly from facility to facility.

IV. Additional Details About Option 1 and Option 2 (Which Involve the Submission of Information to the Department)

A. Submission of a New Affected Individual's Information Under Option 1 or Option 2

Under Option 1 or Option 2, a high-risk chemical facility may submit information about new affected individuals in accordance with its SSP. The Department encourages high-risk chemical facilities to submit information about affected individuals as soon as possible after an individual has been determined to be an affected individual. As described earlier in this notice, the high-risk chemical facilities must submit information prior to a new affected individual obtaining access to any restricted area or critical asset.

B. Updates & Corrections to Information About Affected Individuals Under Option 1 or Option 2

Section 2102(d)(2)(A)(i) of the Homeland Security Act prohibits the Department from requiring a high-risk chemical facility to submit information about an individual more than one time under Option 1 or Option 2. Therefore, under Option 1 or Option 2, a high-risk chemical facility may choose whether to submit data updates or corrections about affected individuals.

The Department believes that there are substantial privacy risks if a high-risk chemical facility opts not to provide updates and corrections (*e.g.*, updating or correcting a name or date of birth) about affected individuals. Specifically, the accuracy of an affected individual's personal data being vetted against the TSDB for terrorist ties may be affected. Accurate information both (1) increases the likelihood of correct matches against information about known or suspected terrorists, and (2) decreases the likelihood of incorrect matches that associate affected individuals without terrorist ties with known and suspected terrorist identities. As a result, the Department encourages high-risk

[20] The Department indicated (in previous notices the Department published to comply with the Paperwork Reduction Act) that the terrorist ties check should be performed 48 hours prior to access. Although performing checks at least 48 hours in advance remains a best practice, the Department no longer expects all high-risk chemical facilities to perform checks in advance. The Department has changed this expectation in order to encourage high-risk chemical facilities to select Option 1, 2, and/or 3 when drafting SSPs.

chemical facilities to submit updates and corrections as they become known so that the Department's checks for terrorist ties, which are done on a recurrent basis, are accurate. If a high-risk chemical facility is either unable or unwilling to update or correct an affected individual's information, the affected individual may seek redress as described in the CFATS Personnel Surety Program Privacy Impact Assessment.[21]

C. Notification That an Affected Individual No Longer Has Access Under Option 1 or Option 2

Section 2102(d)(2)(A)(i) of the Homeland Security Act also prohibits the Department from requiring a high-risk chemical facility to notify the Department when an affected individual no longer has access to the restricted areas or critical assets of a high-risk chemical facility. Therefore, under Option 1 or Option 2, a high-risk chemical facility has the option to notify the Department when the affected individual no longer has access to any restricted areas or critical assets, but such notification is not required. The Department strongly encourages high-risk chemical facilities to notify the Department when an affected individual no longer has access to restricted areas or critical assets to ensure the accuracy of the Department's data and to stop the recurrent vetting on the person who is no longer an affected individual. If a high-risk chemical facility is either unable or unwilling to notify the Department when an affected individual no longer has access to restricted areas or critical assets, the affected individual may seek redress as described in the CFATS Personnel Surety Program Privacy Impact Assessment.

D. What/Who Is the Source of the Information Under Option 1 and Option 2

High-risk chemical facilities are responsible for complying with RBPS 12(iv). However, companies operating multiple high-risk chemical facilities, as well as companies operating only one high-risk chemical facility, may comply with RBPS 12(iv) in a variety of ways. A high-risk chemical facility, or its parent company, may choose to comply with RBPS 12(iv) by identifying and directly submitting to the Department the information about affected individuals. Alternatively, a high-risk chemical facility, or its parent company, may choose to comply with RBPS 12(iv) by outsourcing the information-submission process to third parties.

The Department also anticipates that many high-risk chemical facilities will rely on businesses that provide them with contract services (*e.g.*, complex turn-arounds, freight delivery services, landscaping) to identify and submit the appropriate information about affected individuals the contract services employ to the Department under Option 1 and Option 2.

Both third parties that submit information on behalf of high-risk chemical facilities and businesses that provide services to high-risk chemical facilities must be designated by the high-risk chemical facility within CSAT in order to submit appropriate information about affected individuals to the Department on behalf of the high-risk chemical facility.[22]

V. CSAT User Roles and Responsibilities

Under Options 1 and 2 (as described above), high-risk chemical facilities have wide latitude in assigning CSAT user roles to align with their business operations and/or the business operations of third parties that provide contracted services to them. The Department has structured the CSAT Personnel Surety Program application to allow designee(s) of high-risk chemical facilities to submit information about affected individuals directly to the Department on behalf of high-risk chemical facilities.

High-risk chemical facilities and designee(s) will be able to structure CSAT user roles to submit information about affected individuals to the Department in several ways, including but not limited to the following:

- A high-risk chemical facility may directly submit information about affected individuals, and designate one or more officers or employees of the facility with appropriate CSAT user roles; and/or
- A high-risk chemical facility may ensure the submission of information about affected individuals by designating one or more persons affiliated with a third party (or with multiple third parties); and/or
- A company owning several high-risk chemical facilities could consolidate its submission process for affected individuals. Specifically, the company could designate one or more persons to submit information about affected individuals on behalf of all or some of the Tier 1 and Tier 2 high-risk chemical facilities within the company on a company-wide basis.

Third parties interested in providing information about affected individuals to the Department on behalf of high-risk chemical facilities may request a CSAT user account from the high-risk chemical facility or company for which the third party will be working. Third parties will not be able to submit information about affected individuals until a high-risk chemical facility designates the third party within CSAT to submit information on its behalf.

A high-risk chemical facility (or designee(s)) may submit information under Option 1 or Option 2 after the facility's SSP has been approved or authorized by the Department for RBPS 12(iv).

VI. Privacy Considerations

High-risk chemical facilities (or designee(s)) may maintain information about an affected individual, for the purpose of complying with CFATS, which is not submitted to the Department as part of the CFATS Personnel Surety Program (*e.g.*, for compliance with RBPS 12(i)–(iii), or for recordkeeping pertaining to Option 3 or Option 4). Information not in the possession of and not submitted to the Department is not covered under the Privacy Act of 1974. Nevertheless, the Department expects that high-risk chemical facilities and designee(s) will protect and safeguard any such information as outlined in their SSPs and in accordance with any other Federal, State, or local privacy laws that are applicable to the collection of the information, just as the high-risk chemical facilities would for other similar information collected under a their normal business practices for activities unrelated to CFATS.

A. Privacy Act Requirements To Enable Option 1 and Option 2

The Department complies with all applicable federal privacy requirements including those contained in the Privacy Act, the E-Government Act, the Homeland Security Act, and Departmental policy. The United States also follows international instruments on privacy, all of which are consistent with the Fair Information Practice Principles (FIPPs).[23] The Department:

[21] Concurrent with the publication of this implementation notice the Department is publishing a Privacy Impact Assessment (PIA) Update which is available at *www.dhs.gov/privacy.*

[22] Information about how to designate a third party within CSAT is explain in the CFATS Personnel Surety Program User Manual available on *www.dhs.gov/chemicalsecurity.*

[23] *See* Privacy Policy Guidance Memorandum, The Fair Information Practice Principles: Framework for Privacy Policy at the Department of Homeland Security, *available at http://www.dhs.gov/xlibrary/assets/privacy/privacy_policyguide_2008-01.pdf (December 29, 2008).*

• Published a System of Records Notice (SORN) for the CFATS Personnel Surety Program on June 14, 2011 as well as a SORN Update on May 19, 2014.[24]

• Issued a Final Rule [25] to exempt portions of the Chemical Facility Anti-Terrorism Standards Personnel Surety Program SORN from certain provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements on May 21, 2014.

• Published a CFATS Personnel Surety Program Privacy Impact Assessment (PIA) in May 2011, and a CFATS Personnel Surety Program PIA Update on May 1, 2014. Concurrent with the publication of this implementation notice the Department is publishing a second PIA Update which is available at *www.dhs.gov/privacy.*

With the publication of these privacy documents, the Department has ensured that the CFATS Personnel Surety Program complies with the appropriate privacy laws and Department of Homeland Security privacy policies.

B. Redress

The CFATS Personnel Surety Program complies with the requirement of section 2102(d)(2)(A)(iii) of the Homeland Security Act to provide redress to an individual: (1) Whose information was vetted against the TSDB under the program; and (2) who believes that the personally identifiable information submitted to the Department for such vetting by a covered chemical facility, or its designated representative, was inaccurate. The Department has described how to seek redress in the CFATS Personnel Surety Program Privacy Impact Assessment.

C. Additional Privacy Considerations Related to Option 1 and Option 2

The Submitter(s) of each high-risk chemical facility (or designee(s)) will be required to affirm that, in accordance with its SSP, notice required by the Privacy Act of 1974 has been given to affected individuals before their information is submitted to the Department. The Department has made available a sample Privacy Act notice that complies with subsection (e)(3) of the Privacy Act (5 U.S.C. 552a(e)(3)) in the CFATS Personnel Surety Program PIA Update being published concurrently with this notice.[26] The sample notice, or a different satisfactory notice, must be provided by a high-risk chemical facility to affected individuals prior to the submission of Personally Identifiable Information (PII) to the Department under Option 1 and Option 2. This notice must: (1) Notify those individuals that their information is being submitted to DHS for vetting against the TSDB, and that in some cases additional information may be requested and submitted in order to resolve a potential match; (2) instruct those individuals how to access their information; (3) instruct those individuals how to correct their information; and (4) instruct those individuals on procedures available to them for redress if they believe their information has been improperly matched by the Department to information contained in the TSDB. Individuals have the opportunity and the right to decline to provide information; however, if an individual declines to provide information, he or she may impact a high-risk chemical facility's compliance with CFATS.

D. Additional Privacy Considerations for Option 3 and Option 4

A high-risk chemical facility will not submit information to the Department if the facility opts to electronically verify and validate affected individuals' TWICs through the use of TWIC readers (or other technology that is periodically updated with revoked card information) under Option 3. High-risk chemical facilities that opt to implement Option 3 are encouraged, but are not required, to provide notice to each affected individual whose TWIC is being verified and validated. Although Option 3 allows high-risk chemical facilities to comply with RBPS 12(iv) without submitting information to the Department, the Department feels that appropriate notice should still be given to those individuals so that they know their TWICs are now being used to comply with 6 CFR 27.230(a)(12)(iv). The Department has provided a sample privacy notice for high-risk chemical facilities to use in the CFATS Personnel Surety Program PIA Update, published May 1, 2014. A revised sample Privacy Act notice is also included in the PIA Update being published concurrently with this notice.

In addition, a high-risk chemical facility will not submit information to the Department if the facility opts to utilize Option 4 and to visually inspect a credential or document for any Federal screening program that periodically vets individuals against the TSDB. High-risk chemical facilities that opt to implement Option 4 are encouraged, but are not required, to provide notice to each affected individual whose Federal screening program credential or document is being visually inspected in order to comply with 6 CFR 27.230(a)(12)(iv).

VII. Information a High-Risk Chemical Facility May Wish To Consider Including in its SSP

When writing, revising, or updating their SSPs, high-risk chemical facilities may wish to consider including information about the following topics to assist the Department in evaluating the adequacy of the security measures outlined in the SSP for RBPS12(iv):

1. General

• Who does the facility consider an affected individual and how does the facility identify affected individuals?

○ Who does the facility consider facility personnel and how does the facility identify them?

○ Who does the facility consider unescorted visitors and how does the facility identify them?

• If the facility escorts any visitors, how does it escort them?

• How does the facility define its restricted areas and/or critical assets for the purposes of RBPS 12?

• Does the facility include computer systems or remote access as either a restricted area or critical asset?

• Which Option(s), or alternative approaches not described in this notice, will the facility or its designee(s) use to check for terrorist ties?

• Does the facility intend to use one or more Options for some affected individuals that it will not use for other affected individuals? If so, which Option(s) apply to which groups of affected individuals?

• Will the facility opt to have a designee(s) submit information about affected individuals? If so, what guidance will the high-risk chemical facility establish for designee(s) when it submits information (*e.g.*, when are affected individuals considered to be ''facility personnel'' ''unescorted visitors,'' how will the facility verify that notice has been provided to an affected individual before information about him/her is provided to the Department)?

• Does the high-risk chemical facility anticipate that any individuals will require access to restricted areas or

[24] *See* DHS/NPPD–002—Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records, 79 FR 28752, *available at www.dhs.gov/privacy (May 19, 2014).*

[25] *See* Implementation of Exemptions; Department of Homeland Security/National Protection and Programs Directorate—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records, 79 FR 29072, *available at www.dhs.gov/privacy (May 21, 2014).*

[26] The CFATS Personnel Surety Program PIA Update, as well as other privacy related documents, are available at on the Department's Web site at *www.dhs.gov/privacy.*

critical assets without visitor escorts or without the background checks listed in RBPS 12 under exceptional circumstances (*e.g.*, foreseeable but unpredictable circumstances)? If so, who? If so, which exceptional circumstances would warrant access without visitor escorts or without the background checks listed in RBPS 12?

2. With Regard to Option 1

- How will notice be provided to affected individuals that information is being provided to the Department?

3. With Regard to Option 2

- How will notice be provided to affected individuals that information is being provided to the Department?
- What will the facility do if NPPD is unable to verify an affected individual's enrollment in another Department TSDB vetting program?
- What will be the timeframe for this follow-on action?
- What will the facility do if NPPD does verify the credential, but later during a periodic re-verification, is unable verify the credential?
- What will be the timeframe for this follow-on action?
- Does the facility describe how it will comply with RBPS 12(iv) for affected individuals without credentials capable of being verified under Option 2?

4. With Regard to Option 3

- How will the facility identify those affected individuals who possess TWICs?
- How will the facility comply with RBPS 12(iv) for affected individuals without TWICs?
- How will the facility electronically verify and validate TWICs of affected individuals?
- Which reader(s) or Physical Access Control System (PACS) will the facility be using? Or, if it is not using readers, how it will use the CCL or CRL?
- Where will the reader(s) or PAC(s) be located?
- What mode or modes (*i.e.*, which setting on the TWIC Reader) will be used when verifying and validating the TWIC of an affected individual? [27]
- Will the TWIC of an affected individual be re-verified and re-validated with TWIC readers, and, if so, how often?
- What will the facility (or designee(s)) do if an affected individual's TWIC cannot be verified or if the TWIC reader is not functioning properly?

5. With Regard to Option 4

- Upon which Federal screening program(s) does the facility or designee intend to rely?
- What document(s) or credential(s) issued by the Federal screening program(s) will the facility visually verify?
- What procedures will the facility use to allow affected individuals to present document(s) or credential(s)?
- How will the facility verify that the credential or document presented by affected individuals is not fraudulent?
- What procedures will the facility follow to visually verify that a credential or document is current and valid (*i.e.*, not expired)?
- Will the visual verification include the following?

○ Comparing any picture on a document or credential to the bearer of the credential or document;

○ Comparing any physical characteristics listed on the credential or document (*e.g.*, height, hair color, eye color) with the bearer's physical appearance;

○ Checking for tampering;

○ Reviewing both sides of the credential or document and checking for the appropriate stock/credential material;

○ Checking for an expiration date; and

○ Checking for any insignia, watermark, hologram, signature or other unique feature.

- What will the facility do if it is unable to visually verify an affected individual's credential or document, if the credential or document fails visual verification, or if the credential or document appears invalid, expired, or fraudulent?

6. With Regard to Other Options

- A facility that chooses to propose an option not listed above in its SSP should provide as much detail as possible to allow the Department to consider the potential option and evaluate whether or not it meets the RBPS 12(iv) standard.

Caitlin Durkovich,

Assistant Secretary, Office of Infrastructure Protection, National Protection and Programs Directorate, U.S. Department of Homeland Security.

[FR Doc. 2015–31625 Filed 12–17–15; 8:45 am]

BILLING CODE 9110–9P–P

[27] See table 4.1 on page 18 of the TSA reader specification at (*http://www.tsa.gov/sites/default/files/publications/pdf/twic/twic_reader_card_app_spec.pdf*).

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Airport Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0002, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). TSA is combining two previously-approved ICRs (1652–0002 and 1652–0006, Employment Standards) into this single request to simplify TSA collections, increase transparency, and reduce duplication.[1] The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 1, 2015, 80 FR 52778. The collection involves implementing certain provisions of the Aviation and Transportation Security Act and 49 U.S.C. chapter 449 that relate to providing for the safety and security of persons and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence, aircraft piracy, and the introduction of an unauthorized weapon, explosive, or incendiary onto an aircraft.

DATES: Send your comments by January 19, 2016. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via

[1] After the publication of the 60 day notice, TSA decided to include in OMB control number 1652–0002, Airport Security, 49 CFR part 1542, the recordkeeping requirements under OMB Control Number 1652–0006 Employment Standards, which apply to 49 CFR part 1542. This would reduce duplication and combine information collected under the same statute, 49 CFR part 1542. Upon OMB approval of this revision, TSA intends to discontinue OMB Control Number 1652–0006 Employment Standards.

electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection

Title: Airport Security, 49 CFR part 1542.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0002.

Forms(s): NA.

Affected Public: Airport operators regulated under 49 CFR part 1542.

Abstract: TSA is seeking to revise its OMB control number 1652–0002, Airport Security, 49 CFR part 1542 to include the recordkeeping requirements under OMB control number 1652–0006, Employment Standards. The information collection is used to determine compliance with 49 CFR part 1542 and to ensure passenger safety and security by verifying airport operator compliance with security procedures. The following information collections and other recordkeeping requirements with which respondent airport operators must comply also fall under this OMB control number: (1) Development of an Airport Security Program (ASP), submission to TSA, and ASP implementation; (2) as applicable, development of ASP amendments, submission to TSA, and implementation; (3) collection of data necessary to complete a criminal history records check (CHRC) for those individuals with unescorted access to a Security Identification Display Area (SIDA); (4) submission to TSA of identifying information about individuals to whom the airport operator has issued identification media, such as name, address, and country of birth, in order for TSA to conduct a Security Threat Assessment (STA); (5) recordkeeping requirements associated with records required for compliance with the regulation, and for compliance with Security Directives (SDs); and (6) watch list matching of individuals subject to TSA's regulatory requirements against government watch lists.

This information collection is mandatory for airport operators. As part of their security programs, affected airport operators are required to maintain and update, as necessary, records of compliance with the security program provisions set forth in 49 CFR part 1542. This regulation also requires affected airport operators to make their security programs and associated records available for inspection and copying by TSA to verify compliance with transportation security regulations.

Number of Respondents: 438.

Estimated Annual Burden Hours: An estimated 1,657,102 hours annually.

Dated: December 9, 2015.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2015–31913 Filed 12–17–15; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2007–28572]

Revision of Agency Information Collection Activity Under OMB Review: Secure Flight Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0046, abstracted below to OMB for review and approval of a revision to the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on February 4, 2015, 80 FR 6097. The collection involves information that certain U.S. aircraft operators and foreign air carriers (collectively ''covered aircraft operators'') submit to Secure Flight for the purposes of identifying and protecting against potential and actual threats to transportation security and identifying individuals who are a lower risk to transportation security and therefore may be eligible for expedited screening. TSA is revising this collection to include the addition of risk-based assessments generated by aircraft operators using data in their Computer Assisted Passenger Prescreening Systems (CAPPS), Frequent Flyer Code Words (FFCWs) generated by aircraft operators, and the collection of lists of low-risk individuals provided by non-federal entities who are eligible for expedited screening. The CAPPS assessments and FFCWs are used in risk-based analysis of Secure Flight and other prescreening data that produces a boarding pass printing result (BPPR) for each passenger.

DATES: Send your comments by January 19, 2016. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control

number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to:

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Secure Flight Program.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0046.

Form(s): N/A.

Affected Public: Aircraft operators, airport operators.

Abstract: TSA collects information from covered aircraft operators, including foreign air carriers, in order to prescreen passengers under the Secure Flight Program. The information collected under the Secure Flight Program is used for watch list matching, for matching against lists of Known Travelers, and to assess passenger risk (*e.g.,* to identify passengers who present lower risk and may be eligible for expedited screening). The collection covers:

(1) Secure Flight Passenger Data (SFPD) for passengers of covered domestic and international flights within, to, from, or over the continental United States, as well as flights between two foreign locations when operated by a covered U.S. aircraft operator;

(2) SFPD for passengers of charter operators and lessors of aircraft with a maximum takeoff weight of over 12,500 pounds;

(3) certain identifying information for non-traveling individuals that airport operators or airport operator points of contact seek to authorize to enter a sterile area at a U.S. airport, for example, to patronize a restaurant, to escort a minor or a passenger with disabilities, or for another approved purpose; and

(4) registration information critical to deployment of Secure Flight, such as contact information, data format, or the mechanism the covered aircraft operators use to transmit SFPD and other data.

TSA is revising this collection to add the following additional categories of information:

(5) Risk-based assessments generated by U.S. aircraft operators using their CAPPS are sent to Secure Flight for use in risk-based analysis of passenger information. The CAPPS assessments are generated after analysis of the underlying passenger and other prescreening data is obtained by the aircraft operator in the ordinary course of business when the passenger makes his or her reservation. The CAPPS assessment, in turn, is used in the risk-based analysis of SFPD and other prescreening data that produce a BPPR for each passenger. Secure Flight receives only the risk assessment generated from the applicable CAPPS data and not the underlying data. TSA obtains important security value from the risk assessment without receiving the underlying privacy and other information that are generated when individuals make their flight reservations. The CAPPS assessments are designed to enhance TSA's analysis of passenger security risk and enable TSA to make better passenger risk decisions. A likely outcome of the addition of CAPPS risk assessments to Secure Flight's risk-based analysis will be the identification of additional low-risk passengers who may be eligible for expedited security screening at airports with TSA Pre✓® lanes.

(6) FFCW generated by aircraft operators also are sent to Secure Flight regarding passengers who are frequent flyer program members. These data also are used in Secure Flight's risk-based analysis and may result in a passenger being eligible for expedited screening.

(7) Lists of low-risk individuals who are eligible for expedited screening provided by Federal and non-federal entities. In support of TSA Pre✓®, TSA implemented expedited screening of known or low-risk travelers. Federal and non-federal list entities provide TSA with a list of eligible low-risk individuals to be used as part of Secure Flight processes. Secure Flight identifies individuals who should receive low risk screening and transmits the appropriate boarding pass printing result to the aircraft operators.

Both the CAPPS risk assessments and the FFCWs are generated from existing data within aircraft operators' reservations or other systems. The systemic changes required to send these data to Secure Flight varies by aircraft operator.

Number of Respondents: 292.

Estimated Annual Burden Hours: An estimated 678,295 [1] hours annually.

Dated: December 9, 2015.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2015–31911 Filed 12–17–15; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Federal Flight Deck Officer Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0011, abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 1, 2015, 80 FR 52779. The collection requires interested volunteers to fill out an application to determine their suitability for participating in the Federal Flight Deck Officer (FFDO) Program, and deputized FFDOs to submit written reports of certain prescribed incidents.

DATES: Send your comments by January 19, 2016. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security

[1] After further evaluation, TSA has revised the estimated annual burden hours in the 60-day notice, published February 4, 2015, from 678,245 to 678,295.

Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Federal Flight Deck Officer Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0011.

Forms(s): N/A.

Affected Public: Volunteer pilots, flight engineers, and navigators.

Abstract: The Federal Flight Deck Officer (FFDO) Program enables TSA to screen, select, train, deputize, and supervise qualified volunteer pilots, flight engineers, and navigators to defend the flight decks of commercial passenger and all-cargo airliners against acts of criminal violence or air piracy. Information collected as the result of this proposal would be used to assess the eligibility and suitability of prospective and current FFDOs, to ensure the readiness of every FFDO, to administer the program, and for security purposes.

Number of Respondents: 5,000.

Estimated Annual Burden Hours: An estimated 5,833 hours annually.

Dated: December 15, 2015.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2015–31908 Filed 12–17–15; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0061]

Agency Information Collection Activities: Application for Regional Center Under the Immigrant Investor Program and Supplement, Form I–924 and I–924A; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 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. 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 February 16, 2016.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0061 in the subject box, the agency name and Docket ID USCIS–2007–0046. 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–2007–0046;

(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–2007–0046 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:* Application for Regional Center Designation under the Immigrant Investor Program and Supplement.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–924 and Form I–924A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals representing any economic unit, public or private, in the United States that is involved with promoting economic growth. This collection will be used by such individuals to ask USCIS to be designated as a regional center under the Immigrant Investor Program, to request an amendment to a previously approved regional center designation, or to demonstrate continued eligibility for designation as a regional center under the Immigrant Investor Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–924 is 663 and the estimated hour burden per response is 40 hours; the estimated total number of respondents for the information collection for Form I–924A is 730 and the estimated hour burden per response is 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 28,710 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 $912,691.

Dated: December 14, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–31805 Filed 12–17–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5828–N–51]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland, TX 78236–9853; AGRICULTURE: Ms. Debra Kerr,

Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; ARMY: Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571) 256–8145; COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; ENERGY: Mr. David Steinau, Department of Energy, Office of Property Management, OECM MA–50, 4B122, 1000 Independence Ave. SW., Washington, DC 20585 (202) 287–1503; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management; Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426; (These are not toll-free numbers).

Dated: December 10, 2015.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/18/2015

Suitable/Available Properties

Building

Alabama

2 Buildings
Fort Rucker
Fort Rucker AL 36362
Landholding Agency: Army
Property Number: 21201540030
Status: Underutilized
Directions: 25107–RPUID: 576526 (2,721 SQ. FT.; Airfield Fire and Rescue Facility); 30305–RPUID: 250776 (4,422 SQ. FT.; Ready Bldg)
Comments: off-site removal only; no future agency need; removal extremely difficult due to type/size; fair conditions; contact Army for more information on a specific property listed above.

60110
SHELL AF, FORT RUCKER
Ft. Rucker AL 36330
Landholding Agency: Army
Property Number: 21201540032
Status: Underutilized
Comments: off-site removal only; no future agency need; extremely difficult to remove due to type/size; 8,319 SQ. FT.; ADMIN GEN PURP; 50% is occupied; poor conditions; contact Army for more information.

Arkansas

10′X24′ Concrete Floor & Slab
Roof
10299 Bay Ridge Dr.
Daradanelle AR 72834
Landholding Agency: COE
Property Number: 31201540003
Status: Underutilized
Comments: 240 sq. ft.; rec. facility (campground) restroom; fair conditions; contact COE for more information.

Georgia

Building 14
Camp Frank D. Merrill
Fort Benning GA 31905
Landholding Agency: Army
Property Number: 21201540052
Status: Unutilized
Comments: off-site removal only; 120 sq. ft.; 51+ yrs. old; veh. fuel mogas; poor conditions; contact Army for information.

Building 08638–RPUID 283107
Mortar Training Area
off Wildcat Road
Fort Benning GA 31905
Landholding Agency: Army
Property Number: 21201540053
Status: Unutilized
Comments: off-site removal only; 192 sq. ft.; 10+ yrs.-old; sep toil/shower; poor conditions; contact Army for more information.

Building 08728
3279 10th Armored Division Road
Fort Benning GA
Landholding Agency: Army
Property Number: 21201540054
Status: Unutilized
Comments: off-site removal only; 192 sq. ft.; 9+ yrs.-old; sep toil/shower; poor conditions; contact Army for more information.

North Carolina

3 Buildings
Fort Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21201540061
Status: Unutilized
Directions: Q3113–1034505 (64 sq. ft.); Q3414–1034511 (64 sq. ft.); Q2322–296150 (17 sq. ft.)
Comments: very poor conditions; contact Army for more information on a specific property listed above.

Oklahoma

6 Buildings
Fort Sill
Ft. Sill OK 73503
Landholding Agency: Army
Property Number: 21201540034
Status: Unutilized
Directions: 1500 (100 SQ. FT.; Fueling/POL/Wash Support Bldg); 1501 (9,802 SQ. FT.; Vehicle Maintenance Shop); 1502 (9,938 SQ. FT.; Vehicle Maintenance Shop); 1503 (10,190 SQ. FT.; Limited Use Instructional Bldg); 1521 (80 SQ. FT.; Oil Storage Building); 2590 (3,626 SQ. FT.; ADMIN GENERAL PURPOSE)
Comments: off-site removal only; no future agency need; removal difficult due to type/size;6+ mons.vacant; contamination; contact Army for more information on a specific property listed above.

Puerto Rico

2 Buildings
USAG Fort Buchanan RQ327
Fort Buchanan PR 00934
Landholding Agency: Army
Property Number: 21201540057
Status: Excess
Directions: 01024 (300 sq. ft.; storage); 01026 (300 sq. ft.; storage)
Comments: off-site removal only; poor conditions; contact Army for more information on a property listed above.

Tennessee

3 Buildings
Fort Campbell
Ft. Campbrll TN
Landholding Agency: Army
Property Number: 21201540017
Status: Unutilized
Directions: 6995 (RPUID: 594789; 3,687 SQ. FT.; OFFICE); 07825 (RPUID: 590376; 15,111 SQ. FT.; Ammo Repair); A6924 (RPUID: 598990; 3,688 SQ. FT.; OFFICE)
Comments: fair to poor conditions; asbestos present; contact Army for more information on a specific property listed above.

Texas

90005; RPUID: 285770
Clarke Road
Fort Hood TX
Landholding Agency: Army
Property Number: 21201540012
Status: Excess
Comments: off-site removal only; removal extremely difficult due to type; 181 sq. ft.; Navigation Building, Air; contact Army for more information.

27000
67TH STREET
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201540020
Status: Unutilized
Comments: off-site removal only; no future agency need; 284 sq. ft.; TERM EQUIP BLDG; 1+ month vacant; ASBESTOS; contact Army for more information.

92044; RPUID: 286348
Loop Road
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201540021
Status: Excess
Comments: off-site removal only; removal extremely difficult due to type/size; 1,920 SQ. FT.; Admin General Purpose; lead and asbestos contamination; contact Army for more information.

1348 (RPUID: 313187)
North Avenue
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201540022
Status: Excess
Comments: off-site removal only; 654 sq. ft; Admin General Purpose; fair/moderate conditions; Asbestos located in Building caulking and putties; contact Army for more information.

86000
BATTALION AVE
Fort Hood TX 76544

Landholding Agency: Army
Property Number: 21201540023
Status: Unutilized
Comments: off-site removal only; no future agency need; 284 sq. ft.; TERM EQUIP BLDG; 1+ month vacant; ASBESTOS; contact Army for more information.

4496
WAREHOUSE AVE.
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201540024
Status: Unutilized
Comments: off-site removal only; 284 sq. ft; TERM EQUIP BLDG; 1+ month vacant; fair/moderate conditions; ASBESTOS; contact Army for more information; no future agency need.

91003; RPUID: 286087
West Headquarters Avenue
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201540025
Status: Excess
Comments: off-site removal only; removal extremely difficult due to type; 325 sq. ft.; Storage General Purpose; possible lead and asbestos contamination; contact Army for more information.

36017; RPUID: 174093
Wratten Drive
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201540027
Status: Excess
Comments: off-site removal only; removal extremely difficult due to type/size; 2,400 sq. ft.; Laboratory; contact Army for more information.

12000
OLD IRONSIDES RD
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201540028
Status: Unutilized
Comments: off-site removal only; no future agency need; 284 sq. ft.; TERM EQUIP BLDG; 1+ month vacant; ASBESTOS; contact Army for more information.

Virginia

2 Buildings
Lee Blvd.
Fort Eustis VA 23604
Landholding Agency: Air Force
Property Number: 18201540029
Status: Unutilized
Directions: 822 (205 sq. ft.); 876 (651 sq. ft.)
Comments: off-site removal only; no future agency need; removal difficult due to type/condition; very poor conditions; contact Air Force for more information.

2 Buildings
Mulberry Island Rd.
Fort Eustis VA 23604
Landholding Agency: Air Force
Property Number: 18201540030
Status: Unutilized
Directions: 3511 (437 sq. ft.); 3913 (767 sq. ft.)
Comments: off-site removal only; no future agency need; removal difficult due to type/condition; very poor conditions; contact Air Force for more information.

Land

Nebraska

P–4 GHUA
1419 Hwy 19
Sidney NE 82081
Landholding Agency: Air Force
Property Number: 18201540031
Status: Unutilized
Comments: 1 acre; launch facility in ground; contact Air Force for more information.

Texas

Fee Purchase Land-99201
Eldorado AFS
Eldorado TX 76936
Landholding Agency: Air Force
Property Number: 18201540009
Status: Excess
Comments: 119 acres; 192+ months vacant; contact Air Force for more information.

Wyoming

11 Plots of Land
Diamond/Iron Mountain Rd.
Chugwater WY 82210
Landholding Agency: Air Force
Property Number: 18201540013
Status: Unutilized
Directions: Q–10 GHYT; Q–9 GHYS; Q–11 GHYU; Q–8 GHYR; Q–2 GHYK; Q–3 GHYL; Q–4 GHYM; Q–5 GHYN; P–11 GHYH; P–10 GHYG; P–9 GHYF
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

9 Plots of Land
Air Force
Lagrange/Chugwater WY 82221
Landholding Agency: Air Force
Property Number: 18201540014
Status: Unutilized
Directions: R–02 GHYW; R–04 GHWX; R–05 GHYZ; R–06 GHZA; R–07 GHZA; R–08 GHZC; R–09 GHZD; R–10 GHZE; R–11 GHZF
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

2 Plots of Land
Hilldale
Hilldale WY 82060
Landholding Agency: Air Force
Property Number: 18201540015
Status: Unutilized
Directions: P–5 GHYB; P–7 GHYD
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

Q–7 GHYQ
1603 Rd. 237
Carpenter WY 82054
Landholding Agency: Air Force
Property Number: 18201540016
Status: Unutilized
Comments: 1 acre; contact Air Force for more information.

3 Plots of Land
Meriden
Meriden WY 82081
Landholding Agency: Air Force
Property Number: 18201540017
Status: Unutilized
Directions: P–6 GHYC; P–Z GHXY; P–3 GHYZ
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

Q–6 GHYP AND P–8 GHYE
1381 Rd. 228
Cheyenne WY 82002
Landholding Agency: Air Force
Property Number: 18201540018
Status: Unutilized
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

2 Plots of Land
Air Force
Huntley WY 82218
Landholding Agency: Air Force
Property Number: 18201540019
Status: Unutilized
Directions: S–4 GHZK; S–5 GHZL
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

S–2 GHZG
6291 Rd. 47
Torrington WY 82240
Landholding Agency: Air Force
Property Number: 18201540020
Status: Unutilized
Comments: 1 acre; contact Air Force for more information.

3 Plots of Land
Air Force
Hawk Springs WY 82217
Landholding Agency: Air Force
Property Number: 18201540021
Status: Unutilized
Directions: S–8 GHZP; S–7 GHZN; S–6 GHZM
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

2 Plots of Land
Deer Creek Dr.
Wheatland WY 82201
Landholding Agency: Air Force
Property Number: 18201540022
Status: Unutilized
Directions: T–2 GHZU; T–3 GHZV
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

2 Plots of Land
Dickerson Rd.
Brodeaux WY 82201
Landholding Agency: Air Force
Property Number: 18201540023
Status: Unutilized
Directions: T–4 GHZW; T–9 GJAB
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

T–5 GHZX and T–6 GHZY
387 Slater Rd.
Slater WY 82201
Landholding Agency: Air Force
Property Number: 18201540024
Status: Unutilized
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

2 Plots of Land
Slater Rd.
Slater WY 82201
Landholding Agency: Air Force
Property Number: 18201540025
Status: Unutilized
Directions: T–7 GHZZ; T–8 GJAA
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

2 Plots of Land
Snook/Grayrocks Rd.
Wheatland WY 82201
Landholding Agency: Air Force
Property Number: 18201540026
Status: Unutilized

Directions: T–10 GJAC; T–11 GJAD
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

2 Plots of Land
State Hwy
Veteran WY 82243
Landholding Agency: Air Force
Property Number: 18201540027
Status: Unutilized
Directions: S–10 GHZR; S–11 GHZS
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

2 Plots of Land
ST STE Hwy
Yoder WY 82244
Landholding Agency: Air Force
Property Number: 18201540028
Status: Unutilized
Directions: S–3 GHZJ; S–9 GHEQ
Comments: 1 acre each; contact Air Force for more information on a specific plot of land.

Unsuitable Properties

Building

Alaska

Building 2092
Kinney Rd.
Fort Wainwright AK 99703
Landholding Agency: Army
Property Number: 21201540005
Status: Underutilized
Comments: located w/in floodway which has not been corrected or contained; public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area; Floodway

Arkansas

4 Buildings
Little Rock AFB
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201540001
Status: Underutilized
Directions: B–222; B1502; B–2905; B–1500
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

11 Buildings
Little Rock AFB
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201540011
Status: Unutilized
Directions: 1432; 1439; 1437; 1435; 1431; 1420; 1418; 1417; 1416; 1415; 1389
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

16340
Fleming Drive
Pine Bluff Arsenal AR 71602
Landholding Agency: Army
Property Number: 21201540035
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

California

Bldg. 480
500 Crissy St.
Travis AFB CA 94535
Landholding Agency: Air Force
Property Number: 18201540008
Status: Unutilized
Comments: public access denied and no alternative methods to gain access without compromising national security.
Reasons: Secured Area

Colorado

7 Buildings
Fort Carson
Fort Carson CO 80902
Landholding Agency: Army
Property Number: 21201540018
Status: Unutilized
Directions: 5557 (RPUID: 591785); 5559 (RPUID: 596873); 5561 (RPUID: 601301); 5563 (RPUID: 577607); 5565 (RPUID: 593788); 5567 (RPUID: 591786); 5569 (RPUID: 591787)
Comments: (Property located within floodway which has not been correct or contained).
Reasons: Floodway

12 Buildings
Fort Carson
Ft. Carson CO 80902
Landholding Agency: Army
Property Number: 21201540019
Status: Unutilized
Directions: 5540 (RPUID: 610022); 5541 (RPUID: 586846); 5542 (RPUID: 616626); 5543 (RPUID: 598076); 5544 (RPUID:567013); 5545 (RPUID:596871); 5546 (RPUID: 593098); 5547 (RPUID: 616627); 5549 (RPUID: 616627); 5551 (RPUID: 596872); 5553 (RPUID: 606097); 5555 (RPUID: 606639)
Comments: (Property located within floodway which has not been correct or contained).
Reasons: Floodway

Florida

Building 1053
7416 MacDill Ave.
MacDill AFB
Tampa FL 33621
Landholding Agency: Air Force
Property Number: 18201540005
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Georgia

Facility 21
145 Beale Dr.
Robins AFB GA 31098
Landholding Agency: Air Force
Property Number: 18201540033
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Illinois

Building 5713
2221 East Dr.
Scott AFB IL 62225
Landholding Agency: Air Force
Property Number: 18201540007
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

2 Buildings
Rock Island Arsenal
Rock Island IL 61299
Landholding Agency: Army
Property Number: 21201540041
Status: Underutilized
Directions: 215–RPUID: 366364; 215B–PUID: 1170018
Comments: public access denied and no alternative to gain access without compromising national security.
Reasons: Secured Area

Maryland

4 Buildings
Aberdeen Proving Ground
Aberdeen Proving Grou MD 21005
Landholding Agency: Army
Property Number: 21201540006
Status: Unutilized
Directions: 530–RPUID: 232987; 00502–RPUID:231120; 00504–RPUID: 231122; 00507–RPUID:231124
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

10 Buildings
Aberdeen Proving Ground
Aberdeen Proving Grou MD 21005
Landholding Agency: Army
Property Number: 21201540008
Status: Unutilized
Directions: E2499–RPUID: 1115220; 248–RPUID: 233131; 324–RPUID: 233380; 00325–RPUID: 233381; 335–RPUID: 233389; 00336–RPUID: 233390; 00342–RPUID: 233396; 00343–RPUID: 233397; 00501–RPUID: 21119; 00503–RPUID: 231121
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

10 Buildings
Aberdeen Proving Ground
Aberdeen Proving Grou MD 21005
Landholding Agency: Army
Property Number: 21201540009
Status: Unutilized
Directions: 1100A–RPUID: 232502; 5112–RPUID: 231874; E1426–RPUID: 230361; E2144–RPUID: 231462; E2180–RPUID: 231474; E2200–RPUID: 236777; E3100–RPUID: 229840; E3240–RPUID: 225691; E3245–RPUID: 1233661; E5027–RPUID: 235043
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

10 Buildings
Aberdeen Proving Ground
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21201540010
Status: Unutilized
Directions: 00320–RPUID: 233377; 00534–RPUID: 232990; 00894–RPUID: 229860; 01096–RPUID: 230735; 2352–RPUID: 232067; 4314–RPUID: 230781; 00938–RPUID: 229876; E1932–RPUID: 231449;

E1942–RPUID: 230062; 00535–RPUID: 232991
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

10 Buildings
Aberdeen Proving Ground
Aberdeen Proving Grou MD 21005
Landholding Agency: Army
Property Number: 21201540011
Status: Unutilized
Directions: E5032–RPUID: 981051; E5060–RPUID: 235049; E5140–RPUID: 235827; E5172–RPUID: 235834; E5173–RPUID: 235835; E5244–RPUID: 235853; E5352–RPUID: 236079; E5429–RPUID: 236092; E5826–RPUID: 237105; E7987–RPUID: 234070
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

3 Buildings
Fort Detrick, Forest Glen
Annex; Stephen Sitter Avenue
Fort Detrick MD 20901
Landholding Agency: Army
Property Number: 21201540014
Status: Unutilized
Directions: 00152; 00156; 0175A
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

10 Buildings
Aberdeen Proving Ground
Aberdeen Proving Grou MD 21005
Landholding Agency: Army
Property Number: 21201540043
Status: Underutilized
Directions: E2162–RPUID: 231464; E2166–RPUID: 231465; E2182–RPUID: 231475; E2188–RPUID: 236771; E2194–RPUID: 236773; E2198–RPUID: 236776; E5061–RPUID: 235050; E5101–RPUID: 230074; E5842–RPUID: 237111; E5844–RPUID: 237112
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

8 Buildings
Aberdeen Providing Ground
Aberdeen Providing Gr MD 21005
Landholding Agency: Army
Property Number: 21201540044
Status: Unutilized
Directions: E5848–RPUID: 237114; E5860–RPUID: 237116; E5862–RPUID: 237117; E5884–RPUID: 237129; E5886–RPUID: 237130; E5892–RPUID: 237888; E5894–RPUID: 237889; E5896–RPUID: 237890
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Building 00922
922 Live Fire Lane
Aberdeen Proving Grou MD 21005
Landholding Agency: Army
Property Number: 21201540045
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Michigan

Building 835
Fitness Facility/Thrift
43515 n. Jefferson Ave.
Selfridge ANGB MI 48045
Landholding Agency: Air Force
Property Number: 18201540034
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Missouri

9 Buildings
Fort Leonard Wood
Ft. Leonard Wood MO
Landholding Agency: Army
Property Number: 21201540058
Status: Unutilized
Directions: 682–RPUID: 575534; 683–RPUID: 581273; 781–RPUID: 593764; 887–RPUID: 593487; 2307–RPUID: 573663; 2341–RPUID: 597115; 4199–RPUID: 579050; 5027–RPUID: 595346; 5167–RPUID: 593968
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

9 Buildings
Fort Leonard Wood
Fort Leonard Wood MO
Landholding Agency: Army
Property Number: 21201540059
Status: Unutilized
Directions: 5279–RPUID: 618544; 5422–RPUID: 598786; 5426–RPUID: 618281; 5432–RPUID: 615691; 5442–RPUID: 582917;5452–RPUID: 587677;5502–RPUID: 606152; 5584–RPUID: 582723; 5733–RPUID: 594089
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

2 Buildings
Fort Leonard Wood
Fort Leonard Wood MO
Landholding Agency: Army
Property Number: 21201540060
Status: Unutilized
Directions: 12652–RPUID:607957; 668
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Nebraska

Bldg. 382
605 Nelson Dr.
Offutt NE 68113
Landholding Agency: Air Force
Property Number: 18201540004
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Nevada

2 Buildings
Hawthorne Army depot
Hawthorne Army Depot NV
Landholding Agency: Army
Property Number: 21201540040
Status: Unutilized
Directions: 0C261–RPUID: 330817; 10341–RPUID: 319518
Comments: flam/explos. materials are located on adjacent industrial, commercial, or Federal facility; public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area;Within 2000 ft. of flammable or explosive material

New Jersey

12 Buildings
JBML
JBML NJ 08640
Landholding Agency: Air Force
Property Number: 18201540006
Status: Unutilized
Directions: 94281; 94631; 90451; 9078; 9000; 9214; 9159; 9479; 9469; 9853; 9823; 9841
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

New Mexico

Building 150
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201540010
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

New York

12 Buildings
Fort Drum
Ft. Drum NY 13602
Landholding Agency: Army
Property Number: 21201540015
Status: Unutilized
Directions: BRK11 (RPUID: 1193675); BRK12 (RPUID: 1193672); BRK13 (RPUID: 1193812); BRK14 (RPUID: 1193815); BRK15 (RPUID: 1193814); BRK16 (RPUID: 1193816); BRK17 (RPUID: 1193813); BRK18 (RPUID: 1193850); BRK19 (RPUID: 1193852); BRK20 (RPUID: 1193851); BRK21 (RPUID: 1193854); BRK22 (RPUID: 1193853)
Comments: property located within an airport runway clear zone or military airfield; Public access denied and no alternative method to gain access without compromising national security.
Reasons: Within airport runway clear zone; Secured Area

3 Buildings
Fort Drum
Ft. Drum NY 13602
Landholding Agency: Army
Property Number: 21201540016
Status: Unutilized
Directions: BRK23 (RPUID: 1193853); BRK24 (RPUID: 1193884); BRK25 (RPUID: 1193885)
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

1236
US Army Garrison, West Point
West Point NY 10996

Landholding Agency: Army
Property Number: 21201540033
Status: Unutilized
Comments: document deficiencies: condemned; ceilings, walls, flooring, doors, and windows are rotted and beyond repair; wood deteriorated to state of non-repair; clear threat to physical safety.
Reasons: Extensive deterioration

10 Buildings
Fort Drum
Ft. Drum NY 13602
Landholding Agency: Army
Property Number: 21201540055
Status: Unutilized
Directions: BRK01 (RPUID: 1193186); BRK02 (RPUID: 1193187) BRK03 (RPUID: 1193237); BRK04 (RPUID: 1193238); BRK05 (RPUID: 1193240); BRK06 (RPUID: 1193239); BRK07 (RPUID: 1193241); BRK08 (RPUID: 1193669); BRK09 (RPUID: 1193674); BRK10 (RPUID: 1193671)
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

North Carolina

27 Buildings
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21201540002
Status: Unutilized
Directions: 15132–RPUID: 581224; M6460–RPUID: 610295; M2348–RPUID: 958708; E4325–RPUID: 613768; A5428–RPUID: 597133; M6146–RPUID: 597164; M6143–RPUID: 576307; M2646–RPUID: 958720; M6445–RPUID: 595599; M2360–RPUID: 958714; M6438–RPUID: 557152; M6450–RPUID: 577153; M6733–RPUID: 609986; M6746–RPUID: 571513; M6751–RPUID: 584516; M2359–RPUID: 958713;A5628–RPUID: 581440; M6433–RPUID: 590748;A5630–RPUID: 593150; M2357–RPUID: 958713; M2338–RPUID: 958304; M2340–RPUID: 958305; M2342–RPUID: 958704; M2343–RPUID: 958705; M2345–RPUID: 958706; M2350–RPUID: 958709; M2351–RPUID: 958710
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

5 Buildings
Fort Bragg
Fort Bragg NC 28310
Landholding Agency: Army
Property Number: 21201540003
Status: Underutilized
Directions: 15433–RPUID: 1034408; 15533–RPUID: 1034409; 15631–RPUID: 607469; 15730–RPUID: 297551; F1231–RPUID: 575616
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

20 Buildings
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21201540004
Status: Underutilized
Directions: 85303; A3764; D3022; H3237; H3554; M2346; M2353; M2356; M2505; M2642; M2650; M2651; M2653; M5051; M6142; M6205; M6150; P2341; X6088; M2640
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Pennsylvania

S2705 & S2706
Letterkenny Army Depot
Letterkenny Army Depo PA 17201
Landholding Agency: Army
Property Number: 21201540031
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Puerto Rico

29 Buildings
Victory Road; USAG FORT BUCHANAN, RQ327
Fort Buchanan PR 00934
Landholding Agency: Army
Property Number: 21201540013
Status: Excess
Directions: 01029; 01030; 01031; 01032; 01033; 01034; 01035; 01036; 01037; 01038; 01039; 01040; 01041; 01042; 01043; 01044; 01046; 01047; 01048; 01049; 01050; 01051; 01052; 01054; 01055; 01056; 01057; 01058; 01061
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Building 00215
Fort Allen Training Center
Rd. #1
Juan Diaz PR 00795
Landholding Agency: Army
Property Number: 21201540049
Status: Unutilized
Comments: documented deficiencies: condemned due to a fault in the structural integrity; foundation instability and deterioration the walls and ceilings have fallen.
Reasons: Extensive deterioration

3 Buildings
Camp Santiago Trng Center
(RQ577)
Salinas PR 00751
Landholding Agency: Army
Property Number: 21201540050
Status: Unutilized
Directions: 00415–RPUID: 951222; 00416; 00414
Comments: documented deficiencies: condemned; due to structural integrity walls and foundation are cracked.
Reasons: Extensive deterioration

Texas

Pick up Truck Storage Shed 9
620900B009; USDA/ARS
Bushland TX 70912
Landholding Agency: Agriculture
Property Number: 15201540004
Status: Underutilized
Directions: PO Drawer 10,23000 Experiment Station Dr.
Comments: documented deficiencies: significantly deteriorated due to rotten framing and holes in structure.
Reasons: Extensive deterioration

10649
Sheppard AFB
Sheppard TX 76311
Landholding Agency: Air Force
Property Number: 18201540002
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

B4493
Sheppard AFB
Sheppard TX 76311
Landholding Agency: Air Force
Property Number: 18201540003
Status: Underutilized
Comments: documented deficiencies: partially collapsing; unsound foundation; public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area Extensive deterioration

9111; RPUID: 180441
Hell on Wheels Avenue
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201540026
Status: Excess
Comments: documented deficiencies: property has holes in the structure that most likely will result in collapse if removed off-site; clear threat to physical safety.
Reasons: Extensive deterioration

16 Buildings
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21201540051
Status: Unutilized
Directions: 03682; 03693; 05041; 05043; 05044; 05045; 07013; 07021; 09495; 09683; 11269; 11519; 11520; 11626; 11660; 11682
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Building 1736
Naval Air Station; 547 5th Street
Corpus Christi TX 78419
Landholding Agency: Navy
Property Number: 77201540014
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Utah

16 Buildings
DUGWAY PROVING GROUND
DUGWAY PROVING GROUND UT 84022
Landholding Agency: Army
Property Number: 21201540036
Status: Underutilized
Directions: 00001–RPUID: 570563; 00003–RPUID: 588352; 00005–RPUID: 588352; 00007–RPUID: 611072; 00011–RPUID: 614435; 00020–RPUID: 611287; 00021–RPUID: 614434; 00022–RPUID: 570464; 00023–RPUID: 599972; 00024–RPUID: 575282; 00025–RPUID: 586999; 00027–RPUID: 570566; 00029–RPUID: 587000;

00031–618225;33–RPUID: 599973; 37–RPUID: 587002
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

20 Buildings
DUGWAY PROVING GROUND
DUGWAY PROVING GROUND UT 84022
Landholding Agency: Army
Property Number: 21201540037
Status: Underutilized
Directions: 00154–598832; 00156–595717; 00158–574114; 00162–603757; 00163–574115; 00164–585779; 00167–595718; 00171–586937; 00173–607725; 00175–574117; 00177–603576; 00180–575781; 00181–575670; 00183–574119; 00185–598833; 00186–595719; 00187–609946; 00197–609948; 00198–579166; 00201–600412
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

20 Buildings
DUGWAY PROVING GROUND
DUGWAY PROVING GROUND UT 84022
Landholding Agency: Army
Property Number: 21201540038
Status: Underutilized
Directions: 00205–609949; 00209–602438; 00256–583679; 00303–600093; 00306–616070; 00313–590335; 00321–587745; 00325–583680; 00329–573173; 00351–579174; 00361–600095;5236–581055; 05362–579151; 05363–576303; 05367–573490; 05375–575942; 05381–578690; 05382–583591; 05383–599699; 05390–604657
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

14 Buildings
DUGWAY PROVING GROUND
DUGWAY PROVING GROUND UT 84022
Landholding Agency: Army
Property Number: 21201540039
Status: Underutilized
Directions: 00069–RPUID: 599975; 00093–RPUID: 618228; 00152–RPUID: 621801; 00103–RPUID: 587003; 00107–RPUID: 611292; 00113–RPUID: 605404; 00118–RPUID: 590378; 00119–RPUID: 606737; 00123–RPUID: 577667; 00125–RPUID: 577668; 00127–RPUID: 607723; 00129–RPUID: 574112; 00131–RPUID: 577669; 00140–RPUID: 606738
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Virginia

06217
Fort Lee
Ft. Lee VA 23801
Landholding Agency: Army
Property Number: 21201540029
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

1555A
Radford Army Ammunition Plant; Rte. 114 P.O. Box 2
Radford VA 24143
Landholding Agency: Army
Property Number: 21201540042
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

West Virginia

Building 11
3610 Collins Ferry Rd.
Morgantown WV 26507
Landholding Agency: Energy
Property Number: 41201540003
Status: Excess
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Land

Alaska

Aucke Bay Marine Station
11305 Glacier Hwy
Juneau AK 99801
Landholding Agency: GSA
Property Number: 54201540016
Status: Excess
GSA Number: 9–C–AK–0855
Directions:
Landholding Agency: NOAA; Disposal Agency: GSA
Comments: military (Coast Guard) use only; public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Arkansas

60 Acres
Harris Rd.
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201540012
Status: Unutilized
Comments: located w/in floodway which has not been corrected or contained; public access denied and no alternative method to gain access without compromising national security.
Reasons: Floodway; Secured Area

Georgia

Facility 7525
145 Beale Dr.
Robins AFB GA 31098
Landholding Agency: Air Force
Property Number: 18201540032
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Maryland

4 Concrete Pads
Aberdeen Proving Ground
Aberdeen MD 21005
Landholding Agency: Army
Property Number: 21201540056
Status: Unutilized
Directions: E3176–981045; E5335–981052; E5628–996138; E7226–981063
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

[FR Doc. 2015–31504 Filed 12–17–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5774–N–04]

Promise Zones Initiative: Third Round Selection Process

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD provides notice on the selection process, criteria, and application submission for the third round of the Promise Zone initiative.

DATES: Application due date is 5:00 p.m. EST on February 23, 2016.

ADDRESSES: Interested eligible organizations are invited to submit applications for a Promise Zone designation. Questions or comments regarding the application process should be directed by email to *Promisezones@hud.gov*. Questions or comments may also be directed by postal mail to the Office of the Deputy Assistant Secretary for Economic Development, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 7136, Washington, DC 20410 ATTN: Promise Zone Selections.

FOR FURTHER INFORMATION CONTACT: Bryan Herdliska, U.S. Department of Housing and Urban Development, 451 7th Street SW., Rm 7136, Washington, DC, 20410; telephone number 202–402–6758. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

In his 2013 State of the Union address, President Obama announced the establishment of the Promise Zones initiative to partner with high-poverty communities across the country to create jobs, increase economic security, expand educational opportunities, increase access to quality, affordable housing, and improve public safety.[1] On January 8, 2014, the President

[1] See *http://www.whitehouse.gov/the-press-office/2013/02/15/fact-sheet-president-s-plan-ensure-hard-work-leads-decent-living.*

announced the first five Promise Zones, which are located in: San Antonio, TX; Philadelphia, PA; Los Angeles, CA; Southeastern Kentucky, KY; and the Choctaw Nation of Oklahoma, OK. On April 28, 2015, eight more Promise Zones were designated as part of the second round Promise Zone selection process. They are located in: Camden, NJ; Hartford, CT; Indianapolis, IN; Minneapolis, MN; Sacramento, CA; St. Louis, MO; South Carolina Low Country; and Pine Ridge Indian Reservation of the Oglala Sioux Tribe, SD. Each of these communities (nine urban, two rural, and two tribal) submitted a plan on how it will partner with local business and community leaders to make investments that reward hard work and expand opportunity. In exchange, the Federal government is helping these Promise Zone designees secure the resources and flexibility they need to achieve their goals.[2] The urban designations were conferred by HUD, while the rural and tribal designations were conferred by U.S. Department of Agriculture (USDA).

Promise Zones Benefits

The Promise Zone designation partners the Federal government with local leaders who are addressing multiple community revitalization challenges in a collaborative way and have demonstrated a commitment to results. Further, Promise Zones will be assigned Federal staff to help navigate the array of Federal assistance and programs already available to them. In addition, eligible applicants in Promise Zones will receive any available (a) preference for certain competitive Federal programs and (b) technical assistance. Subject to enactment by Congress, businesses investing in Promise Zones or hiring residents of Promise Zones will be eligible to receive tax incentives. Altogether, this package of assistance will help local leaders accelerate efforts to revitalize their communities.

The Promise Zone designation will be for a term of 10 years and may be extended as necessary to capture the full term of availability of the Promise Zone tax incentives, if the tax incentives are enacted. During this term, the specific benefits made available to Promise Zones may vary from year to year, and sometimes more often than annually, due to changes in Federal agency policies and changes in appropriations and authorizations for relevant programs. All assistance provided to Promise Zones is subject to applicable regulations, statutes, and changes in federal agency policies, appropriations, and authorizations for relevant programs. Subject to these limitations, the Promise Zone designation commits the Federal government to partner with local leaders who are addressing multiple community revitalization challenges in a collaborative way and have demonstrated a commitment to results.

Response to Public Comment

On July 29, 2015, HUD published a notice in the **Federal Register** at 80 FR 45227 to solicit comments from first and second round applicants, interested parties, and the general public on the Promise Zones initiative and the proposed selection process for the of Promise Zone designations. The public comment period closed on September 28, 2015. HUD received 21 communications containing public comments. HUD and USDA, in consultation with federal interagency partners of the Promise Zone initiative, provided responses to public comments on the application process which have been included in the updated Frequently Asked Questions (FAQs). The FAQs can be found at *www.hud.gov/promisezones*.

Promise Zones Selection Process

This notice announces the opening of the application period for the third round of Promise Zone designations. HUD and USDA have reorganized and revised the Application Guide to clarify elements that applicants found particularly difficult and incorporated some comments. The MAX Survey online survey system, which is used for submitting certain components of the application, has also been reorganized. Applications are due by 5:00 p.m. EST on February 23, 2016 with announcements expected in 2016. As a result of this competition, HUD intends to designate five urban communities and USDA intends to designate one rural and one tribal community. A total of 20 Promise Zone designations will be made by the end of calendar year 2016.

Due to the cross-disciplinary nature of the initiative, the list of eligible Lead Applicants has been updated to reflect that Promise Zone activities are likely to be carried out by a variety of organizations and organization types, including organizations that have specific roles in the delivery of programs funded by different Federal agencies. Most such organizations are eligible under the categories of governmental and nonprofit organizations that were previously listed as eligible Lead Applicants. HUD and USDA included examples might encourage communities to engage organizations that are the most appropriate to respond to their needs and lead revitalization efforts. Eligible Lead Applicants for Urban Promise Zone designations are: Units of General Local Government (UGLG);[3] An office/department of a local government submitting on behalf of the local government under a local delegation of authority; Nonprofit organizations applying with the support of the UGLG; and Public Housing Agencies, Community Colleges, Local Education Agencies (LEAs), or Metropolitan Planning Organizations (MPOs) applying with the support of the UGLG.

Eligible Lead Applicants for Rural and Tribal Promise Zone designations are: Local governments (which includes county, city, town, township, parish, village, governmental authority or other general-purpose political subdivision of a state or combination thereof) and Federally-recognized tribes;[4] Nonprofit organizations applying in partnership with local government or tribal government; Housing authorities applying in partnership with local government, or Tribally Designated Housing Entities (TDHEs) applying in partnership with tribal government; or Local Education Agencies (LEAs) applying in partnership with local or tribal government; or community colleges applying in partnership with local or tribal government.

Any Lead Applicant whose proposed Promise Zone boundaries meet the qualifying criteria set forth in the Third Round Application Guide is eligible to apply for a Promise Zone designation. All of the following must be present in an application for a proposed Urban Promise Zone to be eligible for a designation: (1) Proposed Promise Zone must have one contiguous boundary and

[2] See *http://www.whitehouse.gov/the-press-office/2014/01/08/fact-sheet-president-obama-s-promise-zones-initiative*.

[3] Unit of general local government as defined in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)). See definition (a) (1) Unit of General Local Government.

[4] ''Tribal applicants'' are: Federally-recognized tribes as well as duly established political subdivisions of a Federally-recognized tribe. A ''Federally-recognized tribe'' is any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 USCS §§ 1601 *et seq.*], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*) A Nonprofit organization applying in partnership with a Federally-recognized tribal government may apply as a tribal applicant.

cannot include separate geographic areas; [5] (2) The rate of overall poverty or Extremely Low Income rate (whichever is greater) of residents within the Promise Zone must be at or above 32.5%; [6] (3) Promise Zone boundaries must encompass a population of at least 10,000 but no more than 200,000 residents; (4) The Promise Zone application must affirmatively demonstrate support from all mayors or chief executives of UGLGs that include any geographical area within the proposed Promise Zone boundary, subject to the following conditions:

• *Counties and county equivalents (collectively ''counties'').*[7] The chief executive of a county must demonstrate support for any Promise Zone Plan (Plan) that includes an area within the unincorporated boundaries of the county. The chief executive of a county may support as many Plans as he or she wishes in incorporated areas within the county, but may only support one Plan that includes an area within the unincorporated boundaries of the county. If the chief executive of a county supports multiple Plans, the chief executive must include an explanation of how the county intends to work with multiple designees at the same time and sustain the necessary level of effort, resources, and support for each designee for the full term of each designation.

• *UGLGs other than counties.* For UGLGs other than counties, the chief executive of an UGLG must demonstrate support for a Plan that includes any area within the geographic boundaries of the UGLG. The chief executive of UGLGs that are not counties may support only one Plan. If the chief executive of an UGLG that is not a county supports more than one Plan, HUD will disqualify all Promise Zone applications supported by that chief executive.

• *Crossing Jurisdictions.* The Promise Zone application must demonstrate support for the Plan from all chief executives of UGLGs included within the proposed Promise Zone boundary. The chief executive of a county must demonstrate support for any Plan that includes area within the unincorporated boundaries of the county. For UGLGs other than counties, the chief executive of an UGLG must demonstrate support for a Plan that includes any area within the geographic boundaries of the UGLG. For example, a Plan that includes areas in two cities requires the support of the chief executives from both cities. A Plan that includes area within the boundaries of a city and the unincorporated boundaries of the county requires support from the chief executive of the city and the chief executive of the county.

• *UGLGs with Designated Promise Zones.* If a Promise Zone designated in Round 1 or 2 is located within a UGLG in which a new application is being submitted, the applicant must include an explanation of how, if a second Promise Zone designation is made, the UGLG plans to work with both of the Promise Zone designees at the same time and sustain the level of effort, resources and support committed to each Promise Zone under its respective Promise Zone Plan for the full term of each Promise Zone designation. This explanation must be evidenced by commitments from the UGLG in materials submitted by the chief executive in support of the application.

	Is support from the chief executive of City X required?	Is support of the chief executive of City Y required?	Is support of the chief executive of County Z required?
The PZ Plan is for an area entirely within the boundaries of City X.	Yes.*	No.	No.**
The PZ Plan is for an area entirely within the boundaries of City Y.	No.	Yes.*	No.**
The PZ Plan is for an area entirely within the boundaries of unincorporated area of County Z.	No.	No.	Yes.***
The PZ Plan consists of area within City X and City Y.	Yes*	Yes.*	No.**
The PZ Plan consists of area within City Y and an area within the unincorporated boundaries of County Z.	No.	Yes.*	Yes.***
The PZ Plan consists of area within City X, area within City Y, and area within the unincorporated boundaries of County Z.	Yes.*	Yes.*	Yes.***

* For UGLGs other than counties, the chief executive of an UGLG must demonstrate support for a Plan that includes any area within the geographic boundaries of the UGLG.

** However, the chief executive of a county may support as many Plans as he or she wishes in incorporated areas within the county.

*** The chief executive of a county must demonstrate support for any Promise Zone Plan that includes area within the unincorporated boundaries of the county.

Rural and Tribal Promise Zone Designations

All the following must be present to be eligible for a Rural or Tribal Promise Zone designation: (1) Rural and Tribal Promise Zones must encompass one or more census tract(s) across a contiguous geography.[8] Rural applicants can define their boundaries by either census tracts or by county, where multiple counties are included. Tribal applicants can define boundaries which may encompass: one or more census tracts and nearby tribally-controlled areas; or reservations; or consortia of tribal and non-tribal jurisdictions; (2) Promise Zone boundaries must encompass a population of no more than 200,000 residents.[9] The population limit of 200,000 may not include any incorporated municipalities or unincorporated areas with individual populations greater than 50,000. Rural and tribal Promise Zones may fall in non-metro and metro counties; (3) The rate of overall poverty or Extremely Low Income rate (whichever is greater) [10] of

[5] Applicants are required to use the Promise Zone mapping tool to show both the boundary and the poverty levels. The mapping tool emails this information as a PDF to the applicant. This PDF, in its entirety, must be included in the application. See page 33 of the Application Guide for more information on the mapping tool.

[6] The reported poverty rate or Extremely Low Income rate will be rounded to the nearest .1%.

[7] Note the reference to county includes all county equivalents, such as parishes.

[8] For rural and tribal applications, Promise Zone boundaries that cross state lines and water borders can be considered contiguous.

[9] The population limit of 200,000 is intended to allow for regional collaboration among multiple communities of varying sizes and capacities. The rural eligibility criteria ensure, by definition, that rural Promise Zone applications cannot include communities over 50,000.

[10] The estimated concentration of Extremely Low Income (ELI) households represents an approximation of the percent of households within the specified area whose household combined income is below 30% of the HUD defined Area Median Income (AMI). This ELI indicator is calculated with data from the block group level from Comprehensive Housing Affordability Strategy

residents within the Promise Zone must be at or above 20 percent and the Promise Zone must contain at least one census tract with a poverty rate at or above 30 percent; [11] and (4) Local leadership must demonstrate commitment to the Promise Zone effort. Tribal applications must include commitment of tribal jurisdiction(s) represented. Proposed Promise Zone boundaries may cross UGLG or tribal area lines, but one Lead Applicant must be identified, and for cross-jurisdictional applications, commitment must be demonstrated by the leadership of all UGLGs or tribal areas involved.

Application Review

Applications for Promise Zone designations will be reviewed by representatives from USDA, HUD, the Department of Education, the Department of Justice, the Department of Health and Human Services, the Department of Labor, and the Department of Transportation. Additional Federal agencies and outside entities may contribute reviewers, depending upon the anticipated volume of applications.

Reviewers will first verify that the application is submitted by an applicant eligible for selection, by verifying that the proposed Promise Zone meets the qualifying criteria and that the Lead Applicant meets the eligibility criteria for the third round selection process. For urban applications, reviewers will confirm the subcategory in which each application should be considered (large Metropolitan Core Based Statistical Area (Metro CBSA) or small/medium Metro CBSA).[12]

Rural applications will be ranked against other rural applications, tribal applications will be ranked against other tribal applications, and urban applications will be ranked against other urban applications. An application must score a total of 75 points or more out of 100 points, to be considered for a designation (scoring 75 points or more means that applications fall within the ''competitive range''). Once scored, applications will be ranked competitively within each of the three Promise Zones categories and within the urban subcategories, as applicable.

HUD intends to designate at least one applicant from the small/medium Metro CBSA sub-category if the highest scoring small/medium Metro CBSA application is comparable in quality to other urban designees (within 10 points of the lowest scoring designee and not otherwise disqualified in accordance with all other requirements contained within this application guide). If the number of eligible applications determined to be eligible for the small/medium Metro CBSA subcategory is fewer than the greater of 1) five total applications, or 2) ten percent of the total number of urban applications received, then the applications in the small/medium Metro CBSA subcategory will be included in the large Metro CBSA subcategory and ranked against those applications.

Application Submission

Applications must provide a clear description of how the Promise Zone designation would accelerate and strengthen the community's efforts at comprehensive community revitalization. No substantive or technical corrections will be accepted or reviewed after the application deadline. The *Application Guide* can be found at *www.hud.gov/promisezones*. Applications are due via the Promise Zone online application portal on MAX Survey by 5:00 p.m. EST on February 23, 2016. Directions on how to access and use the application portal are available at *www.hud.gov/promisezones*.

If the Lead Applicant requests to use alternative data sources to meet the eligibility criteria or for the Need application section, a one-page explanation noting the alternative data source must be submitted to *promisezones@hud.gov* with the subject line ''Alternative data source request'' by February 2, 2016 at 5:00 p.m. EST to be approved by the relevant designating agency (HUD or USDA).

Dated: December 14, 2015.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2015–31884 Filed 12–17–15; 8:45 am]

BILLING CODE 4210–67–P

(CHAS) 2010. The final number included in this report for ''poverty rate'' is the greater of these two indicators.

[11] Applicants are required to use the Promise Zones mapping tool to determine the overall poverty rate. The mapping tool determines the overall poverty rate in two ways and uses the higher percentage.

[12] Urban application subcategories are defined as: Large Metro CBSA: The proposed Promise Zone community is located in a Metropolitan Core Based Statistical Area (Metro CBSA) with a total population of 500,000 or more. Small/medium Metro CBSA: The proposed Promise Zone community is located within the geographic boundaries of a Metro CBSA with a population of 499,999 or less. Additional information regarding Metropolitan Core Based Statistical Areas and Principal City can be found at *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b13-01.pdf*.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5871–N–03]

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2015

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on July 1, 2015, and ending on September 30, 2015.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the third quarter of calendar year 2015.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all

waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from July 1, 2015 through September 30, 2015. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the third quarter of calendar year 2015) before the next report is published (the fourth quarter of calendar year 2015), HUD will include any additional waivers granted for the third quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: December 11, 2015.

Helen R. Kanovsky,

General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development July 1, 2015 Through September 30, 2015

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The Norwalk Redevelopment Agency requested a waiver of 24 CFR 58.22(a) for the modernization of the Globe Theater in Norwalk, CT as part of the downtown Wall Street Redevelopment Plan.

Nature of Requirement: HUD's regulation at 24 CFR 58.22(a) provides that ''until the Request for Release of Funds and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity...if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.''

Granted by: Harriet Tregoning, Principal Deputy Assistance Secretary, Office of Community Planning and Development.

Date Granted: September 23, 2015.

Reason Waived: The project demonstrated that it would help promote economic development in downtown Norwalk. Further, the developer did not intentionally violate the regulation; no HUD funds were committed; and based on the environmental review and the HUD field inspection, it was concluded that granting a waiver for this project would not result in any unmitigated, adverse environmental impact.

Contact: Lauren B. McNamara, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7212 Washington, DC 20410, telephone (202) 402–4466.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The City of Simi Valley, CA requested a waiver of 24 CFR 58.22(a) for the construction of the Camino Esperanza Apartments that will feature 30 HOME-assisted units together with tax-credit financing.

Nature of Requirement: HUD's regulation at 24 CFR 58.22(a) provides that ''until the Request for Release of Funds and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity . . . if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.''

Granted by: Harriet Tregoning, Principal Deputy Assistance Secretary, Office of Community Planning and Development.

Date Granted: September 16, 2015.

Reason Waived: The project demonstrated it would help meet the needs of low-income seniors and seniors with disabilities for affordable housing, and that the project would not be feasible without HOME financing. Further, the recipient did not intentionally violate the regulations; no HUD funds were committed; and based on the environmental assessment and the HUD field inspection, it was concluded that granting a waiver for this project would not result in any unmitigated, adverse environmental impact. The process ensured the protection of wetlands on one end of the parcel and the protection of the senior citizens from railroad noise via a noise wall.

Contact: Lauren B. McNamara, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7212, Washington, DC 20410, telephone (202) 402–4466.

• *Regulation:* 24 CFR 91.105(c)(2).

Project/Activity: The City of Detroit, MI requested a waiver of 24 CFR 91.105(c)(2) to shorten the comment period for the use of $8.9 million in Community Development Block Grant (CDBG) Disaster Recovery and other funding that was originally appropriated for Federal Fiscal Year 2013. The funds would assist with planning and implementation costs associated with resilient projects in the Brightmoor, Mt. Elliot and McDougall-Hunt neighborhoods, stemming from August 2014 flooding damage.

Nature of Requirement: HUD's regulation 24 CFR 91.105(c)(2) requires that citizens be provided with reasonable notice and an opportunity to comment on substantial amendments to its consolidated plan. The citizen participation plan requires that citizens be given no less than 30 days to comment on substantial amendments before

they are implemented. The city requested the public comment period for the substantial amendment be shortened from 30 days to 7 days. The period of time for the obligation of the funding that was originally appropriated for Federal Fiscal Year 2013 expired on September 30, 2015, under the annual appropriations act.

Granted by: Harriet Tregoning, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: August 25, 2015.

Reason Waived: HUD has determined that better planning and a reduced comment period would increase the pace of the city's recovery and ensure that the CDBG funds and other funding will be used effectively. Some of the $8.9 million in CDBG funds being made available to the city were appropriated in Federal Fiscal Year 2013, and the period for obligation of that funding expired on September 30, 2015. The city could not complete its citizen participation and amendment process and enter into a grant agreement before September 30th with a 30-day comment period. By granting the city's request to waive the requirement at 24 CFR 91.105(c)(2) both the city and the Department would be able to ensure the obligation of these CDBG funds prior to their expiration on September 30, 2015 and make it likely that the city will fulfill its citizen participation requirements, thereby ensuring that the congressional intent of using the funds consistent with the purposes of the Act will be achieved.

Contact: Steve Johnson, Director of Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7282, Washington, DC 20410, telephone (202) 402–4548.

• *Regulation:* 24 CFR 92.500 (d)(1)(B) and 24 CFR 92.500(d)(1)(C)

Project/Activity: Jefferson Parish Consortium, LA requested a waiver of 24 CFR 92.500(d)(1)(B) and 24 CFR 92.500(d)(1)(C) to provide additional time to commit and expend its annual allocation of HOME funds in order to facilitate the ongoing recovery from the devastation caused by Hurricane Isaac.

Nature of Requirements: HUD's regulation at 24 CFR 92.500(d)(1)(B) requires a HOME participating jurisdiction to commit its annual allocation of HOME funds within 24 months after HUD notifies the participating jurisdiction that it has executed the HOME Investment Partnership Agreement. HUD's regulation at 24 CFR 92.500(d)(1)(C) requires a HOME participating jurisdiction to expend its annual allocation of HOME funds within five years after HUD notifies the participating jurisdiction that it has executed the HOME Investment Partnership Agreement.

Granted by: Harriet Tregoning, Principal Deputy Assistant Secretary, Office of Community Planning & Development.

Date Granted: July 24, 2015

Reasons Waived: As a result of Hurricane Isaac, HUD suspended the FY 2011 deadline for the commitment of HOME funds and the FY 2008 expenditure requirement. The Consortium has requested a suspension of its September 30, 2014, commitment deadline and waiver of its October 31, 2014, expenditure deadline. The Consortium currently has a commitment shortfall of $1,453,977 and an expenditure shortfall of $2,679,758. The suspension of these deadlines would enable the Consortium to retain the HOME funds otherwise subject to recapture.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–7000, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.500(d)(1)(C).

Project/Activity: The Commonwealth of Puerto Rico requested a waiver of 24 CFR 92.500(d)(1)(C), which requires that a participating jurisdiction expend its annual allocation of HOME Funds within five years after HUD notifies the participating jurisdiction that HUD has executed the jurisdiction's HOME Investment Partnership Agreement.

Nature of Requirement: The regulation at 24 CFR 92.500(d)(1)(C) requires HUD to reduce or recapture any HOME funds in a participating jurisdiction's (PJ's) HOME Investment Trust Fund that are not expended within five years of HUD's notification to the PJ that is has executed its HOME grant agreement. The Commonwealth failed to disburse $12,177,614 of HOME grant funds by its July 31, 2015, deadline.

Granted by: Harriet Tregoning, Principal Deputy Assistant Secretary, Office of Community Planning and Development.

Date Granted: July 24, 2015.

Reason Waived: In August and October of 2014, the Commonwealth repaid large amounts to its HOME Program Treasury Account to resolve HUD Office of Inspector General (OIG) audit findings that it expended HOME funds for ineligible expenditures. Because of the size and timing of these repayments, the Commonwealth did not have adequate time to commit the repaid funds to new affordable housing projects and expend them for costs associated with those projects. HUD granted the waiver to permit the Commonwealth additional time to expend funds on new affordable housing projects, because deobligating $12,177,614 under these circumstances would create an undue hardship of low-income residents of the Commonwealth who need standard, affordable housing.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7164, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.500(d)(1)(C).

Project/Activity: New Castle County, DE requested a waiver of 24 CFR 92.500(d)(1)(C), which requires that a participating jurisdiction expend its annual allocation of HOME Funds within five years after HUD notifies the participating jurisdiction that HUD has executed the jurisdiction's HOME Investment Partnership Agreement.

Nature of Requirement: The regulation at 24 CFR 92.500(d)(1)(C) requires HUD to reduce or recapture any HOME funds in a participating jurisdiction's (PJ's) HOME Investment Trust Fund that are not expended within five years of HUD's notification to the PJ that is has executed its HOME grant agreement. The County failed to disburse $412,204 of HOME grant funds by its June 30, 2015, deadline.

Granted by: Harriet Tregoning, Principal Deputy Assistant Secretary, Office of Community Planning and Development.

Date Granted: July 24, 2015.

Reason Waived: In April, 2015, the County repaid a large amount to its HOME Program Treasury Account to resolve monitoring findings related to two rental housing projects that were not completed. Because the funds were repaid just 2 months before the expenditure deadline, it was not possible for the County to commit the funds to a new affordable housing project and expend the funds for an eligible cost associated with that project. HUD granted the waiver to permit the County sufficient time to commit and expend the funds on new affordable housing projects that will serve low-income residents.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community and Planning Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7164, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.500(d)(1)(C).

Project/Activity: The City of Buffalo, NY requested a waiver of 24 CFR 92.500(d)(1)(C), which requires that a participating jurisdiction expend its annual allocation of HOME funds within five years after HUD notifies the participating jurisdiction that HUD has executed the jurisdiction's HOME Investment Partnership Agreement.

Nature of Requirement: The regulation at 24 CFR 92.500(d)(1)(C) requires HUD to reduce or recapture any HOME funds in a participating jurisdiction's HOME Investment Trust Fund that are not expended within five years of HUD's notification to the participating jurisdiction that is has executed its HOME grant agreement. The City failed to disburse $3,072,861 of HOME grant funds by its June 30, 2015, deadline.

Granted by: Harriet Tregoning, Principal Deputy Assistant Secretary, Office of Community Planning and Development.

Date Granted: July 24, 2015.

Reason Waived: The City's ability to expend HOME funds was suspended for more than a year pending resolution of HUD monitoring findings. HUD granted the waiver to permit the City sufficient time to commit and expend the funds on new affordable housing projects that will serve low-income residents.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7164, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.500(d)(1)(C).

Project/Activity: The County of Westchester, NY requested a waiver of 24 CFR 92.500(d)(1)(C), which requires that a participating jurisdiction expend its annual

allocation of HOME funds within five years after HUD notifies the participating jurisdiction that HUD has executed the jurisdiction's HOME Investment Partnership Agreement.

Nature of Requirement: The regulation at 24 CFR 92.500(d)(1)(C) requires HUD to reduce or recapture any HOME funds in a participating jurisdiction's HOME Investment Trust Fund that are not expended within five years of HUD's notification to the participating jurisdiction that is has executed its HOME grant agreement. The County failed to disburse $141,723 of HOME grant funds by its July 31, 2014, deadline.

Granted by: Harriet Tregoning, Principal Deputy Assistant Secretary, Office of Community Planning and Development.

Date Granted: July 24, 2015.

Reason Waived: In April, 2014, the County repaid a large sum of HOME funds to its HOME Program Treasury Account and did not have adequate time to expend these funds on new affordable housing projects. Because the funds were repaid just 2 months before the expenditure deadline, it was not possible for the County to commit the funds to a new affordable housing project and expend the funds for an eligible cost associated with that project. HUD granted the waiver to permit the County sufficient time to commit and expend the funds on new affordable housing projects that will serve low-income residents.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7164, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 570.200(g).

Project/Activity: The City of Detroit, MI requested a waiver of 24 CFR 570.200(g) to allow more than 20 percent of Community Development Block Grant funds to be used to assist with planning costs associated with resilient projects in the Brightmoor, Mt. Elliot and McDougall-Hunt neighborhoods, stemming from August 2014 flooding damage.

Nature of Requirement: HUD's regulation at 24 CFR 570.200(g) (Limitation on planning and administrative costs) provides that no more than 20 percent of the sum of any grant, plus program income, shall be expended for planning and program administrative costs, as defined in §§ 570.205 and 507.206, respectively. Recipients shall conform with this requirement by limiting the amount of CDBG funds obligated for planning plus administration during each program year to an amount no greater than 20 percent of the sum of its entitlement grant made for that program year (if any) plus the program income received by the recipient and its subrecipients (if any) during that program year.

Granted by: Harriet Tregoning, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: August 25, 2015.

Reason Waived: HUD determined that better planning would increase the pace of the city's recovery and ensure that financial resources such as CDBG–DR funding will be used effectively. By granting the city's request to waive the requirements at § 570.200(g) the city would be able to carry out specific planning activities that would have a more immediate impact on the disaster-affected areas. In addition, the focus on the use of the CDBG funds for pre-development costs is consistent with the Federal Government's Build America initiative, a component of which is encouraging grantees to use CDBG funds to promote infrastructure development.

Contact: Steve Johnson, Director of Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7282, Washington, DC 20410, telephone (202) 402–4548.

II. Regulatory Waivers Granted by the Office of Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Cooper Road Plaza Apartments, FHA Project Number 064–35418, Shreveport, LA. Post 525 Cooper Road Plaza, Incorporated (owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loans on the subject project.

Nature of Requirement: The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states ''Assistance that has been paid to a project Owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: July 2, 2015.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan. Deferring the loan payment will preserve this affordable housing resource for an additional 20 years through the execution and recordation of a Rental Use Agreement.

Contact: Kimberly Britt, Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6178, Washington, DC 20410, telephone (202) 402–7576.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Knights of St. John, FHA Project Number 083–35017T, Louisville, KY; KSJ Corporation of Louisville, Kentucky (Owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan on the project.

Nature of Requirement: The regulation at 24 CFR 219.220(b)(1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states ''Assistance that has been paid to a project Owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: July 17, 2015.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan. Deferring the loan payment will preserve this affordable housing resource for an additional 20 years through the execution and recordation of a Rental Use Agreement.

Contact: Marilynne Hutchins, Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6174, Washington, DC 20410, telephone (202) 402–4323.

Regulation: 24 CFR 219.220(b).

Project/Activity: Smith Tower, FHA Project Number: 126–SH009, Vancouver, WA; Mid-Columbia Manor, Incorporated seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan

Nature of Requirement: The regulation at 24 CFR 219.220(b)(1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects states, ''Assistance that has been paid to a project Owner under this subpart must be repaid at the earlier of expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: July 28, 2015.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan. Deferring the loan payment will preserve this affordable housing resource for an additional 20 years through the execution and recordation of a Rental Use Agreement.

Contact: Kimberly Britt, Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6174, Washington, DC 20410, telephone (202) 402–7576.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Canterbury House, FHA Project Number 0540SH001, Charleston, SC; Episcopal Diocesan Housing, Incorporated seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan.

Nature of Requirement: The regulation at 24 CFR 219.220(b)(1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects states, ''Assistance that has been paid to a project Owner under this subpart must be repaid at the earlier of expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: July 28, 2015.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan. Deferring the

loan payment will preserve this affordable housing resource for an additional 20 years through the execution and recordation of a Rental Use Agreement.

Contact: Frank Tolliver, Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6174, Washington, DC 20410, telephone (202) 402–3821.

• *Regulation:* 24 CFR 219.220(b) (1995).

Project/Activity: Berrien Homes is a 160-unit project located in Benton Harbor, MI (FHA–023–071N1) that is being purchased by Berrien Homes Limited Dividend Housing Association Limited Partnership. The project consists of 15 one-bedroom units, 45 two-bedroom units, 60 three-bedroom units, and 40 four-bedroom units. The 30 year mortgage was insured pursuant to FHA 223(a)(7) which was a refinance of Section 236 of the National Housing Act and was endorsed on August 27, 2010, in the amount of $455,400 at 6.25 percent interest. The Flexible Subsidy Operating Assistance Loan was awarded in 1987 in the amount of $2,964,600 with 1 percent non-compounding annual interest. As of December 2014, the accrued interest was $796,546. The 2010 Mark to Market (M2M) transaction subordinated the Flexible Subsidy Note to the FHA Insured first mortgage, the HUD-held Mortgage Restructuring Note and the Green Retrofit Loan, and made it due and payable upon a sale of the Property or the prepayment of the M2M originated debt. The purchaser requested the re-subordination of the Flexible Subsidy Loan for a new 30-year term to facilitate the transaction.

Nature of Requirement: The regulation at 24 CFR 219.220(b)(1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project (Transfer of Physical Assets (TPA)) if the Secretary so requires at the time of approval of the TPA.''.

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 13, 2015.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan to allow the much needed preservation and moderate rehabilitation of the project. The project will be preserved as an affordable housing resource of Benton Harbor, MI.

Contact: Patricia M. Burke, Acting Branch Chief, Office of Recapitalization, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6230, Washington, DC 20410, telephone (202) 402–3460.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Tubman Towers, FHA Project No. 043–35034T, Springfield, Ohio; Lutheran Social Services of Central Ohio Tubman Towers seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan.

Nature of Requirement: The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects states, ''Assistance that has been paid to a project Owner under this subpart must be repaid at the earlier of expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 14, 2015.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan when it became due upon the project's mortgage maturity. Deferring the loan payment will preserve this affordable housing resource for an additional 35 years through the execution and recordation of a Rental Use Agreement.

Contact: James Wyatt, Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6172, Washington DC 20410, telephone (202) 402–2519.

• *Regulation:* 24 CFR 232.7.

Project/Activity: Oak Creek Alzheimer & Dementia Care Center (FHA No. 121–22178) is a memory care facility. The facility does not meet the requirements of 24 CFR 232.7 ''Bathroom'' of FHA's regulations. The project is located in Castro Valley, CA.

Nature of Requirement: The regulation mandates in a board and care home or assisted living facility that the not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 4, 2015.

Reason Waived: The project is for memory care, all rooms have half-bathrooms and the resident to full bathroom ratio is 9.5: 1. The project meets the State of California's licensing requirements for bathing and toileting facilities.

Contact: Vance T. Morris, Operations Manager, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20401, telephone (202) 402–2419.

• *Regulation:* 24 CFR 266.200(b)(2).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Substantial Rehabilitation Defined. Housing Opportunities Commission (HOC) of Montgomery County, Maryland.

Nature of Requirement: HUD's regulation at 24 CFR 266.200(b)(2) defines substantial rehabilitation as any combination of covered work to the existing facilities of a project that aggregates to at least 15 percent of project's value after the rehabilitation and that results in material improvement of the project's economic life, livability, marketability, and profitability. Covered work includes replacement, alteration and/or modernization of building spaces, long-lived building or mechanical system components, or project facilities. The following changes apply to both Level I and II Housing Finance Agencies Definition of Substantial Rehabilitation (S/R) revised as: work that exceeds either: a) $15,000 times the high cost factor ''as adjusted by HUD for inflation'', or b) replacement of two or more building systems. 'Replacement' is when cost of replacement work exceeds 50 percent of the cost of replacing the entire system. The base limit is revised to $15,000 per unit for 2015, and will be adjusted annually based on the percentage change published by the Consumer Financial Protection Bureau, or other inflation cost index published by HUD. This is consistent with proposed changes in MAP Guide.

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 26, 2015.

Reason Waived: The waiver was necessary to effectuate the Federal Financing Bank (FFB) Risk Sharing Initiative between Housing and Urban Development and the Treasury Department/FFB announced in Fiscal Year 2014. The waiver is consistent with changes Multifamily is seeking now to the regulation and as previously approved in March 2015 for the first 11 HFAs participating in the Initiative. Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 266.200(b)(2).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Substantial Rehabilitation Defined. Minnesota Housing Finance Agency (MHFA).

Nature of Requirement: HUD's regulation at 24 CFR 266.200(b)(2) defines substantial rehabilitation as any combination of covered work to the existing facilities of a project that aggregates to at least 15 percent of project's value after the rehabilitation and that results in material improvement of the project's economic life, livability, marketability, and profitability. Covered work includes replacement, alteration and/or modernization of building spaces, long-lived building or mechanical system components, or project facilities. The following changes apply to both Level I and II Housing Finance Agencies Definition of Substantial Rehabilitation (S/R) revised as: work that exceeds either: a) $15,000 times the high cost factor ''as adjusted by HUD for inflation'', or b) replacement of two or more building systems. 'Replacement' is when cost of replacement work exceeds 50 percent of the cost of replacing the entire system. The base limit is revised to $15,000 per unit for 2015, and will be adjusted annually based on the percentage change published by the Consumer Financial Protection Bureau, or other inflation cost index published by HUD. This is consistent with proposed changes in MAP Guide.

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: September 22, 2015.

Reason Waived: The waiver was necessary to effectuate the Federal Financing Bank (FFB) Risk Sharing Initiative between Housing and Urban Development and the Treasury Department/FFB announced in Fiscal Year 2014. The waivers are consistent with changes Multifamily is seeking now to the regulation and as previously approved in March 2015 for the first 11 HFAs participating in the Initiative. Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 266.200(c)(2).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Equity Take-Outs. Housing Opportunities Commission (HOC) of Montgomery County, Maryland

Nature of Requirement: HUD's regulation at 24 CFR 266.200(c)(2) allows existing projects to be refinanced if certain criteria are met. If the property is subject to an HFA financed loan to be refinanced and such refinancing will result in the preservation of affordable housing, refinancing of these properties is permissible if project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on the average occupancy in the project over the most recent 12 months, and the mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested. The HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, the cost of repairs and reasonable transaction costs as determined by the Commissioner. If a loan to be refinanced has been in default within the 12 months prior to application for refinancing, the HFA must assume not less than 50 percent of the risk. Equity take-outs for existing projects (refinance transactions) permit the insured mortgage to exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs or ''equity take-outs'' in refinances of HFA-financed projects and those outside of HFA's portfolio if the result is preservation with the following conditions: (1) Occupancy is no less than 93 percent for previous 12 months; (2) no defaults in the last 12 months of the HFA loan to be refinanced; (3) a 20 year affordable housing deed restriction placed on title that conforms to the 542(c) statutory definition; (4) a Capital Needs Assessment (CNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and (5) for projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts, the Owner agrees to renew HAP contract(s) for 20 year term, (subject to appropriations and statutory authorization, etc.), and existing and post-refinance HAP residual receipts are set aside to be used to reduce future HAP payments.

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 26, 2015.

Reason Waived: The waiver was necessary to effectuate the Federal Financing Bank (FFB) Risk Sharing Initiative between Housing and Urban Development and the Treasury Department/FFB announced in Fiscal Year 2014. The waiver is consistent with changes Multifamily is seeking now to the regulation and as previously approved in March 2015 for the first 11 HFAs participating in the Initiative. Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 266.200(c)(2).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Equity Take-Outs. Minnesota Housing Finance Agency (MHFA).

Nature of Requirement: HUD's regulation at 24 CFR 266.200(c)(2) allows existing projects to be refinanced if certain criteria are met. If the property is subject to an HFA financed loan to be refinanced and such refinancing will result in the preservation of affordable housing, refinancing of these properties is permissible if project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on the average occupancy in the project over the most recent 12 months, and the mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested. The HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, the cost of repairs and reasonable transaction costs as determined by the Commissioner. If a loan to be refinanced has been in default within the 12 months prior to application for refinancing, the HFA must assume not less than 50 percent of the risk. Equity take-outs for existing projects (refinance transactions) permit the insured mortgage to exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs or ''equity take-outs'' in refinances of HFA-financed projects and those outside of HFA's portfolio if the result is preservation with the following conditions: (1) Occupancy is no less than 93% for previous 12 months; (2) no defaults in the last 12 months of the HFA loan to be refinanced; (3) a 20 year affordable housing deed restriction placed on title that conforms to the 542(c) statutory definition; (4) a Capital Needs Assessment (CNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and (5) for projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts, the Owner agrees to renew HAP contract(s) for 20 year term, (subject to appropriations and statutory authorization, etc.), and existing and post-refinance HAP residual receipts are set aside to be used to reduce future HAP payments.

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2015.

Reason Waived: The waiver was necessary to effectuate the Federal Financing Bank (FFB) Risk Sharing Initiative between Housing and Urban Development and the Treasury Department/FFB announced in Fiscal Year 2014. The waiver is consistent with changes Multifamily is seeking now to the regulation and as previously approved in March 2015 for the first 11 HFAs participating in the Initiative. Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 266.200(d).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Underwriting of Projects with Section 8 HAP Contracts. Housing Opportunities Commission (HOC) of Montgomery County, Maryland

Nature of Requirement: HUD's regulation at 24 CFR 266.200(d) allows projects receiving project-based assistance under section 8 of the U.S. Housing Act of 1937 or other rental subsidies to be incurred only if the mortgage does not exceed an amount supportable by the lower of the unit rents being or to be collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market that are similar in amenities and location to the project. For refinancing of Section 202 projects, and for Public Housing Authority (PHA) projects converting to Section 8 through RAD, the Department permitted HOC to underwrite the financing using current or to be adjusted project-based Section 8 assisted rents, even though they exceed the market rates. This is consistent with HUD Housing Notice 04–21, ''Amendments to Notice 02–16: Underwriting Guidelines for Refinancing of Section 202, and Section 202/8 Direct Loan Repayments'', which grants authority only to those lenders refinancing with mortgage programs under the National Housing Act.

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2015.

Reason Waived: The waiver was necessary to effectuate the Federal Financing Bank

(FFB) Risk Sharing Initiative between Housing and Urban Development and the Treasury Department/FFB announced in Fiscal Year 2014. The waiver is consistent with changes Multifamily is seeking now to the regulation and as previously approved in March 2015 for the first 11 HFAs participating in the Initiative. Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 266.200(d).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Underwriting of Projects with Section 8 HAP Contracts. Minnesota Housing Finance Agency (MHFA).

Nature of Requirement: HUD's regulation at 24 CFR 266.200(d) allows projects receiving project-based assistance under section 8 of the U.S. Housing Act of 1937 or other rental subsidies to be incurred only if the mortgage does not exceed an amount supportable by the lower of the unit rents being or to be collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market that are similar in amenities and location to the project. For refinancing of Section 202 projects, and for Public Housing Authority (PHA) projects converting to Section 8 through RAD, the Department permitted MHFA to underwrite the financing using current or to be adjusted project-based Section 8 assisted rents, even though they exceed the market rates. This is consistent with HUD Housing Notice 04–21, ''Amendments to Notice 02–16: Underwriting Guidelines for Refinancing of Section 202, and Section 202/8 Direct Loan Repayments'', which grants authority only to those lenders refinancing with mortgage programs under the National Housing Act.

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2015.

Reason Waived: The waiver was necessary to effectuate the Federal Financing Bank (FFB) Risk Sharing Initiative between Housing and Urban Development and the Treasury Department/FFB announced in Fiscal Year 2014. The waiver is consistent with changes Multifamily is seeking now to the regulation and as previously approved in March 2015 for the first 11 HFAs participating in the Initiative. Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 266.620(e).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Termination of Mortgage Insurance. Housing Opportunities Commission (HOC) of Montgomery County, Maryland.

Nature of Requirement: HUD's regulation at 24 CFR 266.620(e) requires termination of the Contract of Insurance if the HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage or while the Contract of Insurance is in existence. As required by the Initiative, Housing Opportunities Commission (HOC) of Montgomery County, Maryland agreed to indemnify HUD for all amounts paid to FFB if ''the HFA or its successors commit fraud, or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage, or while the Contract of Insurance is in existence''. Only Level I HFAs are eligible for FFB financing, thereby ensuring the HFA maintains financial capacity to perform under the indemnification agreement.

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 26, 2015.

Reason Waived: The waiver was necessary to effectuate the Federal Financing Bank (FFB) Risk Sharing Initiative between Housing and Urban Development and the Treasury Department/FFB announced in Fiscal Year 2014. The waiver is consistent with changes Multifamily is seeking now to the regulation and as previously approved in March 2015 for the first 11 HFAs participating in the Initiative. Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 266.620(e).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Termination of Mortgage Insurance. Minnesota Housing Finance Agency (MHFA).

Nature of Requirement: HUD's regulation at 24 CFR 266.620(e) requires termination of the Contract of Insurance if the HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage or while the Contract of Insurance is in existence. As required by the Initiative, Minnesota Housing Finance Agency agrees to indemnify or otherwise reimburse HUD in a manner acceptable to the Commissioner for all amounts paid to FFB if ''the HFA or its successors commit fraud, or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage, or while the Contract of Insurance is in existence''. MHFA is not permitted to indemnify HUD under current Minnesota law, and provided an opinion letter from its Office of the Attorney General to that effect. However, MHFA agrees to reimburse HUD for amounts paid by HUD to FFB. In addition, MHFA will pay HUD any related costs and collection fees as ordered by a court of competent jurisdiction.

Only Level I HFAs are eligible for FFB financing, thereby ensuring the HFA maintains financial capacity to perform under the indemnification agreement.

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2015.

Reason Waived: The waiver was necessary to effectuate the Federal Financing Bank (FFB) Risk Sharing Initiative between Housing and Urban Development and the Treasury Department/FFB announced in Fiscal Year 2014. The waiver is consistent with changes Multifamily is seeking now to the regulation and as previously approved in March 2015 for the first 11 HFAs participating in the Initiative. Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 266.200(g).

Project/Activity: California Housing Finance Agency (CalHFA), Ocean View Senior Apartments, Pacifica, California.

Nature of Requirement: HUD's regulation at 24 CFR 266.200(g) defines an Elderly Project as ''Projects or parts of projects specifically designed for the use and occupancy by elderly families.'' This regulatory section also provides that ''An elderly family means any household where the head or spouse is 62 years of age or older, and also and single person who is 62 years of age or older.''

Granted by: Edward T. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 29, 2015.

Reason Waived: Ocean View Apartment is an existing 100-unit senior housing apartment community located in Pacifica, California, constructed in 1973. Originally financed by a HUD mortgage and operated as affordable senior housing, the former owner prepaid the mortgage in 2000 and had plans to displace resident and convert the Project to market rate housing. CalHFA has asked to be allowed to finance the Project under the Risk Sharing Program restricted to elderly families as defined in the Risk Sharing regulation, with an exception for the approximately 20 existing underage households who currently reside in the Project. In order to protect these low-income households from being forced to relocate, CalHFA sites the Francisco Bay Area as the

extraordinarily high cost area to live with few other affordable senior communities where these underage low-income residents might find housing. CalHFA has requested that they be permitted to remain in residence at the Project. As these younger households move out, or their members become 62, all units will be occupied by a head of household age 62 or older, but not prohibit occupancy based exclusively on age by other family members less than age 62, including children under age 18 in accordance with the requirements of 24CFR Part 266.

Contact: Theodore K. Toon, Director, FHA Multifamily Production, Office of Multifamily Housing Programs, Office of Production, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pollywog Creek Senior Housing, Labelle, FL, Project Number: 066–EE120/FL29–S101–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 2, 2015.

Reason Waived: Delays occurred due to issues with the sale of the land, amendment of some easements through several governmental entities, and additional time is needed for the project to initially close.

Contact: Alicia Anderson, Director, Branch Chief, Grants and New Funding, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 402–5787.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Montclair 4, Montclair, CA, Project Number: 143–HD018/CA43–Q091–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 2, 2015.

Reason Waived: Additional time was needed for review of the closing documents, the Office of General Counsel to schedule the closing, and for the project to achieve an initial closing.

Contact: Alicia Anderson, Branch Chief, Grants and New Funding, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 402–5787.

• *Regulation:* 24 CFR 891.100(d).

*Project/Activity:*Jefferson Commons, New London, CT, Project Number: 017–HD047/CT26–Q101–001;

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 14, 2015.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Alicia Anderson, Branch Chief, Grants and New Funding, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 402–5787.

• *Regulation:*24 CFR 891.165.

Project/Activity: H. Fletcher Brown, Wilmington, DE, Project Number: 032–EE024/DE26–S101–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 14, 2015.

Reason Waived: Additional time was needed to begin the firm commitment application.

Contact: Alicia Anderson, Branch Chief, Grants and New Funding, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 402–5787.

• *Regulation:* 24 CFR 891.165.

Project/Activity: J. Michael Fitzgerald Apartments, Chicago, IL, Project Number: 071–EE255/IL06–S101–016.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2015.

Reason Waived: Additional time was needed to process the firm commitment package for this mixed finance project.

Contact: Alicia Anderson, Branch Chief, Grants and New Funding, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 402–5787.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Brown County Housing Authority (KS168).

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: July 28, 2015.

Reason Waived: The housing authority is a Section 8 only and nonprofit entity and its program year end and fiscal year end are not the same, which caused scheduling issues and adversely affected the timing of submission of the audited financial statement. On the basis of this information, the housing authority was granted until August 31, 2015 to complete and submit the audited financial statement.

Contact: Dee Ann R. Walker, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7908.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Gary Housing Authority (IN011).

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 10, 2015.

Reason Waived: The housing authority requested a waiver of its audited financial data submission and the financial indicator scoring thresholds under the Public Housing Assessment System (PHAS) on the basis that its leadership has changed almost annually making it very difficult to timely meet deadlines. The housing authority advised that its newly hired Executive Director was working diligently to address the operational challenges of the housing authority and needed a little more time to complete and submit the financial statement.

Contact: Dee Ann R. Walker, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7908.

• *Regulation:* 24 CFR 905.314.

Project/Activity: Flint Housing Commission (FHC) requested a good cause waiver to transfer 35 percent of its 2015 Capital Fund Formula Grant into BLI 1406–Operations, in part to fund certain anticrime measures.

Nature of Requirement: Public housing agencies (PHAs) may use Operating Funds for anticrime and antidrug activities, including costs of providing adequate security for public housing residents, including above-baseline service agreements. HUD's Fiscal Year 2015 appropriations allows HUD, through waiver, to use Capital Funds for this Operating Fund activity. (See

Public Law 113–235, 128 Stat. 2130, approved December 16, 2015, at 128 Stat. 2734–2735.)

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 16, 2015.

Reason Waived: Flint Housing Commission's letter of May 2015 included all the information provided by the Capital Fund Processing Guidance to make a good cause determination. Specifically, FHC requested $583, 513 to be transferred to Budget Line Item 1460 for Operations. FHC provided recent crime data at the developments and indicated the specific activities for which it plans to use the funds.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20140, telephone (202) 402–4181.

• *Regulation:* 24 CFR 982.503(a)(3).

Project/Activity: Housing Authority of the County of Los Angeles (HACoLA), Los Angeles, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.503(a)(3) states that the public housing agency's (PHA) voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole fair market rent (FMR) area, or may establish a separate payment standard amount for each designated part of the FMR area.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: July 2, 2015.

Reason Waived: HACLA sought to establish a different payment standard schedule at 110 percent of the FMR for participants in its HUD–VASH program because HUD–VASH families are traditionally more difficult to house and affordable housing is in short supply.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(a)(3).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA), Los Angeles, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.503(a)(3) states that the PHA's voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole fair market rent (FMR) area, or may establish a separate payment standard amount for each designated part of the FMR area.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2015.

Reason Waived: HACLA sought to establish a different payment standard schedule at 120 percent of the 2015 FMRs for participants in its HUD–VASH program because HUD–VASH families are traditionally more difficult to house and affordable housing is in short supply.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(a)(3).

Project/Activity: Home Forward (HF), Portland, OR.

Nature of Requirement: HUD's regulation at 4 CFR 982.503(a)(3) states that the public housing agency's (PHA) voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole fair market rent (FMR) area, or may establish a separate payment standard amount for each designated part of the FMR area.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2015.

Reason Waived: HF sought to establish a different payment standard schedule at 120 percent of the 2015 FMRs for participants in its HUD–VASH program because HUD–VASH families are traditionally more difficult to house and affordable housing is in short supply.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(a)(3).

Project/Activity: Linn-Benton Housing Authority (LBHA), Albany, OR.

Nature of Requirement: HUD's regulation at 24 CFR 982.503(a)(3) states that the public housing agency's (PHA) voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole fair market rent (FMR) area, or may establish a separate payment standard amount for each designated part of the FMR area.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 12, 2015.

Reason Waived: LBHA sought to establish a different payment standard schedule at 120 percent of the 2015 FMRs for participants in its HUD–VASH program because HUD–VASH families are traditionally more difficult to house and affordable housing is in short supply.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(a)(3).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.503(a)(3) states that the public housing agency's (PHA) voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole fair market rent (FMR) area, or may establish a separate payment standard amount for each designated part of the FMR area.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2015.

Reason Waived: SFHA sought to establish a different payment standard schedule at 120 percent of the 50th percentile 2015 FMRs for participants in its HUD–VASH program occupying single-room occupancy, zero-, and one-bedroom units and 100 percent of the 50th percentile FMRs for all other bedroom sizes because HUD–VASH families are traditionally more difficult to house and affordable housing in the unit sizes noted above are in short supply.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(a)(3).

Project/Activity: Fort Collins Housing Authority (FCHA), Fort Collins, CO.

Nature of Requirement: HUD's regulation at 24 CFR 982.503(a)(3) states that the public housing agency's (PHA) voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole fair market rent (FMR) area, or may establish a separate payment standard amount for each designated part of the FMR area.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: September 16, 2015.

Reason Waived: FCHA sought to establish a different payment standard schedule at 120 percent of the 50th percentile 2015 FMRs for participants in its HUD–VASH program occupying one- and two-bedroom units since these units are traditionally more difficult to find.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Bellingham/Whatcom County Housing Authorities (BWCHA), Bellingham, WA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: July 28, 2015.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to move to a new unit where 24-hour services and care givers are provided. To provide this reasonable accommodation so that the client could move to this new unit and pay no more than 40 percent of his adjusted income toward the family share, the BWCHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: July 29, 2015.

Reason Waived: The applicant, who was a homeless veteran with disabilities, required an exception payment standard to move to a unit that met his needs. To provide this reasonable accommodation so that the client could move into this current unit and pay no more than 40 percent of his adjusted income toward the family share, the SFHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the County of Alameda (HACA), Hayward, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2015.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to remain in her current unit that meets her needs without becoming rent burdened. To provide this reasonable accommodation so that the client could remain in this unit and pay no more than 40 percent of her adjusted income toward the family share, the HACA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410; telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the County of Alameda (HACA), Hayward, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2015.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to remain in her current unit that meets her needs without becoming rent burdened. To provide this reasonable accommodation so that the client could remain in this unit and pay no more than 40 percent of her adjusted income toward the family share, the HACA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the County of Alameda (HACA), Hayward, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2015.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to remain in her current unit that meets her needs without becoming rent burdened. To provide this reasonable accommodation so that the client could remain in this unit and pay no more than 40 percent of her adjusted income toward the family share, the HACA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: City of Roseville Housing Authority (CRHA), Roseville, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2015.

Reason Waived: The participant, who is disabled, required an exception payment standard to remain in his unit without being rent burdened. To provide this reasonable accommodation so that the client could remain in his current unit and pay no more than 40 percent of adjusted income toward the family share, CRHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the County of Alameda (HACA), Hayward, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2015.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to remain in his current unit that meets his needs without becoming rent burdened. To provide this reasonable accommodation so that the client

could remain in his current unit and pay no more than 40 percent of his adjusted income toward the family share, the HACA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the County of Alameda (HACA), Hayward, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2015.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to remain in his current unit that meets his needs without becoming rent burdened. To provide this reasonable accommodation so that the client could remain in his current unit and pay no more than 40 percent of his adjusted income toward the family share, the HACA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramirez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 12, 2015.

Reason Waived: The applicant, who was a homeless veteran with disabilities, required an exception payment standard to move to a unit that met his needs. To provide this reasonable accommodation so that the client could move to this current unit and pay no more than 40 percent of his adjusted income toward the family share, the SFHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Colorado Department of Local Affairs (CDLA), Denver, CO.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: September 15, 2015.

Reason Waived: A voucher applicant, who is a person with disabilities, required an exception payment standard to move to accessible unit that met her needs. To provide this reasonable accommodation so that the applicant could move to this unit and pay no more than 40 percent of her adjusted income toward the family share, the CDLA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Mohave County Housing Authority (MCHA), Kingman, AZ.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: September 15, 2015.

Reason Waived: A voucher applicant, who is a person with disabilities, required an exception payment standard to move to a unit that met his needs. To provide this reasonable accommodation so that the applicant could move to this unit and pay no more than 40 percent of her adjusted income toward the family share, the CDLA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the County of Alameda (HACA), Hayward, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: September 16, 2015.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to remain in her current unit that meets her needs without becoming rent burdened. To provide this reasonable accommodation so that the client could remain in this unit and pay no more than 40 percent of her adjusted income toward the family share, the HACA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Colorado Department of Local Affairs (CDLA), Denver, CO.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: September 16, 2015.

Reason Waived: A voucher applicant, who is a person with disabilities, required an exception payment standard to move to a unit that met her needs. To provide this reasonable accommodation so that the applicant could move to this unit and pay no more than 40 percent of her adjusted income toward the family share, the CDLA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.55(b).

Project/Activity: Lincoln Housing Authority (LHA), Lincoln, NE.

Nature of Requirement: HUD's regulation at 24 CFR 983.55(b) states that the PHA may not enter an Agreement or HAP contract until HUD or an independent entity approved by HUD has conducted any required subsidy

layering review and determined that the project-based voucher assistance is in accordance with HUD subsidy layering requirements.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: August 12, 2015.

Reason Waived: This waiver was granted to facilitate the start of construction for this veterans project and to avoid the recapture of funds awarded. The LHA was permitted to execute an Agreement prior to the completion of a subsidy layering review, but no vertical construction could begin until this review was completed.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 985.101(a).

Project/Activity: Beckville Housing Authority (BHA), Beckville, TX.

Nature of Requirement: HUD's regulation at 24 CFR 985.101(a) states a PHA must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: July 20, 2015.

Reason Waived: This waiver was granted because for the BHA's fiscal year ending September 30, 2014. The executive director was not appointed to serve until the latter part of November 2014 and did not receive rights to enter data into IMS/PIC prior to the deadline. At the time of the appointment, no one else had rights to transmit SEMAP certifications.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC, 20410, telephone (202) 708–0477.

[FR Doc. 2015–31874 Filed 12–17–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2015–N187; FXES11120200000F2–167–FF02ENEH00]

Final Environmental Impact Statement and Draft Record of Decision on the Southern Edwards Plateau Habitat Conservation Plan for Incidental Take of Nine Federally Listed Species in Central Texas

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, under the National Environmental Policy Act of 1969 (NEPA), make available the final environmental impact statement (EIS) and draft record of decision (ROD) analyzing the impacts of the issuance of an incidental take permit for implementation of the final Southern Edwards Plateau Habitat Conservation Plan (SEP HCP). Our decision is to issue a 30-year incidental take permit for implementation of the SEP HCP preferred alternative (described below), which authorizes incidental take of animal species listed pursuant to the Endangered Species Act of 1973, as amended. As part of the SEP HCP, measures will be implemented to avoid, minimize, and mitigate impacts to offset impacts to the affected species.

DATES: We will finalize the ROD and a permit no sooner than 30 days after publication of this notice.

ADDRESSES: You may obtain copies of the final documents by going to *http://www.fws.gov/southwest/es/AustinTexas/.* Alternatively, you may obtain a compact disk with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin, TX 78758; by calling (512) 490–0057; or by faxing (512) 490–0974. For additional information about where to review documents, see ''Reviewing Documents'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 or (512) 490–0057.

SUPPLEMENTARY INFORMATION: We, the Service, announce the availability of the final EIS and draft ROD, which we developed in compliance with the agency decision-making requirements of the NEPA, as well as the final SEP HCP as submitted by the City of San Antonio and Bexar County, Texas (Applicants). All alternatives have been described in detail, evaluated, and analyzed in our November 2015 final EIS. The ROD documents the rationale for our decision.

Based on our review of the alternatives and their environmental consequences as described in our final EIS, we have selected the Proposed SEP HCP Alternative. The proposed action is to issue to the Applicants an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.,* Act), that authorizes incidental take of nine endangered species (Covered Species): Two birds—golden-cheeked warbler (*Setophaga* [=*Dendroica*] *chrysoparia,* GCWA) and black-capped vireo (*Vireo atricapilla,* BCVI), and seven karst invertebrates (collectively the Covered Karst Invertebrates)—*R. infernalis* (no common name), *Rhadine exilis* (no common name) Helotes mold beetle (*Batrisodes venyivi*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Madla cave meshweaver (*Cicurina madla*), Government Canyon Bat Cave meshweaver (*C. venii*). The term of the permit is 30 years (2015–2045).

The Applicants will implement minimization and mitigation measures to offset impacts to the Covered Species according to their SEP HCP. The minimization and mitigation measures include, but are not limited to: Restricting activities to avoid the two bird's breeding seasons, implementing oak wilt prevention techniques, conducting extensive karst invertebrate surveys prior to any activity in karst zones, preserving habitat in perpetuity for all Covered Species, and managing and monitoring preserves in perpetuity.

Background

The Applicants have applied for an incidental take permit (TE48571B–0, ITP) under the Act, that would authorize incidental take of nine Covered Species in all, or portions, of seven Texas counties, and would be in effect for a period of 30 years. The proposed incidental take of the Covered Species would occur from lawful, non-federal activities including: Public or private land development projects; construction, maintenance, and/or improvement of roads, bridges, and other transportation infrastructure; and installation and/or maintenance of utility infrastructure (Covered Activities). The SEP HCP includes a 7-county area: Bandera, Bexar, Blanco, Comal, Kendall, Kerr, and Medina counties. Incidental take coverage will: (1) Only be offered to Participants in the jurisdictions of Bexar County and the City of San Antonio, including current and future portions of the City's extra-territorial jurisdiction (except where the City of San Antonio is within Comal County and (2) be provided within any SEP HCP preserves located in 7-county plan area. The final EIS considers the direct, indirect, and cumulative effects of implementation of the HCP, including the measures that will be implemented to minimize and mitigate such impacts to the maximum extent practicable.

The Secretary of the Interior has delegated to the Service the authority to

approve or deny an ITP in accordance with the Act. To act on the Applicant's permit application, we must determine that the HCP meets the issuance criteria specified in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32. The issuance of an ITP is a federal action subject to NEPA compliance, including the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508).

On December 19, 2014, we issued a draft EIS and requested public comment on our evaluation of the potential impacts associated with issuance of an ITP for implementation of the SEP HCP and to evaluate alternatives (79 FR 75830). We included public comments and responses associated with the draft EIS and draft HCP in the final EIS.

Purpose and Need

The purpose of the section 10(a)(1)(B) permit is to authorize incidental take associated with the Covered Activities described above. We identified key issues and relevant factors through public scoping and meetings, working with other agencies and groups, and reviewing comments from the public. We received responses from 1 federal agency, 1 tribe, and 110 other non-governmental agencies (NGOs) and individuals. The Environmental Protection Agency had comments on several sections of the draft EIS including air quality and the need for a Construction Emissions Mitigation Plan, a lack of analysis regarding environmental justice, and lack of a review by potentially affected tribes. The Caddo Nation of Oklahoma stated the project would not impact sights of interest to the Caddo Nation. Comments from individuals and NGOs included both support and concern for the HCP and the EIS selection of the preferred alternative. We believe these comments are addressed and reasonably accommodated in the final documents.

Alternatives

We considered five alternatives in the EIS.

No Action Alternative: Under the No Action Alternative, the Service would not issue an incidental take permit for the SEP HCP.

Proposed SEP HCP Alternative: Our preferred alternative is the proposed HCP with a 30-year term, as described in the final EIS, which provides for the issuance of an ITP to the Applicants for incidental take of the Covered Species that may occur as a result of Covered Activities. This alternative includes a number of measures to avoid, minimize, and mitigate impacts to the Covered Species, including over 30,000 acres of preserves for the Covered Species, avoiding the bird's breeding seasons to reduce direct impacts, and conducting extensive karst feature surveys to minimize direct impacts to karst invertebrates. This alternative assumes 50 percent of the development activities requiring an ITP for the Covered Species over the next 30 years will participate in the SEP–HCP, which represents 50 percent of the projected GCWA and BCVI habitat loss and 20 percent of the loss of potential habitat supporting the Covered Karst Invertebrates resulting from development within the Enrollment Area over the next 30 years.

10% Participation Alternative: This alternative assumes 10 percent of the development activities requiring an ITP for the Covered Species over the next 30 years will participate in the SEP HCP. The incidental take request represents 10 percent of the projected GCWA and BCVI habitat loss and 10 percent of the loss of potential habitat for the Covered Karst Invertebrates resulting from development within the Enrollment Area over the next 30 years.

Single-County Alternative: The Single-County Alternative proposes the preserve system will be located within Bexar County or within 10 miles of the Bexar County border. This alternative proposes the same amount of take for the Covered Species as the Proposed SEP HCP Alternative; however, it proposes one-half of the preserve for GCWA and BCVI and greater participation fees.

Increased Mitigation Alternative—The Increased Mitigation Alternative incorporates the same mitigation for the BCVI, higher proposed mitigation for the GCWA, and two times the required amount of preserve needed to achieve conservation baselines for the Covered Karst Invertebrates than that of the Proposed SEP HCP Alternative. Additionally, this alternative calls for 60 percent of the GCWA preserve within Bexar County and/or within 5 miles of the county border. Expected participation is the same as the Proposed SEP HCP Alternative.

Decision

We intend to issue an ITP allowing the Applicants to implement the Proposed SEP HCP Alternative. Our decision is based on a thorough review of the alternatives and their environmental consequences. Implementation of this decision entails the issuance of the ITP by the Service and full implementation of the HCP by the Applicants, including minimization and mitigation measures, monitoring and adaptive management, and complying with all terms and conditions in the permit.

Rationale for Decision

We have selected the Proposed SEP HCP Alternative for implementation based on multiple environmental and social factors, including potential impacts and benefits to Covered Species and their habitats; the extent and effectiveness of avoidance, minimization, and mitigation measures; and social and economic considerations.

We did not choose the No Action Alternative, because compliance with the Act will continue to occur on an individual basis through project-specific consultations with the Service, permitting actions will occur at the level and scope of an individual project, and mitigation requirements will be individually negotiated with the Service. As compared with the No Action Alternative, the Proposed SEP HCP Alternative provides for a more comprehensive and efficient approach to compliance with the Act and will provide larger, more contiguous preserves providing for more robust buffering against threats.

We did not choose the 10% Participation Alternative because we believe that participation in the SEP HCP will exceed the requested level of authorized take well before the 30 year time period of the proposed permit. The result of early expiration of the permit would result in either a major amendment to the SEP HCP, expiration of the permit and a return to the No Action Alternative status quo, or starting a new regional HCP planning process. All of these options undermine the expected efficiencies and increased compliance with the Act expected as part of the Proposed SEP HCP Alternative.

We did not choose the Single County Alternative because we believe the proposed mitigation compared to the amount of requested take is insufficient to meet the issuance criteria (described below) for an ITP. In particular, the criteria requiring an HCP minimize and mitigate to the maximum extent practicable any impacts from proposed takings.

We did not choose the Increased Mitigation Alternative because the high cost to participate in the plan would likely decrease participation in the plan causing individuals to come to the Service for individual permits, similar to the No Action Alternative.

In order to issue an ITP we must ascertain that the HCP meets issuance criteria as set forth in 16 U.S.C. 1539(a)(2)(A) and (B). We have made

that determination based on the criteria summarized below.

1. *The taking will be incidental.* We find that take will be incidental to otherwise lawful activities, including: public or private land development projects; construction, maintenance, and/or improvement of roads, bridges, and other transportation infrastructure; and installation and/or maintenance of utility infrastructure.

2. *The applicants will, to the maximum extent practicable, minimize and mitigate the impacts of such takings.* The Applicant's have developed and are committed to implementing a wide variety of conservation measures intended to minimize and mitigate the impacts of incidental taking that may result from the Covered Activities.

3. *The applicants will develop an HCP and ensure that adequate funding for the HCP will be provided.* The Applicants have developed an HCP, which includes a detailed estimate of the costs of implementing the SEP HCP (see Chapter 11of the HCP). The funding necessary to pay for implementing the SEP HCP will come mostly from participation fees and public funding sources.

4. *The taking will not appreciably reduce the likelihood of survival and recovery of any listed species in the wild.* As the federal action agency considering whether to issue an ITP to the Applicants, we have reviewed the proposed action under section 7 of the Act. Our biological opinion, dated November 20, 2015, concluded that issuance of the ITP will not jeopardize the continued existence of the Covered Species in the wild. No areas designated as critical habitat will be adversely modified. The biological opinion also analyzes other listed species within the planning area and concludes that the direct and indirect effect of the issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of other listed species or destroy or adversely modify any designated critical habitat.

5. *The applicants agree to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP.* We have assisted the Applicants in the development of the SEP HCP, commented on draft documents, participated in numerous meetings, and worked closely with them throughout the development of the HCP, so conservation of Covered Species would be assured and recovery would not be precluded by the Covered Activities. The SEP HCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the HCP and ensure success. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in the conservation measures can be implemented if proposed measures prove ineffective (adaptive management).

We have determined that the Proposed SEP HCP Alternative best balances the protection and management of habitat for Covered Species while providing an efficient means for compliance with the Act for the Covered Species in the permit area. Considerations used in this decision include whether (1) mitigation will benefit the Covered Species, (2) adaptive management of the conservation measures will ensure that the goals and objectives of the HCP are realized, (3) conservation measures will protect and enhance habitat, (4) mitigation measures for the Covered Species will fully offset anticipated impacts to species and provide recovery opportunities, and (5) the HCP is consistent with the Covered Species' recovery plans, where they exist.

A final permit decision will be made no sooner than 30 days after the publication of this notice of availability and completion of the record of decision.

Reviewing Documents

You may obtain copies of the final EIS, draft ROD, and final HCP by going to *http://www.fws.gov/southwest/es/AustinTexas/.* Alternatively, you may obtain a compact disk with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin TX 78758; by calling (512) 490–0057; or by faxing (512) 490–0974. Copies of the final EIS and final HCP are also available for public inspection and review at the following locations (by appointment only):

- Department of the Interior, Natural Resources Library, 1849 C St. NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin, TX 78758.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR part 1506.6).

Benjamin N. Tuggle,

Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2015–31844 Filed 12–17–15; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO35000.L14300000.FR0000]

Renewal of Approved Information Collection; OMB Control No. 1004–0029

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from applicants for a land patent under the Color-of-Title Act. This request is for an extension without change of OMB control number 1004–0029.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before January 19, 2016.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior, OMB Control ID: 1004–0029, Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_submission@omb.eop.gov.* Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: *Jean_Sonneman@blm.gov.*

Please indicate ''Attn: 1004–0029'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Flora Bell, at 202–912–7347. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Ms. Bell. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on June 16, 2015 (80 FR 34453), and the comment period ended August 17, 2015. The BLM received no comments. The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0029 in your correspondence. 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.

The following information is provided for the information collection:

Title: Color-of-Title Application (43 CFR Subparts 2540 and 2541).

Forms:

- Form 2540–1, Color-of-Title Application;
- Form 2540–2, Color-of-Title Conveyances Affecting Color or Claim of Title; and
- Form 2540–3, Color-of-Title Tax Levy and Payment Record.

OMB Control Number: 1004–0029.

Abstract: The Color-of-Title Act (43 U.S.C. 1068, 1068a, and 1068b) provides for the issuance of a land patent to a tract of public land of up to 160 acres, where the claimant shows peaceful, adverse possession of the tract in good faith for more than 20 years, as well as sufficient improvement or cultivation of the land. The information covered in this submission enables the BLM to determine whether or not such a claimant has made a showing that is sufficient under the pertinent statutory and regulatory criteria.

Frequency of Collection: Once.

Estimated Number and Description of Respondents Annually: individuals, groups, and associations, which seek title to public land on the basis of adverse possession.

Estimated Reporting and Recordkeeping ''Hour'' Burden Annually: 21 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: $70.

The following table details the individual components and respective hour burdens of this information collection request:

A. Type of response	B. Number of responses	C. Hours per response	D. Total hours (column B × column C)
Color-of-Title Application/Individuals	5	3	15
Color-of-Title Application/Groups	1	3	3
Color-of-Title Application/Corporations	1	3	3
Totals	7		21

Anna Atkinson,

Bureau of Land Management, Information Collection Clearance Officer (Acting).

[FR Doc. 2015–31901 Filed 12–17–15; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–549 and 731–TA–1299–1303 (Preliminary)]

Circular Welded Carbon-Quality Steel Pipe From Oman, Pakistan, the Philippines, the United Arab Emirates, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of circular welded carbon-quality steel pipe from Oman, Pakistan, the United Arab Emirates, and Vietnam, provided for in subheadings 7306.19.10, 7306.19.51, 7306.30.10, 7306.30.50, 7306.50.10, and 7306.50.50 of the Harmonized Tariff Schedule of the United States, that are allegedly sold in the United States at less than fair value (''LTFV''), and that are allegedly subsidized by the government of Pakistan.

The Commission also found that imports of circular welded carbon-quality steel pipe from the Philippines are negligible pursuant to section 771(24) of the Act, and its investigation with regard to imports from this country

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

is thereby terminated pursuant to section 733(a)(1) of the Act.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations on circular welded carbon-quality steel pipe from Oman, Pakistan, the United Arab Emirates, and Vietnam. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On October 28, 2015, Bull Moose Tube Company (Chesterfield, Missouri); EXLTUBE (N. Kansas City, Missouri); Wheatland Tube, a division of JMC Steel Group (Chicago, Illinois); and Western Tube and Conduit (Long Beach, California) filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of circular welded carbon-quality steel pipe from Oman, Pakistan, the Philippines, the United Arab Emirates, and Vietnam, that are alleged to be sold in the United States at LTFV and alleged to be subsidized by the government of Pakistan. Accordingly, effective October 28, 2015, the Commission, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–549 and antidumping duty investigation Nos. 731–TA–1299–1303 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 3, 2015 (80 FR 67790). The conference was held in Washington, DC, on November 18, 2015, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on December 14, 2015. The views of the Commission are contained in USITC Publication 4586 (December 2015), entitled *Circular Welded Carbon-Quality Steel Pipe from Oman, Pakistan, the Philippines, the United Arab Emirates, and Vietnam:* Investigation Nos. 701–TA–549 and 731–TA–1299–1303 (Preliminary).

By order of the Commission.

Issued: December 14, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–31810 Filed 12–17–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–976]

Certain Woven Textile Fabrics and Products Containing Same Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 1, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of AAVN, Inc. of Richardson, Texas. Supplements were filed on October 9 and 13, 2015. An amended complaint was filed on October 20, 2015. A second amended complaint was filed on November 12, 2015. A further supplementation was filed on December 4, 2015. The second amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain woven textile fabrics and products containing same by reason of infringement of certain claims of U.S. Patent No. 9,131,790 (''the '790 patent''), and that an industry in the United States exists as required by subsection (a)(2) of section 337. The second amended complaint further alleges violations of section 337 based upon the importation into the United States, the sale for importation into the United States, or in the sale of certain woven textile fabrics and products containing same by reason of false advertising, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The second amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the second amended complaint, the U.S. International Trade Commission, on December 14, 2015, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether:

(a) There is a violation of subsection (a)(1)(B) of section 337 in the

importation into the United States, the sale for importation, or the sale within the United States after importation of certain woven textile fabrics and products containing same by reason of infringement of one or more of claims 1–7 of the '790 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or in the sale of certain woven textile fabrics and products containing same by reason of false advertising, the threat or effect of which is to destroy or substantially injure an industry in the United States; and

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

AAVN, Inc., 1401 North Central Expressway, Suite 370, Richardson, TX 75080.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

AQ Textiles, LLC, 7622 Royster Road, Greensboro, NC 27455.

Creative Textile Mills Pvt. Ltd., 115/116, Sun Industrial Estate, Sun Mill Compound, Lower Parel (W), Mumbai, Maharashtra 400013, India.

Indo Count Industries Ltd., 301 Arcadia, 3rd Floor, Nariman Point, Mumbai 400 021 Maharashtra, India.

Indo Count Global, Inc., 295 Fifth Avenue, Suite 1019, New York, NY 10016.

GHCL Limited, B–38, Institutional Area, Sector-1, Noida, Uttar Pradesh 201 301 India.

Grace Home Fashions LLC, 295 Fifth Avenue, Suite 812, New York, NY 10016.

E & E Company, Ltd., Ghodbunder Road, Waghbil Naka, Thane 400 607 Maharashtra, India.

E & E Company, Ltd., d/b/a JLA Home, 45875 Northport Loop East, Fremont, CA 94538.

Welspun Global Brands Ltd., Welspun City, Village Versamedi, Taluka Anjar, District Kutch, Gujarat 370 110, India.

Welspun USA Inc., 295 Fifth Avenue, Suite 1118–1120, New York, NY 10016.

Elite Home Products, Inc., 95 Mayhill Street, Saddle Brook, NJ 07663.

Pradip Overseas Ltd., 104/105, Chacharwadi, Opp. Zydus Cadilla, Sarkhej Bawla Highway, Ahmedabad—382 213, India.

Pacific Coast Textiles, Inc., 12621 Western Avenue, Garden Grove, CA 92841.

Amrapur Overseas, Inc., 12621 Western Avenue, Garden Grove, CA 92841.

Westport Linens, Inc., 230 5th Avenue # 1611, New York, NY 10001.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the second amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the second amended complaint and the notice of investigation. Extensions of time for submitting responses to the second amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the second amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the second amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the second amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 15, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–31839 Filed 12–17–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–550 and 731–TA–1304–1305 (Preliminary)]

Certain Iron Mechanical Transfer Drive Components From Canada and China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain iron mechanical transfer drive components (''IMTDCs'') from Canada and China, provided for in subheadings 8483.30.80, 8483.50.60, 8483.50.90, 8483.90.30, 8483.90.80, 7325.10.00, 7325.99.10, 7326.19.00, 8431.31.00, 8431.39.00, and 8483.50.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and that are allegedly subsidized by the government of China.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On October 28, 2015, TB Wood's Incorporated, Chambersburg, Pennsylvania filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of IMTDCs from Canada and China and subsidized imports of IMTDCs from China. Accordingly, effective October 28, 2015, the Commission, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–550 and antidumping duty investigation Nos. 731–TA–1304–1305 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 3, 2015 (80 FR 67789). The conference was held in Washington, DC, on November 18, 2015, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on December 14, 2015. The views of the Commission are contained in USITC Publication 4587 (December 2015), entitled *Certain Iron Mechanical Transfer Drive Components from Canada and China: Investigation Nos. 701–TA–550 and 731–TA–1304–1305 (Preliminary).*

By order of the Commission.

Issued: December 14, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–31779 Filed 12–17–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–932]

Certain Consumer Electronics and Display Devices With Graphics Processing and Graphics Processing Units Therein Commission Decision Not To Review the ALJ's Final Initial Determination Finding No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination (ID) issued on October 9, 2015, which found no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation based on a complaint filed by NVIDIA Corporation of Santa Clara, California (NVIDIA). The investigation was instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain consumer electronics and display devices with graphics processing and graphics processing units therein by reason of infringement of one or more of claims 1, 19, and 20 of U.S. Patent No. 6,198,488 (the '488 patent); claims 1 29 of U.S. Patent No. 6,992,667 (the '667 patent); claims 1 5, 7 19, 21 23, 25 30, 34 36, 38, and 41 43 of U.S. Patent No. 7,038,685 (the '685 patent); claims 5 8, 10, 12 20, and 24 27 of U.S. Patent No. 7,015,913 (the '913 patent); claims 7, 8, 11 13, 16 21, 23, 24, 28, and 29 of U.S. Patent No. 6,697,063 (the '063 patent); claims 1 10, 12, and 14 of U.S. Patent No. 7,209,140 (the '140 patent); and claims 1 6, 9 16, and 19 25 of U.S. Patent No. 6,690,372 (the '372 patent), and whether an industry in the United States exists as required by subsection (a)(2) of section 337. 79 FR 61338 (Oct. 10, 2014). Respondents include Samsung Electronics Co., Ltd. (Republic of Korea); Samsung Electronics America, Inc. (Ridgefield Park, NJ); Samsung Telecommunications America, LLC (Richardson, TX); Samsung Semiconductor, Inc. (San Jose, CA); and Qualcomm, Inc. (San Diego, CA) (collectively, Respondents). NVIDIA later withdrew all allegations regarding the '488, '667, '913, and '063 patents and some allegations regarding the '140, '372, and '685 patents.

On October 9, 2015, the presiding administrative law judge (ALJ) issued his ID finding no violation by Respondents of section 337 with respect to the remaining allegations. Specifically, regarding the '140 patent, the ID concluded: (1) Claim 14 is invalid for obviousness; (2) the accused products do not infringe; and (3) there is no domestic industry. Regarding the '372 patent, the ID concluded: (1) Claim 23 and claim 24 are invalid for anticipation; (2) some of the accused products infringe claim 23, but none of the accused products infringe claim 24; and (3) there is no domestic industry. Regarding the '685 patent, the ID concluded: (1) Neither claim 1 nor claim 15 are invalid for anticipation; (2) the accused products do not infringe claim 1 or claim 15; and (3) there is a domestic industry. The ID additionally found that the scope of this investigation is limited to consumer electronics and display devices that include graphics processing capabilities and that have graphics processing units therein, rejecting NVIDIA's argument to include Qualcomm graphics processing units separate and apart from the consumer electronic and display devices.

On October 26, 2015, NVIDIA filed a petition for review of the ALJ's findings related to the '372 and '685 patents, and Respondents filed a contingent petition for review of the ALJ's findings related to the '140 and '685 patents. NVIDIA did not seek review of the ALJ's findings related to the '140 patent. On October 30, 2015, the ALJ issued his recommended determination on remedy

and bond. On November 3, 2015, NVIDIA, Respondents, and the Office of Unfair Import Investigations filed responses to the petitions and contingent petitions. Having examined the record of this investigation, including the ID, the petition for review, the contingent petition thereto, and the respective responses, the Commission has determined not to review the ID.

On September 24, 2015, NVIDIA filed an Unopposed Motion to Terminate the Investigation as to Respondent Samsung Telecommunications America, LLC. We have reviewed the motion, and it is granted.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42 46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42 46).

By order of the Commission.

Issued: December 14, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–31816 Filed 12–17–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–125 (Fourth Review)]

Potassium Permanganate From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on potassium permanganate from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: *Effective Date:* December 7, 2015.

FOR FURTHER INFORMATION CONTACT: Michael Szustakowski ((202) 205–3169), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 7, 2015, the Commission determined that the domestic interested party group response to its notice of institution (80 FR 52793, September 1, 2015) of the subject five-year review was adequate and that the respondent interested party group response was inadequate.[1] The Commission did not find any other circumstances that would warrant conducting a full review.[2] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on December 28, 2015, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before January 5, 2016 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by January 5, 2016. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 14, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–31809 Filed 12–17–15; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Chairman Meredith M. Broadbent voted to conduct a full review.

[3] The Commission has found the response submitted by Carus Corporation to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–946]

Certain Ink Cartridges and Components Thereof; Commission's Determination to Review an Initial Determination in Part and, on Review, To Affirm a Finding of a Violation of Section 337; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on October 28, 2015,

granting summary determination that 17 defaulting respondents have violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. On review, the Commission affirms with modifications the ALJ's findings regarding the importation requirement. The Commission's determination results in a determination of a violation of section 337. Accordingly, the Commission requests written submissions, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 27, 2015, based on a complaint filed by Epson Portland Inc. of Hillsboro, Oregon; Epson America, Inc. of Long Beach, California; and Seiko Epson Corporation of Japan (collectively, ''Epson''). 80 FR 4314–16 (Jan. 27, 2015). The complaint alleged violations of section 337 by reason of the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink cartridges and components thereof that infringe certain claims of U.S. Patent Nos. 8,366,233 (''the '233 patent''); 8,454,116 (''the '116 patent''); 8,794,749 (''the '749 patent''); 8,801,163 (''the '163 patent''); and 8,882,513 (''the '513 patent''). *Id.* The notice of investigation named 19 respondents. *See id.* The Office of Unfair Import Investigations is a party in this investigation.

Respondents Zhuhai Nano Digital Technology, Co., Ltd. of Guangdong, China and Nano Business and Technology, Inc. of Lake Oswego, Oregon were terminated from the investigation based upon a settlement agreement and consent order. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Certain Respondents Based on a Settlement Agreement and Consent Order; Issuance of a Consent Order (Aug. 5, 2015).

The remaining 17 respondents were found in default. *See* Notice of a Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default (July 10, 2015).

On August 31, 2015, Epson moved for a summary determination of a violation of section 337 by the defaulting respondents and for issuance of a general exclusion order and cease and desist orders. On September 11, 2015, the Commission Investigative Attorney (''IA'') filed a response in support of the motion. No other responses to the motion were received.

On September 16, 2015, the ALJ issued an ID partially terminating the investigation based on Epson's withdrawal of certain claims. *See* Notice of a Commission Determination Not to Review an Initial Determination Terminating the Investigation in Part as to Certain Claims (Oct. 15, 2015). Claims 1 and 10 of the '233 patent; claims 9, 14, 18, and 21 of the '116 patent; claims 1, 18, 49, and 60 of the '749 patent; claims 1 and 6 of the '163 patent; and claims 14, 15, and 19 of the '513 patent remain pending in this investigation. *See* Order No. 12 at 8–19.

On October 28, 2015, the ALJ issued the subject ID granting Epson's motion for summary determination of violation and recommending the issuance of a general exclusion order and cease and desist orders. *See* Order No. 12. No party petitioned for review of the ID.

The Commission has determined to review only the importation analysis in the ID. Upon review, the Commission affirms a finding that Epson has met the importation requirement. In addition to the specific instances of importation by each defaulting respondent identified in the ID, the record evidence supports a finding that respondent Zhuhai National, through its intermediary respondent Huebon, sold and imported accused ink cartridge control no. 7579 (Group 4 cartridge) in 2014. Seitz 2015 Decl. ¶ 39; Seitz Ex. 1.170. In addition, the record evidence supports a finding that respondent Zinyaw sold accused ink cartridge control no. 7556 (Group 5 cartridge) after they were imported into the United States in 2014. Seitz 2015 Decl. ¶ 156; Seitz Ex. 1.215.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's

consideration. Complainant is further requested to state the date that the patents expire and the HTSUS subheadings under which the accused products are imported, and provide identification information for all known importers of the subject articles.

Written submissions and proposed remedial orders must be filed no later than close of business on Wednesday, December 30, 2015. Reply submissions must be filed no later than the close of business on Wednesday, January 6, 2015. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 12. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–946'') in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).* Persons with questions regarding filing should contact the Secretary (202–205–2000). Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–31817 Filed 12–17–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0076]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection Relief of Disabilities and Application for Restoration of Explosive Privileges

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until February 16, 2016.

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 Laurie O' Lena, 3750 Corporal Road, Huntsville, AL 35898 at email or telephone: *EROD@atf.gov* or (256) 261–7640.

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 Bureau of Alcohol, Tobacco, Firearms and Explosives, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Relief of Disabilities and Application for Restoration of Explosives Privileges.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 5400.29. The applicable component within the Department of Justice is the Bureau of Alcohol, Tobacco, Firearms and Explosives, in the Explosives Enforcement Branch.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals.

Other (if applicable): None.

Abstract: ATF is charged with the responsibility for enforcing Title XI of the Organized Crime Control Act (the Act) of 1970 and the implementing regulations contained at 27 CFR, Part 555. Subtitle C of Public Law 107–296, the Safe Explosives Act, enacted November 25, 2003, amended the Act to give the Director authority to grant relief from disability for any person who is prohibited from shipping, transporting, receiving, or possessing an explosive under section 842(i) of the Act. The regulations at 27 CFR, Section 555.142 state that the Director may grant relief to an applicant if it is established to the satisfaction of the Director that the circumstances regarding the disability and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety. The ATF Form 5400.29, Application for Restoration of Explosives Privileges, is used by ATF to conduct background investigations on all applicants for restoration of explosives privileges. In an effort to ensure that any person applying for restoration of explosives privileges has a record and reputation such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief would not be contrary to the public interest, ATF proposes that all applicants complete ATF Form 5400.29.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* We estimated that there are a total of 300 respondents associated with this information collection request. We estimate that each respondent will

spend approximately 30 minutes completing this form.

6. *An estimate of the total public burden (in hours) associated with the collection:* Assuming all 300 responses are collected and multiplied by the average 30 minutes needed to complete this form (300 Respondents × .50 hours = 150 hours). The total annual burden hours associated with this request is 150 hours.

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: December 14, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–31794 Filed 12–17–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Numbers 1121–0341]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection: Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package

AGENCY: Office for Victims of Crime, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Office of Justice Programs, Office for Victims of Crime 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 following collections (1121–0336 and 1121–0342) will be discontinued and combined with this revision of 1121–0341. This proposed information collection was previously published in the **Federal Register** Volume 80 FR 61471, on October 23, 2015, allowing for a 60 day comment period.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment until January 19, 2016.

FOR FURTHER INFORMATION CONTACT: If you have 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 Shelby Jones Crawford, Program Manager, Office for Victims of Crime, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20530. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503 or send 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Revision of Existing Collection

(2) *Title of the Form/Collection:* OVC TTAC Feedback Form Package

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* NA. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal agencies/organizations. Other: Federal Government; Individuals or households; Not-for-profit institutions; Businesses or other for-profit. Abstract: The Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package is designed to collect the data necessary to continuously assess the satisfaction and outcomes of assistance provided through OVC TTAC for both monitoring and accountability purposes to continuously meet the needs of the victim services field. OVC TTAC will give these forms to recipients of training and technical assistance, scholarship applicants, users of the Web site and call center, consultants/instructors providing training, agencies requesting services, and other professionals receiving assistance from OVC TTAC. The purpose of this data collection will be to capture important feedback on the respondents' satisfaction and outcomes of the resources provided. The data will then be used to advise OVC on ways to improve the support that it provides to the victim services field at-large.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 27,225 respondents who will require an average of 10 minutes (ranging from 5 to 15 minutes across all forms) to respond to a single form each year.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection are estimated to be 5,075 hours.

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., Room 3E.405B, Washington, DC 20530.

Dated: December 15, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–31869 Filed 12–17–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested

data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Multiple Worksite Report and the Report of Federal Employment and Wages.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before February 16, 2016.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Quarterly Census of Employment and Wages (QCEW) program is a Federal/State cooperative effort which compiles monthly employment data, quarterly wages data, and business identification information from employers subject to State Unemployment Insurance (UI) laws. These data are collected from State Quarterly Contribution Reports (QCRs) submitted to State Workforce Agencies (SWAs). The States send micro-level employment and wages data, supplemented with the names, addresses, and business identification information of these employers, to the BLS. The State data are used to create the BLS sampling frame, known as the longitudinal QCEW data. This file represents the best source of detailed industrial and geographical data on employers and is used as the sampling frame for most BLS surveys. The longitudinal QCEW data include the individual employers' employment and wages data along with associated business identification information that is maintained by each State to administer the UI program as well as the Unemployment Compensation for Federal Employees (UCFE) program.

The QCEW Report, produced for each calendar quarter, is a summary of these employer (micro-level) data by industry at the county level. Similar data for Federal Government employees covered by the UCFE program also are included in each State's report. These data are submitted by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands to the BLS which then summarizes these micro-level data to produce totals for the States and the Nation. The QCEW Report provides a virtual census of nonagricultural employees and their wages, with nearly 53 percent of the workers in agriculture covered as well.

For employers having only a single physical location or worksite in the State and, thus, operating under a single industrial and geographical code, the data from the States' UI accounting files are sufficient for statistical purposes. However, such data are not sufficient for statistical purposes for those employers having multiple establishments or engaging in different industrial activities within the State. In such cases, the employer's QCR reflects only statewide employment and wages and is not disaggregated by establishment or worksite. Although data at this level are sufficient for many purposes of the UI program, more detailed information is required to create a sampling frame and to meet the needs of several ongoing Federal/State statistical programs. The Multiple Worksite Report (MWR) is designed to supplement the QCR when more detailed information is needed.

Because of the data captured by the MWR, improved establishment business identification data elements have been incorporated into and maintained by the longitudinal QCEW database. The MWR collects a physical location address, secondary name (trade name, division, subsidiary, etc.), and reporting unit description (store number, plant name or number, etc.) for each worksite of multi-establishment employers.

Employers with more than one establishment reporting under the same UI account number within a State are requested to complete the MWR if the sum of the employment in all of their secondary establishments is 10 or greater. The primary worksite is defined as the establishment with the greatest number of employees. Upon receipt of the first MWR form, each employer is requested to supply business location identification information. Thereafter, this reported information appears on the MWR each quarter. The employer is requested to verify the accuracy of this business location identification information and to provide only the employment and wages for each worksite for that quarter. By using a standardized form, the reporting burden on many large employers, especially those engaged in multiple economic activities at various locations across numerous States, is reduced.

The function of the Report of Federal Employment and Wages (RFEW) is to collect employment and wages data for Federal establishments covered under the UCFE program. The MWR and RFEW are essentially the same. The MWR/RFEW forms are designed to collect data for each establishment of a multi-establishment employer.

No other standardized report is available to collect current establishment-level monthly employment and wages data by SWAs for statistical purposes each quarter from the private sector nor State and local governments. Also, no other standardized report currently is available to collect installation-level Federal monthly employment and wages data each quarter by SWAs for statistical purposes. Completion of the MWR is required by State law in 27 States and territories.

II. Current Action

Office of Management and Budget clearance is being sought for an extension of the Multiple Worksite Report and the Report of Federal Employment and Wages.

The BLS has taken steps to help reduce employer reporting burden by developing a standardized format for employers to use to send these data to the States in an electronic medium. The BLS established an Electronic Data Interchange (EDI) Collection Center to improve and expedite the MWR collection process. Employers who complete the MWR for multi-location businesses can submit employment and wages information on any electronic medium directly to the data collection center, rather than separately to each State agency. The data collection center then distributes the appropriate data to the respective States. In addition, the BLS has developed a Web-based system, MWRweb, to collect these data from small to medium-size businesses. The BLS continues to see much greater utilization of this reporting option.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Extension of currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Multiple Worksite Report (MWR) and the Report of Federal Employment and Wages (RFEW).

OMB Number: 1220–0134.

Affected Public: Business or other for-profit institutions, not-for-profit institutions, and the Federal Government.

Frequency: Quarterly.

Form No.	Total respondents	Respondent	Total responses	Average time per response (minutes)	Total burden (hours)
BLS 3020 (MWR)	139,817	Non-Federal	559,268	22.2	206,929
BLS 3021 (RFEW)	2,737	Federal	10,948	22.2	4,051
Totals	142,554		570,216		210,980

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 15th day of December, 2015.

Kimberly Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2015–31823 Filed 12–17–15; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (#1110).

Date and Time: December 18, 2015 2:30 p.m.–3:00 p.m.

Place: Virtual meeting via teleconference hosted by NSF.

The NSF is located at 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Charles Liarakos, National Science Foundation, 4201 Wilson Boulevard, Room 605, Arlington, VA 22230; Tel No.: (703) 292–8400.

Purpose of Meeting: Review Report from the NSF BIO Advisory Committee Subcommittee on NEON Scope Impacts.

Reason for Late Notice: Expedite matter of critical NSF interest.

Agenda: Discussion of the Report. Vote on Report.

Dated: December 14, 2015.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2015–31765 Filed 12–17–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0273]

Information Collection: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.''

DATES: Submit comments by February 16, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0273. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Tremaine Donnell, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, Office of the Chief Information Officer U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0273 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0273. NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR)

reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance is available in ADAMS under Accession No. ADAMS ML15337A056.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, Tremaine Donnell, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments.

Please include Docket ID NRC–2015–0273 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

2. *OMB approval number:* 3150–0209.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 781.

5. *How often the collection is required or requested:* Part 5 follows provisions covered in 10 CFR part 4, section 4.331 Compliance Reviews, which indicates that the NRC may conduct compliance reviews and Pre-Award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the act and these regulations. The NRC may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

6. *Who will be required or asked to respond:* Recipients of Federal Financial Assistance provided by the NRC (including Educational Institutions, Other Nonprofit Organizations receiving Federal Assistance and Agreement States).

7. *The estimated number of annual responses:* 800.

8. *The estimated number of annual respondents:* 200.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 3,600.

10. *Abstract:* Part 5 implements the provisions of title IX of the Education Amendments of 1972, as amended,(except section 904 and 906 of these amendments) (20 U.S.C. 1681,1682, 1683, 1685, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis

III. Requests for Comments

The NRC is seeking comments that address the following questions:

Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations.

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 14th day of December, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2015–31834 Filed 12–17–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0043]

Information Collection: Request for Information Regarding Recommendations 2.1, 2.3, and 9.3 of the Near-Term Task Force Review of Insights From the Fukushima Dai-ichi Event

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Request for Information Regarding Recommendations 2.1, 2.3, and 9.3 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Event.''

DATES: Submit comments by *January 19, 2016.*

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0211) NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0043 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0043. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0043 on this Web site.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML12053A340. The supporting statement and burden estimates are available in ADAMS under Accession Nos. ML15278A247 and ML15278A246.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Request for Information Regarding Recommendations 2.1, 2.3, and 9.3 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Event.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 28, 2015, 80 FR 45005.

1. *The title of the information collection:* Request for Information Pursuant to 10 CFR 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Event.

2. *OMB approval number:* 3150–0211.

3. *Type of submission:* Extension.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required or requested:* Once.

6. *Who will be required or asked to respond:* 100 power reactor licensees, and 2 Combined License holders (2 units each).

7. *The estimated number of annual responses:* 79.3.

8. *The estimated number of annual respondents:* 104.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 104,962.

10. *Abstract:* Following events at the Fukushima Dai-Ichi nuclear power plant resulting from the March 11, 2011, earthquake and subsequent tsunami, and in response to requirements contained in section 402 of the Consolidated Appropriations Act (Pub. L. 112–074), the NRC requested information from power reactor licensees pursuant to title 10 of the *Code of Federal Regulations* part 50.54(f). The information requested includes seismic and flooding hazard reevaluations to determine if further regulatory action is necessary, walkdowns to confirm compliance with the current licensing basis and provide input to the hazard reevaluations, and analysis of the Emergency Preparedness capability with respect to staffing and communication ability during a prolonged multiunit event. The NRC will use the information provided by licensees to determine if additional regulatory action is necessary.

Dated at Rockville, Maryland, this 14th day of December, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–31797 Filed 12–17–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; ASLBP No. 16–944–01–LA–BD01]

Southern Nuclear Operating Company, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding: Southern Nuclear Operating Company, Inc. (Vogtle Electric Generating Plant, Units 3 and 4).

This proceeding involves an application by Southern Nuclear Operating Company, Inc. for an amendment to Facility Operating License Nos. NPF–91 and NPF–92 for operation of the Vogtle Electric Generating Plant, Units 3 and 4, located in Burke County, Georgia. In response to a notice filed in the **Federal Register**, *see* 80 FR 60937 (Oct. 8, 2015), the Blue Ridge Environmental Defense League and its chapter Concerned Citizens of Shell Bluff filed a Petition to Intervene and Request for Hearing on December 7, 2015.

The Board is comprised of the following Administrative Judges:

Ronald M. Spritzer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Nicholas G. Trikouros, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. James F. Jackson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Dated: December 11, 2015.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2015–31875 Filed 12–17–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0158]

Information Collection: Nuclear Material Events Database (NMED) for the Collection of Event Report, Response, Analyses, and Follow-Up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Nuclear Material Events Database (NMED for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.''

DATES: Submit comments by January 19, 2016.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0178), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7315, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0158 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0158. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0158 on this Web site.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ML15314A655. The supporting statement is available in ADAMS under Accession No. ML15314A713.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Nuclear Material Events Database (NMED for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 27, 2015 (80 FR 44401).

1. *The title of the information collection:* ''Nuclear Material Events Database (NMED) for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.''
2. *OMB approval number:* 3150–0178.
3. *Type of submission:* Extension.
4. *The form number if applicable:* NA.
5. *How often the collection is required or requested:* On occasion. Agreement States are requested to provide copies of licensee nuclear material event reports electronically or by hard copy to the NRC within 30 days of receipt from their licensee. In addition, Agreement States are requested to report events that may pose a significant health and safety hazard to the NRC Headquarters Operations Officer within 24 hours of notification by an Agreement State licensee.
6. *Who will be required or asked to respond:* Current Agreement States and any State receiving Agreement State status in the future.
7. *The estimated number of annual responses:* 506.
8. *The estimated number of annual respondents:* 37.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 804 hours.
10. *Abstract:* NRC regulations require NRC licensees to report incidents and overexposures, leaking or contaminated sealed source(s), release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, abandoned well logging sources and medical events. Agreement State licenses are also required to report these events to their individual Agreement State regulatory authorities under compatible Agreement State regulations. The NRC is requesting that the Agreement States provide information to NRC on the initial

notification, response actions, and follow-up investigations on events involving the use (including suspected theft or terrorist activities) of nuclear materials regulated pursuant to the Atomic Energy Act. The event information should be provided in a uniform electronic format, for assessment and identification of any facilities/site-specific or generic safety concerns that could have the potential to impact public health and safety. The identification and review of safety concerns may result in lessons learned and may also identify generic issues for further study that could result in proposals for changes or revisions to technical or regulatory designs, processes, standards, guidance or requirements.

Dated at Rockville, Maryland, this 15th day of December, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2015–31835 Filed 12–17–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0166]

Information Collection: NRC Form 531 ''Request for Taxpayer Identification Number''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 531 ''Request for Taxpayer Identification Number.''

DATES: Submit comments by January 19, 2016.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0188), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0166 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0166. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ADAMS ML15138A184. The supporting statement is available in ADAMS under Accession No. ADAMS ML15289A416.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 531 ''Request for Taxpayer Identification Number''. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 22, 2015, (80 FR 43477).

1. *The title of the information collection:* Request for Taxpayer Identification Number.

2. *OMB approval number:* 3150–0188.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 531.

5. *How often the collection is required or requested:* Licensees are only required to submit once, however, a continuous monthly request is sent until the licensee submits the Taxpayer Identification Number.

6. *Who will be required or asked to respond:* NRC Form 531 is used to collect TINs and information sufficient to identify the licensee or applicant for licenses, certificates, approvals and registrations.

7. *The estimated number of annual responses:* 300 responses.

8. *The estimated number of annual respondents:* 300 respondents.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 75 hours.

10. *Abstract:* The Debt Collection Improvement Act of 1996 requires that agencies collect taxpayer identification numbers (TINs) from individuals who do business with the Government, including contractors and recipients of

credit, licenses, permits, and benefits. The TIN will be used to process all electronic payments (refunds) made to licensees by electronic funds transfer by the Department of the Treasury. The Department of the Treasury will use the TIN to determine whether the refund can be used to administratively offset any delinquent debts reported to the Treasury by other government agencies. In addition, the TIN will be used to collect and report to the Department of the Treasury any delinquent indebtedness arising out of the licensee's or applicant's relationship with the NRC.

Dated at Rockville, Maryland, this 14th day of December, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2015–31796 Filed 12–17–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0175]

Information Collection: NRC Form 664, ''General Licensee Registration''

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 664, General Licensee Registration.''

DATES: Submit comments by January 19, 2016.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0198), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0175 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0175.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML15309A472. The supporting statement is available in ADAMS under Accession No. ADAMS ML15309A598.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 664 General Licensee Registration.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 12, 2015 (80 FR 48349).

1. *The title of the information collection:* NRC Form 664, ''General Licensee Registration.''
2. *OMB approval number:* 3150–0198.
3. *Type of submission:* Extension.
4. *The form number if applicable:* NRC Form 664.
5. *How often the collection is required or requested:* Annually.
6. *Who will be required or asked to respond:* General Licensees of the NRC who possess certain generally licensed devices subject to annual registration authorized pursuant to section 31.5 of Title 10 of the *Code of Federal Regulations* (10 CFR).
7. *The estimated number of annual responses:* 564.
8. *The estimated number of annual respondents:* 564.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 188 hours (564 annual responses × 1/3 hour).
10. *Abstract:* NRC Form 664 is used by NRC general licensees to make reports regarding certain generally licensed devices subject to annual registration. The registration program allows NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged. Also, the registration program ensures that general licensees are aware of and understand the requirements for the possession, use, and disposal of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the regulatory requirements for proper handling and disposal of generally licensed devices and would reduce the

potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

Dated at Rockville, Maryland, this 14th day of December, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2015–31798 Filed 12–17–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0129]

Information Collection: Domestic Licensing of Source Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget (OMB); request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a renewal of the OMB approval for an existing collection of information to OMB for review. The information collection is titled, ''10 CFR part 40, Domestic Licensing of Source Material'' (3150–0020).

DATES: Submit comments by January 19, 2016.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0020), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0129 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0129.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML15328A130.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review titled, ''Information Collection: 10 CFR part 40, ''Domestic Licensing of Source Material.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 25, 2015 (80 FR 51613).

1. *The title of the information collection: 10 CFR part 40, Domestic Licensing of Source Material.*

2. *OMB approval number: 3150–0020.*

3. *Type of submission:* Extension.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required or requested:* On occasion. Reports required under part 40 of title 10 of the *Code of Federal Regulations* (10 CFR) are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications need to be submitted every 5 to 10 years. Information in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis.

6. *Who will be required or asked to respond:* Applicants for and holders of NRC licenses authorizing the receipt, possession, use, or transfer of radioactive source material.

7. *The estimated number of annual responses:* 1,286 (368 [188 NRC responses + 178 recordkeepers + 2 third party responses] + 918 [200 Agreement States responses + 717 recordkeepers + 1 third party response]).

8. *The estimated number of annual respondents:* 160 (50 NRC licensees + 110 Agreement States licensees).

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 10,425 (5,036 NRC Licensees hours [2,773 reporting + 2,257 recordkeeping + 6 third party response] + 5,389 Agreement States licensees' hours [1,709 reporting + 3,677 recordkeeping + 3 third party response]).

10. *Abstract:* 10 CFR part 40 establishes requirements for licenses for the receipt, possession, use, and transfer of radioactive source material. The application, reporting, recordkeeping, and third party notification requirements are necessary to permit the NRC to make a determination as to whether the possession, use, and transfer of source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

Dated at Rockville, Maryland, this 15th day of December, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–31836 Filed 12–17–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–36 and CP2016–42; Order No. 2867]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 164 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 21, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 164 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–36 and CP2016–42 to consider the Request pertaining to the proposed Priority Mail Contract 164 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 21, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–36 and CP2016–42 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 21, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–31801 Filed 12–17–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–34 and CP2016–40; Order No. 2866]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail & First-Class Package Service Contract 8 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 21, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail & First-Class Package Service Contract 8 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–34 and CP2016–40 to consider the Request pertaining to the proposed Priority Mail & First-Class Package Service Contract 8 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 21, 2015.

[1] Request of the United States Postal Service to Add Priority Mail Contract 164 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 11, 2015 (Request).

[1] Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 8 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 11, 2015 (Request).

The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–34 and CP2016–40 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 21, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–31800 Filed 12–17–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–35 and CP2016–41; Order No. 2869]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 163 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 21, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 163 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–35 and CP2016–41 to consider the Request pertaining to the proposed Priority Mail Contract 163 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 21, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–35 and CP2016–41 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 21, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–31803 Filed 12–17–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 163 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 11, 2015 (Request).

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–45; Order No. 2872]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 22, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On December 14, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–45 for consideration of matters raised by the Notice.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 14, 2015 (Notice).

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 22, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–45 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than December 22, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–31864 Filed 12–17–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 18, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 10, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 162 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–31, CP2016–37.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–31813 Filed 12–17–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 18, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 11, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 8 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–34, CP2016–40.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–31815 Filed 12–17–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 18, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 11, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 163 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–35, CP2016–41.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–31821 Filed 12–17–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 18, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 10, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 161 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–30, CP2016–36.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–31814 Filed 12–17–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 18, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 10, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 30 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–32, CP2016–38.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–31812 Filed 12–17–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service ™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 18, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service ® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 11, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 164 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–36, CP2016–42.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–31820 Filed 12–17–15; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76639; File No. SR–FINRA–2015–033]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rule 0150 To Apply FINRA Rule 2121 and its Supplementary Material .01 and .02 to Transactions in Exempted Securities That Are Government Securities

December 14, 2015.

I. Introduction

On September 17, 2015, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to FINRA Rule 0150, Application of Rules to Exempted Securities Except Municipal Securities, so that FINRA Rule 2121 and its Supplementary Material .01 and .02, which govern mark-ups and commissions, will apply to transactions in exempted securities that are government securities. The proposed amendment was published for comment in the **Federal Register** on October 6, 2015.[3] On November 19, 2015, FINRA granted the Commission an extension of time, until January 4, 2016 to act on the proposal.[4] No comments were received in response to the proposal. This order approves the rule change as proposed.

II. Description of the Proposed Rule Change

A. Background

As stated in the Notice, FINRA is proposing to amend FINRA Rule 0150, which governs the application of FINRA rules and the rules of the National Association of Securities Dealers (''NASD'') [5] that apply to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons.[6] Current FINRA Rule 0150(c) specifically enumerates these provisions and does not include reference to FINRA Rule 2121, Supplementary Material .01, and Supplementary Material .02, which govern mark-ups and commissions (''mark-up rule'').[7] The proposed amendment would incorporate the mark-up rule into FINRA Rule 0150 and extend its application to transactions in, and business activities relating to, exempted securities that are government securities, as defined in Section 3(a)(42) of the Exchange Act.[8]

In the Notice, FINRA described the historical reasons for not applying certain NASD rules, including the mark-up rule, to exempted securities (except municipal securities). Prior to 1993, there were statutory limitations on the NASD's ability to apply sales practice rules, including the mark-up rules, to transactions in exempted securities. The Government Securities Act Amendments of 1993 (''GSAA'') [9] eliminated the limitations on the authority of registered securities associations over transactions by a registered broker or dealer in an exempted security.[10] Following the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 0150 to Apply FINRA Rule 2121 and its Supplementary Material .01 and .02 to Transactions in Exempted Securities That Are Government Securities; Exchange Act Release No. 76059 (September 30, 2015), 80 FR 60416 (October 6, 2015) (''Notice'').

[4] *See* Letter from Andrew Madar, Associate General Counsel, FINRA Regulatory Policy and Oversight, to Katherine England, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission, dated November 19, 2015.

[5] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process), *available at https://www.finra.org/sites/default/files/NoticeDocument/p038121.pdf.*

[6] The terms exempted securities, municipal securities, and government securities as used in this order are defined in Sections 3(a)(12), 3(a)(29), and 3(a)(42) of the Act, respectively.

[7] NASD Rule 2440, IM–2440–1, and IM–2440–2 were recently moved to the FINRA rules without any substantive changes, becoming FINRA Rule 2121, Supplementary Material .01, and Supplementary Material .02, respectively. *See* Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt FINRA Rule 2121 (Fair Prices and Commissions), Supplementary Material .01 (Mark-Up Policy) and Supplementary Material .02 (Additional Mark-Up Policy For Transactions in Debt Securities, Except Municipal Securities) in the Consolidated FINRA Rulebook; Exchange Act Release No. 72208 (May 21, 2014), 79 FR 30675 (May 28, 2014).

[8] This includes U.S. Treasury securities, as defined in FINRA Rule 6710(p). *See* Notice at 60417, note 12.

[9] Government Securities Act Amendments of 1993, Pub. L. 103–202, § 106(b)(1), 107 Stat. 2344 (1993).

[10] Specifically Section 15A(f) of the Act imposed limitations on the authority of registered securities associations over transactions by a registered broker

GSAA, NASD proposed to apply certain NASD rules to exempted securities other than to municipal securities but did not propose to apply the mark-up rule then in effect to such securities.[11] FINRA stated in the Notice that the NASD believed at the time that actions for conduct generally encompassed by the NASD mark-up rule in the government securities market could be brought under NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade).[12]

B. Purpose

FINRA believes that the proposal to extend FINRA Rule 0150 to apply the mark-up rule to transactions in government securities is consistent with both the GSAA and with the prior application by NASD of certain of its rules, following the GSAA, to exempted securities other than municipal securities.[13]

FINRA also believes that there would be regulatory benefits from amending FINRA Rule 0150 to apply the mark-up rule to transactions in government securities. In the Notice, FINRA notes that it must use the general provisions of FINRA Rule 2010 if FINRA staff wants to bring a case alleging excessive mark-ups, mark-downs, or commissions in transactions in exempted securities other than municipal securities, such as agency debt securities or U.S. Treasury securities.[14] FINRA believes that the proposed amendment would provide it an additional ''specific cause of action under which conduct involving government securities could be regulated'' and ''would clearly signal to members that conduct relating to mark-ups and commissions in the market for government securities directly implicates the mark-up rule.'' [15] FINRA also noted that the mark-up rule provides ''specific criteria by which members should assess debt mark-ups and mark-downs.'' FINRA believes that amending Rule 0150 to apply these standards to transactions in government securities would provide both members and its staff with ''clearer standards by which to measure the propriety of mark-ups, mark-downs, and commissions'' in transactions involving government securities.[16]

FINRA also believes that the proposed amendment would only have a minimal impact on its members because FINRA Rule 2010 already applies to these transactions.[17] In addition, FINRA noted in the Notice that while the proposal would extend the more specific requirements of the mark-up rule to transactions in government securities, the provisions are already applicable to corporate debt securities.[18] Therefore, FINRA members that currently engage in transactions in corporate debt will be familiar with its application.[19]

III. Discussion and Commission Findings

After carefully considering the proposed rule, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act, which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[21] The Commission notes that no comments were received in response to the proposal.[22]

As discussed above, the proposed rule change would expand the applicability of the mark-up rule to exempted securities that are government securities. The Commission notes that government securities can be subject to excessive mark-ups and agrees that making more explicit FINRA's authority over excessive and improper mark-ups, mark-downs, or commissions relating to government securities will benefit investors in government securities. While the Commission acknowledges that FINRA Rule 2010 already applies to transactions in government securities and instances of improper or excessive mark-ups, mark-downs, and commissions, the Commission believes that expanding FINRA Rule 0150 to include the mark-up rule will give FINRA an important enforcement tool with which to pursue instances of excessive mark-ups, mark-downs, and commissions. The Commission also agrees with FINRA's belief that applying the mark-up rule to these securities will provide members with additional clarity when conducting transactions in government securities.

Pursuant to Section 19(b)(5) of the Act,[23] the Commission consulted with and considered the views of the Department of the Treasury (''Treasury'') in determining to approve the proposed rule change.[24] Treasury did not object to FINRA's proposal that the mark-up rule be applied to government securities.[25]

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–FINRA–2015–033), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–31789 Filed 12–17–15; 8:45 am]

BILLING CODE 8011–01–P

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or dealer in an exempted security. This provision was eliminated as part of the GSAA. For more information on the background of Section 15A(f), *see* Notice at 60417, note 5.

[11] NASD Rule 2440 and IM–2440–1. *See* Notice at 60417. The NASD stated at the time that it intended to review the specific application of these rules to the government securities market and that it was developing an interpretation of the mark-up rule with respect to exempted securities and other debt securities.

[12] *See* Notice at 60417, note 9. FINRA also described in the Notice how NASD adopted NASD Rule 0116 (now FINRA Rule 0150) in 2001, setting forth the NASD rules that would apply to transactions in exempted securities, except municipal securities and how the SEC approved IM–2440–2, which set forth a mark-up policy for transactions in debt securities, except municipal securities. *See id.,* notes 10–11.

[13] *See id.* at 60417.

[14] *See id.* at 60418.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.* FINRA also noted that it believes most firms apply substantially similar standards to all transactions in fixed income securities. Furthermore, FINRA does not believe that the proposed amendments would impact the reporting or surveillance of transactions in government securities because it already requires its members to report transactions in many government securities (*i.e.,* agency debentures and agency asset backed securities) to its Trade Reporting and Compliance Engine (''TRACE'') and it actively surveils the markets in such securities. FINRA also noted that for government securities that are not TRACE-eligible, such as U.S. Treasury securities, any review of transactions pursuant to the mark-up rule would not change. *See* Notice at 60418.

[20] In approving the proposed rule change, the Commission has also considered the rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78o–3(b)(6).

[22] In 2013, FINRA sought comment on proposed rule changes that, among other things, would have amended Rule 0150 to apply the mark-up rule to certain government securities. No comments were received on that aspect of the proposal. *See* Notice at 60419, note 18 for more information.

[23] 15 U.S.C. 78s(b)(5).

[24] Section 19(b)(5) of the Act states generally that the Commission shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule filed by a registered securities association that primarily concerns conduct related to transactions in government securities. *See also* Notice at 60418, note 15.

[25] Telephone conversation between Treasury staff and Lourdes Gonzalez, Assistant Chief Counsel; Alicia Goldin, Senior Special Counsel; and Stephen Benham, Special Counsel, Division of Trading and Markets, Commission, on November 16, 2015.

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76641; File No. SR–OCC–2015–805]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of an Advance Notice, as Modified by Amendment Nos. 1, 2 and 3, Concerning The Options Clearing Corporation's Non-Bank Liquidity Facility

December 14, 2015.

Pursuant to section 806(e)(1) of title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Payment, Clearing and Settlement Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on November 5, 2015, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice described in Items I and II below, which Items have been prepared by OCC. On November 11, 2015, OCC filed Amendment No.1 to the advance notice, which amended and replaced in its entirety the advance notice as originally submitted on November 5, 2015. On November 17, 2005, OCC filed Amendment No. 2 to the advance notice, which partially amended the advance notice as submitted on November 11, 2015. On November 24, 2015, OCC filed Amendment No. 3 to the advance notice, which amends and replaces in its entirety the advance notice as submitted on November 11, 2015, and amended on November 17, 2015. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

As discussed in more detail below, this advance notice is filed by OCC in connection with a proposed change to: (i) Extend the existing confirmation (''Existing Confirmation'') [3] for one year under the Master Repurchase Agreement (''MRA'') with the same terms and conditions; (ii) enter into a second confirmation (''Second Confirmation,'' and collectively with the Existing Confirmation, ''Confirmations'') under the MRA also on the same terms and conditions except with an expiration date in June 2016; and (iii) maintain, between the Existing Confirmation and Second Confirmation, an aggregate commitment amount of no less than $1 billion and no greater than $1.5 billion under the non-bank liquidity facility (''Non-Bank Liquidity Facility'') with the existing institutional investor (''Counterparty'') and its agent.[4]

By this notice, OCC requests that the Commission not object to the foregoing proposed changes for renewing, in the future, the Existing Confirmation and the Second Confirmation on the same terms and conditions [5] with the same Counterparty without filing an advance notice concerning the renewal, provided that there has been no negative change to the Counterparty's credit profile or the Counterparty has not experienced a material adverse change (as defined below) since entering into the Confirmations or the latest renewal of the either Confirmation, whichever is later.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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 and B below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

This Amendment No. 3 to SR–OCC–2015–805 (''Filing'') amends and replaces in its entirety the Filing as originally submitted on November 5, 2015, and amended on November 11, 2015 and November 17, 2015. The purpose of this Amendment No. 3 to the Filing is to clarify the conditions under which OCC would be permitted to renew either of the Confirmations without filing a subsequent advance notice filing.

Description of Change

This advance notice is filed by OCC in connection with a proposed change to: (i) Extend the Existing Confirmation, for one year under the MRA, with the same terms and conditions, for a commitment amount of $500 million; (ii) enter into a Second Confirmation under the MRA, also on the same terms and conditions, except with an expiration date in June 2016, for a commitment amount of $500 million; and, (iii) maintain, between the Existing Confirmation and Second Confirmation, an aggregate commitment amount of no less than $1 billion and no greater than $1.5 billion under the Non-Bank Liquidity Facility with the existing Counterparty and its agent.[6] The Second Confirmation has the same terms, conditions, operations, and mechanics as the Existing Confirmation, except for the expiration date and commitment amount.

Background

OCC's overall liquidity plan provides it with access to a diverse set of liquidity funding sources, which include bank borrowing arrangements (*i.e.,* OCC's syndicated credit facility [7]) and the Non-Bank Liquidity Facility. The Non-Bank Liquidity Facility is designed to reduce the concentration of OCC's counterparty exposure with respect to its overall liquidity plan by diversifying its lender base among banks and non-bank, non-clearing member institutional investors, such as pension funds or insurance companies.

The currently approved Non-Bank Liquidity Facility is comprised of two parts: The MRA and the Existing

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] The Existing Confirmation is the original $1 billion Master Confirmation executed under the Master Repurchase Agreement as described in Securities Exchange Act Release No. 73979 (January 2, 2015), 80 FR 1062 (January 8, 2015) (SR–OCC–2014–809).

[4] OCC intends the commitment amount of the Second Confirmation to be $500 million and the commitment amount of the extended Existing Confirmation to be $500 million. OCC would have the flexibility to change the commitment amount of each Confirmation at each renewal provided that at all times OCC would maintain the aggregate commitment level between the two Confirmations under the Non-Bank Liquidity Facility at no less than $1 billion and no greater than $1.5 billion. The MRA and any effective Confirmation(s) constitute the Non-Bank Liquidity Facility.

[5] For the purposes of clarity, OCC would not consider changes to the costs of entering into a Confirmation, or the rate of a transaction permitted under a Confirmation, a change to a term or condition that would require the filing of a subsequent advance notice filing provide that such costs or rate is at the then prevailing market rate.

[6] The substantive terms regarding each additional transaction are set forth in the OCC Committed Repo Program Summary of Indicative Terms, which are attached hereto as Exhibits 3A and 3B. Such exhibits are non-public documents for which OCC has submitted a request for confidential treatment to the Commission.

[7] *See* Securities Exchange Act Release No. 76062 (October 1, 2015), 80 FR 64028 (October 22, 2015) (SR–OCC–2015–803).

Confirmation, which contains certain individualized terms and conditions of transactions executed between OCC, an institutional investor and its agent. The MRA is structured like a typical repurchase arrangement in which the buyer (*i.e.,* the Counterparty) would purchase from OCC, from time to time, United States government securities (''Eligible Securities'').[8]

OCC, as the seller, would transfer Eligible Securities to the buyer in exchange for a payment by the buyer to OCC in immediately available funds (''Purchase Price''). The buyer would simultaneously agree to transfer the purchased securities back to OCC at a specified later date (''Repurchase Date'') or on OCC's demand against the transfer of funds by OCC to the buyer in an amount equal to the outstanding Purchase Price plus the accrued and unpaid price differential (together, ''Repurchase Price''), which is the interest component of the Repurchase Price.

The Confirmations establish tailored provisions of the actual repurchase transactions permitted under the MRA. By entering into the Confirmation, the Counterparty is obligated to enter repurchase transactions even if OCC experiences a material adverse change,[9] funds must be made available to OCC within 60 minutes of OCC's delivering eligible securities, and the institutional investor is not permitted to rehypothecate purchased securities.[10] Additionally, the Confirmations set forth the terms and maximum dollar amounts of the transaction permitted under the MRA.

Extension of the Existing Confirmation

In order to provide continued access to liquidity resources, OCC is also proposing to extend the Existing Confirmation under the Non-Bank Liquidity Facility. The extended Existing Confirmation would have the same terms, conditions, operations, and mechanics as the Existing Confirmation entered into under the Non-Bank Liquidity Facility, but for the expiration date, which would be January 2017, and the commitment amount, which would be $500 million.[11]

The extended Existing Confirmation would, for example, continue to state that OCC is entitled to receive funds from the Non-Bank Liquidity Facility within 60 minutes of a request for such monies and delivery of eligible securities. The buyer would not be able to rehypothocate eligible securities sold to it in connection with a Non-Bank Liquidity Facility transaction, and OCC would be able to substitute eligible securities held by the buyer. Additionally, OCC would have early termination rights with respect to any transaction entered into under the Non-Bank Liquidity Facility as well as have additional remedies in the case of ''material adverse changes'' to OCC. For example, OCC would require that it would not be an event of default if OCC suffers a material adverse change, such as the failure of a clearing member. This provision is important because it provides OCC with certainty of funding, even in adverse or difficult market conditions. This commitment to provide funding would be a key distinction from ordinary repurchase arrangements and a key requirement for OCC.

Second Confirmation

OCC proposes to enter into the Second Confirmation that would permit transactions of up to $500 million and would expire in June 2016. The proposed Second Confirmation would have the same terms, conditions, operations, and mechanics as the Existing Confirmation of the Non-Bank Liquidity Facility, but for the commitment amount and the term.

The proposed Second Confirmation, with a June 2016 expiration date, would help ensure continued access to a minimum amount of liquidity to OCC by staggering the expiration of the committed liquidity funding sources. OCC's current committed liquidity funding sources, which are its syndicated credit facility [12] and the Existing Confirmation, currently expire each year in October and January, respectively. Staggering the expiration dates of Confirmations under the Non-Bank Liquidity Facility in relationship to each other and in relationship to the other liquidity funding source in OCC's overall liquidity plan would mitigate the risk of a precipitous decrease in OCC's access to liquidity as a result of a an unsuccessful renewal of any one funding source.

Aggregate Commitment Amount Under the Non-Bank Liquidity Facility

OCC's current aggregate committed funding available under its Non-Bank Liquidity Facility ($1.0 billion) and its bank syndicated credit facility ($2.0 billion) is $3.0 billion. OCC is proposing to maintain the aggregate commitment amount under the Non-Bank Liquidity Facility at no lower than $1.0 billion and no higher than $1.5 billion, so that the aggregate total funding available is between $3.0 billion and $3.5 billion. This would provide OCC with the flexibility to: (i) React to shifting liquidity needs in a swift manner within funding parameters approved by the Commission, and (ii) reallocate the amount of funding available under the Confirmations at the time either of the Confirmations is to be renewed to manage liquidity needs and enhance its ability to ensure continual liquidity resources.

OCC would continue to evaluate the aggregate commitment amount of the Non-Bank Liquidity Facility so that OCC's available liquidity resources remain properly calibrated to its activities and settlement obligations, and to the extent: (i) OCC determines its liquidity needs merit funding levels below the $1.0 billion or above the $1.5 billion thresholds for the Non-Bank Liquidity Facility, (ii) OCC should seek to change the terms and conditions of the Non-Bank Liquidity Facility, or (iii) the Counterparty has experienced a negative change to its credit profile or a material adverse change since entering into the Confirmations or the latest renewal of the either Confirmation, OCC would submit a proposal with the Commission for approval first.

Anticipated Effect on and Management of Risk

Completing timely settlement is a key aspect of OCC's role as a clearing agency performing central counterparty services. The extension of the Existing Confirmation would continue to promote the reduction of risks to OCC, its clearing members and the options market in general because it would allow OCC to continue to obtain short-term funds from the Non-Bank Liquidity Facility to address liquidity demands arising out of the default or suspension of a clearing member, in anticipation of a potential default or suspension of clearing members, or the insolvency of a bank or another securities or commodities clearing organization.

[8] OCC would use U.S. government securities that are included in clearing fund contributions by clearing members and margin deposits of any clearing member that has been suspended by OCC for the repurchase arrangements. Article VIII, section 5(e) of OCC's By-Laws and OCC Rule 1104(b) authorize OCC to obtain funds from third parties through securities repurchases using these sources. The officers who may exercise this authority include the Executive Chairman and the President.

[9] When included in a contract, a ''material adverse change'' is typically defined as a change that would have a materially adverse effect on the business or financial condition of a company.

[10] *See* Securities Exchange Act Release No. 73979 (January 2, 2015), 80 FR 1062 (January 8, 2015) (SR–OCC–2014–809).

[11] *See* Securities Exchange Act Release No. 73979 (January 2, 2015), 80 FR 1062 (January 8, 2015) (SR–OCC–2014–809).

[12] *See* Securities Exchange Act Release No. 76062 (October 1, 2015), 80 FR 64028 (October 22, 2015) (SR–OCC–2015–803).

The Second Confirmation and the ability to seek an aggregate commitment amount under the Non-Bank Liquidity Facility for no lower than $1.0 billion and no greater than $1.5 billion would also help OCC ensure the continued availability of its liquidity resources by embedding the staggered expiration of the committed liquidity funding sources and providing OCC with the flexibility to seek additional funding amounts at the same terms, conditions, operations, and mechanics of the Confirmations.

The MRA, like any liquidity source, would involve certain risks, but OCC would continue to structure the Non-Bank Liquidity Facility to mitigate those risks. Most of these risks are standard in any master repurchase agreement. For example, a buyer could fail to deliver, or delay in delivering, purchased securities to OCC by the applicable Repurchase Date. OCC will address this risk by seeking a security interest from the buyer in that portion of the purchased securities representing the excess of the market value over the Repurchase Price, or by obtaining other comfort from the buyer that the purchased securities will be timely returned. Further, the purchased securities generally will not be ''on-the-run'' securities, *i.e.,* the most recently issued Treasury securities. The demand in the marketplace for Treasury securities, for uses other than collateral, is much greater for on-the-run Treasury securities, and, therefore, OCC believes buyers will have little incentive to retain the securities transferred by OCC.

The mechanics under the MRA would be structured so that OCC could avoid losses by paying the Repurchase Price. For example, OCC will have optional early termination rights in each Confirmation, under which OCC would be able to accelerate the Repurchase Date of any transaction by providing written notice to the buyer and paying the Repurchase Price. Through this mechanism, OCC can maintain the benefit of the MRA, while mitigating any risk associated with a particular transaction.

The MRA would be structured to avoid potential third-party risks, which are typical of repurchase arrangements. The prohibition on buyer rehypothecation and use of purchased securities, along with OCC's visibility into the buyer's custody account, would reduce the risk to OCC of a buyer default.

As with any repurchase arrangement, OCC is subject to the risk that it may have to terminate existing transactions and accelerate the applicable Repurchase Date with respect to a buyer due to changes in the financial health or performance of the buyer. Terminating transactions could negatively affect OCC's liquidity position. However, any negative effect is reduced by the fact that OCC maintains a number of different financing arrangements, and thus will have access to liquidity sources in the event the MRA is no longer a viable source.

Under the MRA, OCC would be obligated to transfer additional cash or securities as margin in the event the market value of any purchased securities decreases. OCC seeks to ensure it can meet any such obligation by monitoring the value of the purchased securities and maintaining adequate cash resources to make any required payments. Such payments are expected to be small in comparison to the total amount of cash received for each transfer of purchased securities.

The proposed change would help OCC minimize losses in the event of a default, suspension or insolvency, by allowing it to obtain funds from sources not connected to OCC's clearing members on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption. OCC believes that the reduced settlement risk presented by OCC resulting from the proposed change would correspondingly reduce systemic risk and promote the safety and soundness of the clearing system. The ability to borrow funds from the Non-Bank Liquidity Facility would allow OCC to avoid liquidating margin or clearing fund assets in what would likely be volatile market conditions, which would preserve funds available to cover any losses resulting from the failure of a clearing member, bank or other clearing organization.

Because the proposed change preserves substantially the same terms and conditions as the MRA and the Existing Confirmation, OCC believes that the proposed change would not otherwise affect or alter the management of risk at OCC.

Consistency With the Payment, Clearing and Settlement Supervision Act

OCC believes the proposed change is consistent with section 805(b)(1) of the Payment, Clearing and Settlement Supervision Act.[13] The objectives and principles of section 805(b)(1) of the Payment, Clearing and Settlement Supervision Act specify the promotion of robust risk management, promotion of safety and soundness, reduction of systemic risks, and support of the stability of the broader financial system.[14] OCC believes that the proposed change would promote these objectives because the proposed Confirmations would provide OCC with an additional source of committed liquidity to meet its settlement obligations while at the same time being structured to mitigate certain operational risks, as described above, that arise in connection with this committed liquidity source.

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing OCC with prompt written notice of the extension. The proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies OCC in writing that it does not object to the proposed change and authorizes OCC to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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–2015–805 on the subject line.

[13] 12 U.S.C. 5464(b)(1).

[14] *Id.*

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–2015–805. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site (*http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_15_805.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–2015–805 and should be submitted on or before January 4, 2016.

By the Commission.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–31818 Filed 12–17–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76638; File No. SR–NYSEMKT–2015–106]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the Seventh Amended and Restated Operating Agreement of the Exchange To Establish a Committee for Review as a Sub-Committee of the ROC and Make Conforming Changes to Rules and the NYSE MKT Company Guide

December 14, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 11, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes (1) amending the Seventh Amended and Restated Operating Agreement of the Exchange (''Operating Agreement'') to establish a Committee for Review as a sub-committee of the ROC and make conforming changes to Rules 475, 476, 476A, 20—Equities, 308—Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the NYSE MKT Company Guide (the ''Company Guide''); (2) deleting references to ''NYSE Regulation, Inc.'' and ''NYSE Regulation'' in Section 4.05 of the Operating Agreement and Rules 0, 1—Equities, 22—Equities, 36—Equities, 48—Equities, 49—Equities, 54—Equities, 70—Equities, 103—Equities, 103A—Equities, 103B—Equities, 422—Equities, 497—Equities, and 902NY; (3) replacing references to the Chief Executive Officer of NYSE Regulation, Inc. in Rules 48—Equities, 49—Equities and 86—Equities with references to the Chief Regulatory Officer of the Exchange; and (4) making certain technical and non-substantive changes. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to the following changes:

• Amending the Operating Agreement to establish a Committee for Review (''CFR'') as a sub-committee of the ROC and make conforming changes to Rules 475, 476, 476A, 20—Equities, 308—Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide;

• deleting references to ''NYSE Regulation, Inc.'' and ''NYSE Regulation'' [4] in Section 4.05 of the Operating Agreement and Rules 0, 1—Equities, 22—Equities, 36—Equities, 48—Equities, 49—Equities, 54—Equities, 70—Equities, 103—Equities, 103A—Equities, 103B—Equities, 422—Equities, 497—Equities, and 902NY;

• replacing references to the Chief Executive Officer of NYSE Regulation, Inc. in Rules 48—Equities, 49—Equities and 86—Equities with references to the Chief Regulatory Officer of the Exchange; and

• making certain technical and non-substantive changes.

The Exchange proposes that the above rule changes would be operative simultaneously with the termination of

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Regulation, Inc. (''NYSE Regulation''), a not-for-profit subsidiary of the Exchange's affiliate New York Stock Exchange LLC (''NYSE''), performs regulatory functions for the Exchange pursuant to an intercompany Regulatory Services Agreement (''RSA'') that gives the Exchange the contractual right to review NYSE Regulation's performance. *See* Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (SR–NYSE–2015–27) (''NYSE Approval Order''). As noted below, these proposed changes would be appropriate once the RSA terminates because NYSE Regulation would cease providing regulatory services to the Exchange, which would re-integrate its regulatory functions.

the RSA. The Exchange would effect the changes described herein no later than June 30, 2016, on a date determined by its Board.

Amend Operating Agreement To Establish CFR as a Sub-Committee of the ROC

The Exchange proposes to establish a CFR as a sub-committee of the ROC by adding a new section (h)(iii) to Section 2.03 of the Operating Agreement and making conforming changes to Rules 475, 476, 476A, 20—Equities, 308—Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide.

The proposed CFR would be the successor to the current CFR,[5] which is a committee of the NYSE Regulation board of directors that reviews appeals of Exchange disciplinary actions, and the Committee on Securities, a committee of the Exchange board of directors that reviews determinations to limit or prohibit the continued listing of an issuer's securities on the Exchange. By establishing a new CFR, the Exchange proposes to make its appellate process more consistent with that of its affiliate NYSE, whose proposed rule change to establish a CFR as a subcommittee of its ROC has been approved by the SEC.[6] The proposed CFR would incorporate the salient requirements of the current CFR, which was a model for the current proposal and for the CFR adopted by the Exchange's affiliate,[7] and the Committee on Securities.

Section 2.03(h)(iii) of the Operating Agreement would provide that the Board shall annually appoint a CFR as a sub-committee of the ROC. As is currently the case, proposed Section 2.03(h)(iii) would provide that the CFR would be comprised of both Exchange directors that satisfy the independence requirements[8] as well as persons who are not directors. Like the current CFR, the Exchange also proposes that a majority of the members of the CFR voting on a matter subject to a vote of the CFR must be directors of the Exchange.

Further, proposed Section 2.03(h)(iii) would provide that among the persons on the CFR who are not directors would be included representatives of member organizations that engage in a business involving substantial direct contact with securities customers (commonly referred to as ''upstairs firms''), Designated Market Makers (''DMM'') or specialists, and floor brokers.[9] Once again, this is the way the current CFR is structured.[10]

Like the current CFR, proposed Section 2.03(h)(iii) would provide that the CFR would be responsible for reviewing the disciplinary decisions on behalf of the Board.[11] Like the current Committee on Securities, the proposed CFR would review determinations to limit or prohibit the continued listing of an issuer's securities on the Exchange.[12]

In connection with creation of the proposed CFR, the Exchange also proposes to delete Rule 20, which provides that the Exchange establish a Market Performance Committee and that NYSE Regulation establish a Regulatory Advisory Committee to act in an advisory capacity regarding trading rules and disciplinary matters and regulatory rules other than trading rules, respectively. Historically, these advisory committees have been composed of persons associated with member organizations and representatives of both those member organizations doing business on the Exchange's trading floor and those who do not do business on the Floor.

The Exchange notes that the same categories of members would be represented on the proposed CFR, whose mandate as set forth in proposed Section 2.03(h)(iii) would include acting in an advisory capacity to the Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules. The proposed CFR would therefore serve in the same advisory capacity as the Market Performance and Regulatory Advisory Committees. The Exchange accordingly believes that retaining the Market Performance Committee or

[5] The current CFR was created in connection with the merger of the New York Stock Exchange, Inc. (now NYSE), with Archipelago Holdings, Inc. in 2006. *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251, 11259 (March 6, 2006) (SR–NYSE–2005–77). Proposed Section 2.03(h)(iii) of the Operating Agreement would incorporate the salient requirements of the current CFR as set forth in Article III, Section 5 of the NYSE Regulation Bylaws. *See id.* & 11266.

[6] *See* NYSE Approval Order, 80 FR at 59840.

[7] The salient requirements of the NYSE Regulation CFR are set forth in Article III, Section 5 of the NYSE Regulation Bylaws. *See* Securities Exchange Act Release No. 53382, 71 FR 11251, 11259 & 11266 (February 27, 2006) (SR–NYSE–2005–77). *See* NYSE Approval Order, 80 FR at 59840.

[8] The Exchange's independence requirements are set forth in the Independence Policy of the Board of Directors of the Exchange available at *https://www.nyse.com/publicdocs/nyse/regulation/nyse-mkt/nyse_mkt_llc_independence_policy.pdf*. Because the majority of the Exchange Board must be independent, as a functional matter if the Exchange has a five person Board, at least three of the five directors would qualify for CFR membership. *See* Operating Agreement Article II, Section 2.03(a).

[9] Market makers on the Exchange's equity market are called DMMs and on NYSE Amex Options are called specialists. *See* Rule 2—Equities (i) & (j) (defining DMM); Rule 927NY (defining specialist). The three proposed categories of CFR members mirror categories (1) through (3) in Article III, Section 5 of the NYSE Regulation Bylaws for the composition of the NYSE MKT CFR.

The Exchange does not propose to carry over the requirement that the CFR also have an individual representing the fourth category specified in Article III, Section 5 of the NYSE Regulation Bylaws, which is an individual associated with an NYSE MKT member organization that spends a majority of their time on the trading Floor and has as a substantial part of their business the execution of transactions on the trading Floor for their own account or the account of their member organization but is not registered as a specialist. This category describes a class of proprietary traders known as Registered Equity Market Makers (''REMM'') on the former American Stock Exchange LLC, a predecessor of the Exchange, and as Registered Competitive Market Makers (''RCMM'') on the NYSE.

REMMs, like RCMMs, were floor traders who engaged in on-floor proprietary trading, subject to certain requirements intended to have these members effectively function like market makers, pursuant to the exemption for market makers in Section 11(a)(1)(A) of the Exchange Act. *See* 17 CFR 240.11a1–5; Division of Market Regulation, United States Securities and Exchange Commission, Market 2000: *An Examination of Current Equity Market Developments* (January 1994) (''Market 2000''), at A V–7, available at *https://www.sec.gov/divisions/marketreg/market2000.pdf*. The rules relating to this category of proprietary floor trader were not adopted when the American Stock Exchange LLC was acquired by the NYSE. *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995, 58996 (October 8, 2008) (SR–Amex–2008–63). The NYSE eliminated RCMMs shortly thereafter. *See* Securities Exchange Act Release No. 60356 (July 21, 2009), 74 FR 37281 (July 28, 2009) (SR–NYSE–2009–08). In addition, NYSE MKT Rule 114, which governed REMMs, was deleted as obsolete in 2012. *See* Securities Exchange Act Release No. 68306 (November 28, 2012), 77 FR 71846 (December 4, 2012) (SR–NYSEMKT–2012–68). There are thus no Exchange members or member organizations that fall under the fourth category specified in Article III, Section 5 of the NYSE Regulation Bylaws. The only three active membership categories are upstairs firms, DMMs or specialists, and Floor brokers (applicable to both equities and options markets), and each would be represented on the proposed CFR.

[10] The Exchange notes that Section (h)(i) of the Operating Agreement governing the Director Candidate Recommendation Committee (''DCRC'') utilizes the term ''specialist'' for both markets. *See* note 9, *supra.* The Exchange will be seeking approval from its board of directors to amend Section (h)(i) of the Operating Agreement to refer to ''DMM or specialist,'' which would conform it to proposed Section 2.03(h)(iii).

[11] Currently, these powers are set forth in the charter of the NYSE Regulation CFR. The charter for the NYSE Regulation CFR also states that the CFR may provide general advice to the NYSE Regulation board of directors in connection with disciplinary, listing and other regulatory matters. The Exchange proposes to state that the CFR can provide such general advice to the Exchange board and to delineate the appellate and advisory powers of the proposed CFR in Section 2.03(h)(iii) of the Operating Agreement. Further, as discussed below, the Exchange proposes to conform Rules 475, 476, 476A, 20—Equities, 308—Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide governing review of disciplinary and delisting appeals to the proposal.

[12] These powers are currently set forth in the charter of the Committee on Securities and reflected in Section 1205 of the Company Guide.

Regulatory Advisory Committee would be redundant and unnecessary. Moreover, the Exchange believes that member participation on the proposed CFR would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.[13]

Finally, the Exchange proposes to make conforming amendments to 475, 476, 476A and 308—Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide to replace references to the current NYSE Regulation CFR [14] and the current Committee on Securities, with references to the ''Committee for Review.'' Rule 476(f) would also be amended to provide that the CFR may, but is not required to, appoint an appeals panel to conduct a review thereunder and make a recommendation to the CFR regarding the disposition of the appeal. As proposed, appeals panels would have no other role in the appellate process. An appeals panel appointed by the CFR would consist of at least three and no more than five individuals. This is the same composition of appeals panels constituted under the rules of the Exchange's affiliate NYSE Arca, Inc.[15] An appeals panel appointed by the CFR for equity matters would be composed of at least one director and one member or individual associated with an equities member organization. An appeals panel appointed by the CFR for options matters would be composed of at least one director and one member or individual associated with an options member organization. The Exchange also proposes to describe the CFR as a subcommittee of the Exchange's ROC in Sections 1205 and 1212T(g) of the Company Guide.

The Exchange believes that the proposed rule change is consistent with the approach approved for the Exchange's affiliate, NYSE.[16] The proposed rule change is also consistent with the fair representation requirement of Section 6(b)(3) of the Exchange Act,[17] which is intended to give members a voice in the selection of an exchange's directors and the administration of its affairs. In particular, as is the case with the current CFR, the proposed CFR would be composed of persons associated with Exchange members and selected after appropriate consultation with those members. The proposal would therefore continue to provide for the fair representation of members in the ''administration of the affairs of the exchange'', including the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.[18]

Deletion of References to NYSE Regulation, Inc.

In connection with the Exchange's termination of the intercompany RSA pursuant to which NYSE Regulation provides regulatory services to the Exchange,[19] the Exchange proposes the following changes:

Operating Agreement

• The Exchange proposes to amend Section 4.05 of the Operating Agreement to remove references to ''NYSE Regulation, Inc.'' and replace one reference with ''Exchange regulatory staff.'' The Exchange also proposes to replace references to NYSE Regulation ''assets'' to reflect the proposed reintegration of the regulatory function. The crux of the provision would continue to require the Exchange to ensure that any fees, fines or penalties collected by Exchange regulatory staff would not be used for commercial purposes or distributed to NYSE Group, Inc. (which is the ''Member'' for purposes of the Operating Agreement) or any other entity. The proposed revision does not in any way alter previous commitments with respect to the use of fine income. [20]

General Rules

• The Exchange proposes to amend Rule 0 (Definitions of Terms), which describes the regulatory services agreement between the NYSE and FINRA, to remove references to ''NYSE Regulation, Inc., NYSE Regulation staff or departments'', retaining the existing reference in Rule 0 to Exchange staff, which reference would encompass the Exchange's regulatory staff.

Office Rules

• The Exchange proposes to amend Rule 476A (Imposition of Fines for Minor Violation(s) of Rules), which sets forth the Exchange's Minor Rule Violation Plan, to replace the reference to ''NYSE Regulation'' with ''Exchange regulatory staff'' in subpart (d) identifying the parties that can contest a fine imposed under the Rule.

Equities Rules

• The Exchange proposes to amend Rule 1—Equities, which defines the term the ''Exchange'', to replace references to ''officer of NYSER'' and ''employee of NYSER'' with ''Exchange officer'' and ''Exchange employee'', respectively. The Exchange also proposes to delete the definitions of NYSE Market, Inc.[21] and NYSE Regulation as well as the references to NYSE Regulation's market surveillance division.

• The Exchange proposes to amend Rule 22—Equities (Disqualification Because of Personal Interest), which disqualifies members of certain Exchange boards and committees from considering a matter if there are certain types of indebtedness between the board or committee member and a member organization's affiliate or other related parties, to remove references to the ''NYSE Regulation'' board of directors.

• The Exchange proposes to amend Supplementary Material .30 of Rule 36—Equities (Communications Between Exchange and Members' Offices), which governs communications between the Exchange and member offices and requires records to ''be maintained in the format prescribed by NYSE Regulation'' to remove the reference to ''NYSE Regulation'' and replace it with ''the Exchange.''

• The Exchange proposes to amend Supplementary Material .10 of Rule 46—Equities (Floor Officials—Appointment) to replace the reference to ''employees of NYSE Regulation, Inc.'' with a reference to ''Exchange regulatory employees.''

• The Exchange proposes to amend Rule 48—Equities (Exemptive Relief — Extreme Market Volatility Condition), which sets forth the procedures for invoking an extreme market volatility

[13] *See* 15 U.S.C. 78f(b)(3).

[14] The current CFR is referred to in the Rules as the ''committee of NYSE Regulation which is authorized to review disciplinary decisions on behalf of the Exchange Board of Directors and advise the Exchange Board of Directors thereon.'' The term CFR is used in NYSE Regulation's bylaws. *See* note 5, *supra.*

[15] *See* NYSE Arca, Inc. Rule 3.3(a)(1)(B).

[16] *See* NYSE Approval Order, 80 FR at 59840.

[17] *See* 15 U.S.C. 78f(b)(3).

[18] *See* Securities Exchange Act Release No. 53382, 71 FR 11251 (February 27, 2006) (SR–NYSE–2005–77).

[19] *See* note 4, *supra.*

[20] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707, 57717 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving merger whereby the Exchange's predecessor, the American Stock Exchange LLC, a subsidiary of The Amex Membership Corporation, became a subsidiary of NYSE Euronext). In particular, the Exchange reiterates its previous commitment, reflected in Section 4.05 of the Operating Agreement, that it would not use any regulatory fees, fines or penalties collected by NYSE Regulation for commercial purposes. *See id.* The Exchange also undertakes, consistent with the commitment made by its affiliate NYSE and as reflected by the proposed language to Section 4.05 of the Operating Agreement, not to distribute such assets, fees, fines or penalties to the member or any other entity.

[21] NYSE Market (DE) was formerly known as ''NYSE Market, Inc.'' Accordingly, references to ''NYSE Market'' in the Exchange Rules are references to NYSE Market (DE).

condition, to replace the reference to ''officers of NYSE Market and NYSE Regulation'' with ''Exchange regulatory and market operational employees that are officers of the Exchange.''

• The Exchange proposes to amend Rule 49—Equities (Emergency Powers), which addresses the Exchange's emergency powers, to replace ''NYSE Regulation, Inc.'' with ''the Exchange'' in the definition of ''qualified Exchange officer.'' The Exchange also proposes to replace the outdated reference to ''NYSE Euronext'' with ''ICE.''

• The Exchange proposes to amend subpart (b) of Rule 54—Equities (Dealings on Floor—Persons) to replace ''NYSE Regulation, Inc. (''NYSER'')'' with ''Exchange regulatory staff.'' Rule 54(b)—Equities permits approval of appropriately registered and supervised booth staff of member organizations who are not ''members'' to process orders sent to the booth in the same manner that a sales trader in an ''upstairs office'' is allowed to process orders.

• The Exchange proposes to amend the title and subparts (1) & (7) of Supplementary Material .40 of Rule 70—Equities (Execution of Floor Broker Interest), which provides that a member organization will be permitted to operate a booth premise similar to the member organization's ''upstairs'' office, to refer to ''Exchange regulatory staff'' instead of ''NYSE Regulation, Inc. (''NYSER'')'' and ''NYSER.''

• The Exchange proposes to amend Rule 103—Equities (Registration and Capital Requirements of DMMs and DMM Units), which governs registration and capital requirements for DMMs, to refer to ''the Exchange'' instead of ''NYSE Regulation'' and ''Divisions of Market Surveillance and Member Firm Regulation.''

• The Exchange proposes to amend Rule 103A—Equities (Member Education), which governs the continuing education requirement for members active on the Exchange trading Floor, to replace ''NYSE Regulation, Inc.'' with ''the Exchange.''

• The Exchange proposes to amend Rule 103B—Equities (Security Allocation and Reallocation), which governs the security allocation and reallocation process, to replace ''staff of NYSE Regulation'' with ''Exchange regulatory'' staff in Policy Note (G) and to replace ''NYSE Regulation, Inc. (''NYSER'')'' and ''NYSER'' in Supplementary Material .10 with ''Exchange regulatory staff'' and ''the Exchange'', as appropriate.

• The Exchange proposes to amend Rule 422—Equities (Loans of and to Directors, etc.), which prohibits unsecured loans between members of the board of directors or any committee of ICE, ICE Holdings, NYSE Holdings, the NYSE, NYSE Market, the Exchange and NYSE Regulation or an officer or employee the foregoing without the prior consent of the NYSE Board, to remove references to ''NYSE Regulation.''

• The Exchange proposes to amend Rule 497—Equities (Additional Requirements for Listed Securities Issued by Intercontinental Exchange, Inc. or its Affiliates), which imposes certain pre-listing approvals and post-listing monitoring requirements on Affiliated Securities (as defined therein) listed on the Exchange, to remove the definition of NYSE Market in Rule 497(a)(4) and the definition of NYSE Regulation in Rule 497(a)(5) and replace references to each with ''Exchange regulatory staff'' or ''the Exchange.''

Trading of Options Contracts Rules

• The Exchange proposes to amend Rule 902NY, governing admission and conduct on the Exchange options Trading Floor, to remove the reference to an Officer of ''NYSE Regulation.''

Amendments to Rules 48—Equities, 49—Equities, and 86—Equities

The Exchange also proposes to amend Rule 48—Equities (Exemptive Relief — Extreme Market Volatility Condition), Rule 49—Equities (Emergency Powers) and Rule 86—Equities (NYSE Bonds) to replace references to the Chief Executive Officer of NYSE Regulation with references to the CRO of the Exchange.

Rule 48—Equities currently provides that, for purposes of the rule,[22] a ''qualified Exchange officer'' means the NYSE Euronext Chief Executive Officer,[23] or his or her designee, or the Chief Executive Officer of NYSE Regulation, Inc., or his or her designee. Rule 49—Equities addresses the Exchange's emergency powers and defines the term ''qualified Exchange officer'' as, *inter alia,* the ''NYSE Regulation, Inc. Chief Executive Officer'' or his or her designee. Rule 86—Equities currently provides that Clearly Erroneous Execution panels in connection with trades on NYSE MKT Bonds [24] be comprised of the Chief Executive Officer of NYSE Regulation or a designee and representatives from two members or member organizations that are users of NYSE Bonds.

''Chief Executive Officer'' of NYSE Regulation is used in these four rules but CRO is used throughout the Exchange's rules to designate the same position.[25] In particular, CRO is used in Rule 128—Equities (Clearly Erroneous Executions for NYSE Equities) to designate the individual who can participate or designate participants on a CEE panel. CRO is also used to identify the participant in various panels adjudicating Exchange decisions affecting member organizations, including panels convoked under Rule 13—Equities (Orders and Modifiers) for member organizations to dispute an Exchange decision to disqualify it from submitting ''retail'' orders; Rule 107B—Equities (Supplemental Liquidity Providers) for member organizations to dispute a determination by the Supplemental Liquidity Provider Liaison Committee to impose a non-regulatory penalty under the Rule; and Rule 107C—Equities (Retail Liquidity Program) for member organizations to dispute an Exchange decision to disapprove or disqualify it from the participating in the Retail Liquidity Program. Accordingly, the Exchange proposes to replace references to ''Chief Executive Officer'' of NYSE Regulation in Rules 48—Equities, 49—Equities and 86—Equities with either the term ''Chief Regulatory Officer'' or ''CRO'', as appropriate.

Technical and Conforming Changes

The Exchange proposes the following technical and conforming changes.

Equities Rules

Rule 1—Equities, which defines the term the ''Exchange'', would be amended to replace single quotation marks with double quotation marks in the heading and the first paragraph.

Rules 48—Equities, which sets forth the procedures for invoking an extreme market volatility condition, would be amended to replace single quotation marks with double quotation marks around the term ''qualified Exchange officer.''

Rule 103B—Equities, which governs the security allocation and reallocation process, would be amended to replace single quotation marks with double quotation marks around the term

[22] Rule 48—Equities provides that the Exchange can invoke an extreme market volatility condition at the open (or reopen of trading following a market-wide halt of securities) during which time the Exchange can suspend Rules 15—Equities and 123D(1)—Equities regarding obtaining certain prior Floor Official approvals and requirements for mandatory indications.

[23] The Exchange also proposes to replace this outdated reference to ''NYSE Euronext'' with ''ICE.''

[24] NYSE MKT Bonds is the Exchange's electronic bond trading platform. Rule 86—Equities prescribes what bonds are eligible to trade on the NYSE Bonds platform and how bonds are traded on the platform, including the receipt, execution and reporting of bond transactions.

[25] *See, e.g.,* Rules 1–Equities, 13—Equities, 107B—Equities, 107C—Equities, and 128—Equities.

''Allocation Prohibition'' and to remove the comma from ''New York Stock Exchange, LLC.''

Company Guide

Section 350 of the Company Guide provides that a company no longer intending to issue all or some securities for listing should cancel the listing authority by notifying the Exchange by letter, and provides a sample letter for use by listed companies. The Exchange proposes to update the sample letter by changing the addressee from ''Office of General Counsel'' to ''Legal Department'', updating the address to ''11 Wall Street'', and the salutation from ''Dear Sirs'' to ''Ladies and Gentlemen.'' Similarly, the Exchange proposes to make conforming changes in Sections 1204, 1205, 1206 and 1212T to replace references to the ''Office of General Counsel'' with ''Legal Department.''

The Exchange also proposes to amend Section 1212T(c) to replace the outdated reference to ''American Stock Exchange'' with ''Exchange.''

Finally, the Exchange proposes to update the Listing Forms Appendix to update the address from ''30 Broad'' to ''11 Wall'' Street.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [26] in general, and with Section 6(b)(1) [27] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal to amend the Exchange's Operating Agreement to establish a CFR as a sub-committee of the recently approved ROC, which, among other things, would be charged with hearing appeals of disciplinary determinations, complies with the Exchange Act's requirement to provide for a fair procedure for the disciplining of member and persons associated with members. The Exchange's ROC [sic] is composed of both Exchange directors that satisfy the independence requirements (*i.e.,* any Exchange director, other than the chief executive officer) as well as persons who are not directors. The Exchange accordingly proposes that a majority of the members of the CFR voting on a matter subject to a vote of the CFR must be directors of the Exchange.

Further, the proposed CFR would include among the members who are not directors representatives of member organizations that engage in a business involving substantial direct contact with securities customers (upstairs firms), DMMS, and floor brokers. Accordingly, the Exchange believes the proposed creation of a ROC [sic] is consistent with Section 6(b)(7) of the Exchange Act,[28] which, among other things, requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members.

The Exchange also believes that not having the fourth category of proprietary floor-based traders in the proposed CFR would remove references to obsolete categories in the Exchange's rules, thereby reducing potential confusion.

Further, the Exchange believes that permitting but not requiring the CFR to appoint an appeals panel composed of at least three and no more than five individuals to conduct a review and make a recommendation to the CFR regarding the disposition of an appeal is consistent with Section 6(b)(7) of the Exchange Act. An appeals panel appointed by the CFR would be composed of at least one director and one member or individual associated with an equities or options member organization, as appropriate. The Exchange believes that the role of the appeals panel, including that the CFR would retain authority to determine the disposition of appeals, would ensure that the Exchange's rules provide a fair procedure for the disciplining of members and persons associated with members. In addition, for the reasons stated below, the Exchange believes that participation on the proposed CFR and appeals panels of members and persons associated with members would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.

The Exchange believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act [29] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. As discussed above, the Exchange believes that having the CFR serve in the advisory capacity of the Market Performance Committee and Regulatory Advisory Committee is consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Exchange Act. The Exchange believes that member participation on the proposed CFR and appeals panels would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.

The Exchange believes that eliminating references to ''Chief Executive Officer'' of NYSE Regulation in Rules 48—Equities, 49—Equities, and 86—Equities and replacing them with CRO, which is used throughout the Exchange's rules, removes impediments to and perfects a national market system because it would reduce potential confusion that may result from retaining different designations for the same individual in the Exchange's rulebook. Removing potentially confusing conflicting designations would also further the goal of transparency and add consistency to the Exchange's rules.

Finally, making conforming amendments to Rules 475, 476, 476A, 20—Equities, 308—Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide in connection with creation of the proposed CFR removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having obsolete references in the Exchange's rulebook. deleting references to ''NYSE Regulation, Inc.'' and ''NYSE Regulation'' in Section 4.05 of the Operating Agreement and Rules 0, 1—Equities, 22—Equities, 36—Equities, 48—Equities, 49—Equities, 54—Equities, 70—Equities, 103—Equities, 103A—Equities, 103B—Equities, 422—Equities, 497—Equities, and 902NY removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having obsolete references in the Exchange's rulebook. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(1).

[28] *See* 15 U.S.C. 78f(b)(7).

[29] 15 U.S.C. 78f(b)(5).

market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook. The Exchange believes that eliminating obsolete references would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such obsolete references will also further the goal of transparency and add clarity to the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange and its board of directors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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–NYSEMKT–2015–106 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–NYSEMKT–2015–106. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEMKT–2015–106 and should be submitted on or before January 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–31788 Filed 12–17–15; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76640; File No. SR–NSX–2015–05]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving a Proposed Rule Change To Modify and Eliminate Certain Rules and To Enable Trading Activity To Resume on the Exchange

December 14, 2015.

I. Introduction

On November 3, 2015, the National Stock Exchange (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change proposing changes that would, among other things, allow trading activity to resume on the Exchange.[3] The proposed rule change was published for comment in the **Federal Register** on November 13, 2015.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 11.1 (Hours of Trading) to rescind Interpretations and Policies .01 (Cessation of Trading Operations NSX) to permit the Exchange to resume trading activity. The Exchange also proposes to (i) amend Rule 11.11 (Orders and Modifiers) to remove descriptions of certain order types that the Exchange will not offer when it resumes trading and to correct the numbering of certain subparagraphs of the rule; (ii) delete Rule 11.12 (Cross Message) and make conforming changes to Rules 11.11(c) and 16.2; (iii) amend Rule 11.13 and Interpretations and Policies .01 to eliminate the order delivery mode of order interaction with the Exchange's trading system (''Order Delivery''); and (iv) adopt Rule 11.25 (Use of Market Data Feeds) to describe the Exchange's use of certain data feeds for order handling and execution.[5]

[1] 15 U.S.C. 782(b)(1).

[2] 17 CFR 249.19b–4.

[3] On May 1, 2014, NSX filed a proposed rule change to halt all trading activity on the Exchange. *See* Securities Exchange Act Release No. 72107 (May 6, 2014), 79 FR 27017 (May 12, 2014) (SR–NSX–2014–14). There has been no trading activity on the Exchange since the close of business on May 30, 2014 (''Closing Date'').

[4] *See* Securities Exchange Act Release No. 76390 (November 9, 2015), 80 FR 70261 (''Notice'').

[5] For a more detailed description of the proposed changes, *see* Notice, *supra* note 4.

In its filing, the Exchange represented to the Commission that it is ready to resume trading activity upon approval of this filing. To that end, the Exchange represents that, since the Closing Date, it has continued to discharge its responsibilities as a self-regulatory organization (''SRO'') in anticipation of resuming trading operations,[6] specifically, by, among other things, (i) remaining a party to certain multi-party 17d–2 Plans for the Allocation of Regulatory Responsibilities pursuant to Section 17(d)(1) of the Act[7] and Rules 17d–1 and 17d–2 thereunder[8] relating to insider trading surveillance and certain Regulation NMS requirements; [9] (ii) continuing to maintain the operability of its trading system and not modifying the system's functionality, except as necessary to comply with regulatory requirements; [10] (iii) implementing and executing a rigorous testing program, including tests with industry participants, to assure that its trading system will function as designed and consistent with all applicable rules and regulations; [11] (iv) testing connectivity to the securities information processors (''SIPs'') and re-certifying its connection to the Depository Trust Clearing Corporation; [12] and (v) amending certain Exchange Rules to keep current with industry regulatory initiatives.[13] The Exchange further represents that it has the capacity to be able to carry out the purposes of the Act and to comply with and to enforce compliance by ETP Holders and persons associated with ETP Holders, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange further states that it has the financial, technological, and personnel resources to effectively conduct surveillance of its marketplace and to regulate ETP Holders' trading on NSX upon the resumption of trading operations.[14]

Furthermore, the Exchange represents that it will provide timely written notice of the date it will commence trading, and other related information directly to the following parties: (i) ETP Holders; (ii) other national securities exchanges that trade NMS securities; (iii) the SIPs; and, (iv) the operating committees for the various NMS plans (*e.g.,* the Consolidated Tape Association Plan/ Consolidated Quote Plan, the Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis, the Plan to Address Extraordinary Market Volatility).[15] NSX further states that it will provide timely notice to the general public by way of widely-disseminated press releases, notification through the Exchange's Web site, and communications with financial and industry press.[16]

Finally, the Exchange represents that upon receiving Commission approval to resume trading, it will execute a staged roll-out plan to reach full operational capacity and provide notice to ETP Holders with the precise details of the roll-out plan before initiating the plan.[17]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[19] which requires that the rules of the Exchange, among other things, be designed to promote just and equitable principles of trade, 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.

Based on the Exchange's representations, the Commission believes that the Exchange is positioned to resume its status as a fully operational national securities exchange and to commence trading operations consistent with the notice provisions set forth in the proposed rule change.[20] The Commission notes that the Exchange will resume operations using the same trading system and rules (subject to the changes proposed herein) that were in effect on the Closing Date. The Commission further notes that the Exchange has committed to ''regularly assess its regulatory resources to assure that they continue to be sufficient to discharge its SRO responsibilities.'' [21] The Exchange's proposed staged roll-out plan should ensure that trading is resumed in an orderly manner. The Exchange's decision to streamline its trading operations by amending Rules 11.11, 11.12, 11.13, and 16.2, and adopting Rule 11.25, is consistent with the protection of investors and the public interest. These changes, which eliminate order-types that were not being used before the Closing Date, eliminate the order delivery mode of order interaction with the Exchange's trading system, and adopt a rule to describe the Exchange's use of certain data feeds for order handling and execution, will allow the exchange to resume trading, providing another venue to which customer orders can be routed. The Commission notes that it received no comments on the proposed rule change.

As noted above, NSX intends to resume operations as an automated trading center and have its best bid and best offer be a Protected Quotation.[22] To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, market participants must have sufficient notice of new Protected Quotations, as well as all necessary information (such as final technical specifications).[23] Therefore, the Commission believes that it would be a reasonable policy and procedure under Rule 611(a) to require that industry participants begin treating NSX's best bid and best offer as a Protected Quotation as soon as possible but no later than 60 days after the date of this order, or such later date as NSX resumes operations as a national securities exchange.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[24] that the proposed rule change (SR–NSX–2015–05), be, and hereby is, approved.

[6] *See* Notice, *supra* note 4, at 70262.

[7] 15 U.S.C. 78q(d)(1).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2.

[9] *See* Notice, *supra* note 4, at 70264.

[10] *See id.* at 70263.

[11] *See id.*

[12] *See id.*

[13] *See id.* at 70263–64.

[14] *See id.* at 70264–65.

[15] *See id.* at 70263–64.

[16] *See id.* at 70264.

[17] *See id.* at 70263.

[18] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Notice, *supra* note 4, at 70263–64.

[21] *See id.* at 70264.

[22] 17 CFR 242.600(b)(58).

[23] *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006).

[24] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–31790 Filed 12–17–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76637: File No. SR–NYSEMKT–2015–102]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add to the Rules of the Exchange the Ninth Amended and Restated Operating Agreement of New York Stock Exchange LLC

December 14, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 4, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)(iii) thereunder,[5] which renders it 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 Substance of the Proposed Rule Change

The Exchange proposes to add to the rules of the Exchange the Ninth Amended and Restated Operating Agreement of New York Stock Exchange LLC (''NYSE LLC''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add to the rules of the Exchange the Ninth Amended and Restated Operating Agreement of NYSE LLC (the ''Ninth NYSE Operating Agreement'').

In September 2015, the Exchange filed the Eighth Amended and Restated Operating Agreement of NYSE LLC (the ''Eighth NYSE Operating Agreement'') as a ''rule of the exchange'' under Section 3(a)(27) of the Act because NYSE LLC has a wholly-owned subsidiary, NYSE Market (DE), Inc., which owns a majority interest in NYSE Amex Options LLC (''NYSE Amex Options''), a facility of the Exchange.[6]

On June 12, 2015, NYSE LLC filed to, among other things, amend the Eighth NYSE Operating Agreement to establish a Regulatory Oversight Committee as a committee of its board of directors and to terminate a delegation agreement between NYSE LLC, NYSE Market (DE), Inc., and NYSE Regulation, Inc. (the ''Delegation Agreement'').[7] In its filing, NYSE LLC represented that the proposed rule changes would be operative simultaneously with the termination of the Delegation Agreement, no later than June 30, 2016, on a date determined by the board of directors of NYSE LLC.[8] On September 28, 2015, NYSE LLC's rule filing amending the Eighth NYSE Operating Agreement to effectuate certain changes was approved.[9]

The Exchange is accordingly filing to remove the obsolete Eighth NYSE Operating Agreement as a ''rule of the exchange'' under Section 3(a)(27) of the Act, and replace it with the Ninth NYSE Operating Agreement as a ''rule of the exchange'' under Section 3(a)(27) of the Act, once the Ninth NYSE Operating Agreement is operative.[10] Under the NYSE Approval Order, the Ninth NYSE Operating Agreement will be operative simultaneously with the termination of the Delegation Agreement, no later than June 30, 2016, on a date determined by the board of directors of NYSE LLC. The Exchange proposes that the rule change be operative on that same date. The Eighth NYSE Operating Agreement would remain the operative document until that time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[11] in general, and with Section 6(b)(1)[12] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act because, by removing the obsolete Eighth NYSE LLC Operating Agreement and making the Ninth NYSE LLC Operating Agreement a rule of the Exchange when it becomes operative for NYSE LLC, the Exchange would be ensuring that its rules remain consistent with the NYSE LLC operating agreement in effect.

The Exchange notes that, as with the Eighth NYSE LLC Operating Agreement, it would be required to file as a proposed rule change any changes to the Ninth NYSE LLC Operating Agreement with the Commission.[13] In addition, the

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* 15 U.S.C. 78c(a)(27); Securities Exchange Act Release Nos. 75984 (September 25, 2015), 80 FR 59213, 59214 (October 1, 2015) (SR–NYSEMKT–2015–71).

[7] *See* Securities Exchange Act Release No. 75288 (June 24, 2015), 80 FR 37316 (June 30, 2015) (SR–NYSE–2015–27) (''Notice'').

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (SR–NYSE–2015–27) (''NYSE Approval Order'').

[10] 15 U.S.C. 78c(a)(27).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(1).

[13] The Exchange notes that any amendment to the NYSE LLC Operating Agreement would also require that NYSE LLC file a proposed rule change with the Commission.

Exchange believes that the proposed changes are consistent with and will facilitate an ownership structure of the Exchange's facility NYSE Amex Options LLC that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to NYSE Amex Options and its direct and indirect parent entities.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act [14] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that removing the obsolete Eighth NYSE LLC Operating Agreement and making the Ninth NYSE LLC Operating Agreement a rule of the Exchange when it becomes operative for NYSE LLC will remove impediments to the operation of the Exchange by ensuring that its rules remain consistent with the NYSE LLC operating agreement in effect. The Exchange notes that, as with the Eighth NYSE LLC Operating Agreement, no amendment to the Ninth NYSE LLC Operating Agreement could be made without the Exchange filing a proposed rule change with the Commission. For the same reasons, the proposed rule change is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with ensuring that the Commission will have the ability to enforce the Act with respect to the NYSE Amex Options and its direct and indirect parent entities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] 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 prior to 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 and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [17] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–102 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–NYSEMKT–2015–102. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEMKT–2015–102 and should be submitted on or before January 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–31787 Filed 12–17–15; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76636; File No. SR–NYSEArca–2015–119]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

December 14, 2015.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 1, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee changes effective December 1, 2015. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, effective December 1, 2015, to eliminate the Floor Broker Order Capture Device Log-In Fee (''Log-In Fee'').

Currently, the Exchange charges a monthly Log-In Fee of $150 per assigned log-in ID per month to access the Exchange-sponsored Floor Broker Order Capture System by means of a Floor Broker Order Capture Device (''FBOCD'').[4] The log-in permits OTP Holder access to the System from any FBOCD, whether located in a Floor Broker's booth or a general access device located on the Trading Floor. Floor Brokers are required to use the FBOCDs to electronically record the receipt of an order and any events in the life of the order, including execution or cancellation.

The Log-In Fee was instituted to cover the cost per log-in charged by data vendors for access to each FBOCD.[5] The Exchange is in the process of establishing alternative vendors for FBOCD use, which may impact costs to the Exchange. As a result, the Exchange proposes to eliminate the Log-In Fee at this time. Elimination of this fee would not result in any changes to how the FBOCD functions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Log-In Fee was designed to recover costs being charged to the Exchange for use of FBOCD. The Exchange therefore believes it is reasonable, equitable and not unfairly discriminatory to eliminate the Log-In Fee charged to OTP Holders as the Exchange re-evaluates and potentially restructures the cost of FBOCD use to the Exchange. The Exchange believes the elimination of the Log-In Fee would result in the fair and reasonable use of resources by OTP Holders, particularly Floor Brokers.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[8] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because the proposed change would result in the fair and reasonable use of resources by OTP Holders, particularly Floor Brokers, the Exchange believes the elimination of the Log-In Fee is pro-competitive.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4 [10] 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that it is not proposing any changes to the monthly charge of $175 for each FBOCD, which is capped at $4,200 in total per device. The FBOCD is used by Floor Brokerage operations to comply with the requirements of Rule 6.67, Order Format and System Entry Requirements, namely, the systemization of order details and electronic tracking of all events in the life of an order, up to and including cancellation or execution.

[5] *See* Securities Exchange Act Release No. 63643 (January 5, 2011) 76 FR 2163 (January 12, 2011) (NYSEArca–2010–123).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 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) [11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–119 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.

All submissions should refer to File Number SR–NYSEArca–2015–119. 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 Section, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2015–119 and should be submitted on or before January 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–31786 Filed 12–17–15; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before January 19, 2016.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: A team of Quality Assurance staff at the Disaster Assistance Center (DASC) will conduct a brief telephone survey of customers to determine their satisfaction with the services received from the (DASC) and the Field Operations Centers. The result will help the Agency to improve where necessary, the delivery of critical financial assistance to disaster victims.

Title: Disaster Assistance Customer Satisfaction Survey.

Description of Respondents: Disaster Customers satisfaction with service received.

Form Number: SBA Form 2313FOC, 2313CSC.

Estimated Annual Responses: 2,400.

Estimated Annual Hour Burden: 199.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–31838 Filed 12–17–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9389]

Advisory Committee on Historical Diplomatic Documentation—Notice of Closed and Open Meetings for 2016

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet on March 7, June 6, August 29, and December 12, 2016, in open session to discuss unclassified matters concerning declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series.

The Committee will meet in open session from 11:00 a.m. until noon in SA–4D Conference Room, Department of State, 2300 E Street NW., Washington DC 20372 (Potomac Navy Hill Annex). RSVP should be sent as directed below:

- March 7, not later than February 29, 2016. Requests for reasonable accommodation should be made by February 22, 2016.
- June 6, not later than May 30, 2016. Requests for reasonable accommodation should be made by May 23, 2016.
- August 29, not later than August 22, 2016. Requests for reasonable accommodation should be made by August 15, 2016.
- December 12, not later than December 5, 2016. Requests for reasonable accommodation should be made by November 28, 2016.

Closed Sessions. The Committee's sessions in the afternoon of Monday, March 7, 2016; in the morning of Tuesday, March 8; in the afternoon of Monday, June 6, 2016; in the morning of Tuesday, June 7, 2016; in the afternoon of Monday, August 29, 2016; in the morning of Tuesday, August 30, 2016; in the afternoon of Monday, December 12, 2016; and in the morning of Tuesday, December 13, 2016, will be closed in accordance with Section 10(d)

of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

RSVP Instructions. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. Government or military ID) are required for entrance into the Department of State building. Members of the public planning to attend the meetings should RSVP for the open meetings, by the dates indicated above, to Julie Fort or Nick Sheldon, Office of the Historian (202–955–0214/0215). When responding, please provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. Government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Julie Fort for acceptable alternative forms of picture identification.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and E.O. 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *https://foia.state.gov/_docs/SORN/State-36.pdf,* for additional information.

Questions concerning the meeting should be directed to Dr. Stephen P. Randolph, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20372, telephone (202) 955–0215, (email *history@state.gov*).

Note that requests for reasonable accommodation received after the dates indicated in this notice will be considered, but might not be possible to fulfill.

Dated: November 10, 2015.

Stephen P. Randolph,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation.

[FR Doc. 2015–31872 Filed 12–17–15; 8:45 am]

BILLING CODE 4710–11–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at December 4, 2015, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on December 4, 2015, in Harrisburg, Pennsylvania, the Commission took the following actions: (1) Approved or tabled the applications of certain water resources projects; (2) accepted settlements in lieu of penalty from Seneca Resources Corporation and Schreiber Foods, Inc.; and (3) took additional actions, as set forth in the Supplementary Information below.

DATES: December 4, 2015.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission Web site at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Adoption of a resolution urging President Obama and the United States Congress to provide full funding for the Groundwater and Streamflow Information Program, thereby supporting the Susquehanna Flood Forecast & Warning System; (2) approval of a rulemaking action to simplify and revise the rules for transfer of approvals, create a category for minor modifications, and establish a procedure for the Commission to issue general permits; (3) adoption of a resolution updating the Commission's investment policy statement; (4) approval/ratification of two contractual agreements; and (5) a report on delegated settlements with the following project sponsors, pursuant to SRBC Resolution 2014–15: Bon Air Country Club, in the amount of $5,000; Byler Golf Management, Inc., doing business as Iron Valley Golf Club, in the amount of $4,000; P.H. Glatfelter Company, in the amount of $7,000; The Lion Brewery, Inc., in the amount of $1,000; and Irem Temple Golf Club, in the amount of $7,500.

Compliance Matters

The Commission approved settlements in lieu of civil penalty for the following projects:

1. Seneca Resources Corporation (Multiple Approvals by Rule), multiple municipalities, multiple counties, Pa.—$75,000.

2. Schreiber Foods, Inc., Shippensburg Borough, Cumberland County, Pa.—$44,500.

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor: Byler Golf Management, Inc. Project Facility: Iron Valley Golf Course, Cornwall Borough, Lebanon County, Pa. Modification to authorize additional water use purpose (Docket Nos. 19981206 and 19981206–1).

2. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Surface water withdrawal of up to 1.500 mgd (peak day).

3. Project Sponsor and Facility: Montgomery Water and Sewer Authority, Clinton Township, Lycoming County, Pa. Groundwater withdrawal of up to 0.398 mgd (30-day average) from Well 4.

4. Project Sponsor and Facility: Sugar Hollow Water Services, LLC (Susquehanna River), Eaton Township, Wyoming County, Pa. Renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20111214).

5. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20111217).

6. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Modification to increase surface water withdrawal by an additional 1.750 mgd (peak day), for a total of up to 2.500 mgd (peak day) (Docket No. 20140302).

7. Project Sponsor and Facility: SWN Production Company, LLC (Tioga River), Hamilton Township, Tioga County, Pa. Surface water withdrawal of up to 1.500 mgd (peak day).

8. Project Sponsor and Facility: Village of Sidney, Delaware County, N.Y. Modification to extend the approval term of the groundwater withdrawal approval (Docket No. 19860201) to provide time for development of a replacement source for existing Well 2–88.

Project Applications Tabled

The Commission tabled action on the following project applications:

1. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.115 mgd (30-day average) from Dug Road Well.

2. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.038 mgd (30-day average) from Hilltop Well.

3. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.216 mgd (30-day average) from Midway Well 1.

4. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.110 mgd (30-day average) from Midway Well 2.

5. Project Sponsor and Facility: East Berlin Area Joint Authority, Reading Township, Adams County, Pa. Application for groundwater withdrawal of up to 0.072 mgd (30-day average) from Well 1.

6. Project Sponsor and Facility: East Berlin Area Joint Authority, Reading Township, Adams County, Pa. Application for groundwater withdrawal of up to 0.108 mgd (30-day average) from Well 2.

7. Project Sponsor and Facility: East Berlin Area Joint Authority, East Berlin Borough, Adams County, Pa. Application for groundwater withdrawal of up to 0.058 mgd (30-day average) from Well 4.

8. Project Sponsor and Facility: East Berlin Area Joint Authority, East Berlin Borough, Adams County, Pa. Application for renewal with modification to increase groundwater withdrawal limit by an additional 0.048 mgd (30-day average), for a total of up to 0.072 mgd (30-day average) from Well 5 (Docket No. 19860601).

9. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.059 mgd (30-day average) from Well 3A.

10. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.028 mgd (30-day average) from Well 4.

11. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.056 mgd (30-day average) from Well 5.

12. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.022 mgd (30-day average) from Well 6.

13. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.046 mgd (30-day average) from Well 7.

14. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.320 mgd (30-day average) from Well 1 (Docket No. 19850901).

15. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.190 mgd (30-day average) from Well 4 (Docket No. 19850901).

16. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.090 mgd (30-day average) from Well 7 (Docket No. 19850901).

17. Project Sponsor and Facility: Mount Joy Borough Authority, Mount Joy Borough, Lancaster County, Pa. Modification to increase combined withdrawal limit by an additional 0.199 mgd (30-day average), for a total combined withdrawal limit of 1.800 mgd (30-day average) from Wells 1 and 2 (Docket No. 20110617).

18. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Cresson Borough, Cambria County, Pa. Application for groundwater withdrawal from Argyle Stone Bridge Well of up to 6.300 mgd (30-day average) from four sources.

19. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Cresson Township, Cambria County, Pa. Application for groundwater withdrawal from Cresson No. 9 Well of up to 6.300 mgd (30-day average) from four sources.

20. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Gallitzin Township, Cambria County, Pa. Application for groundwater withdrawal from Gallitzin Shaft Well 2A (Gallitzin Shaft #2) of up to 6.300 mgd (30-day average) from four sources.

21. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Gallitzin Township, Cambria County, Pa. Application for groundwater withdrawal from Gallitzin Shaft Well 2B (Gallitzin Shaft #1) of up to 6.300 mgd (30-day average) from four sources.

Project Application Approved Involving a Diversion

The Commission approved the following project application involving a diversion:

1. Project Sponsor: Seneca Resources Corporation. Project Facility: Impoundment 1, receiving groundwater from Seneca Resources Corporation Wells 5H and 6H and Clermont Wells 1, 3, and 4, Norwich and Sergeant Townships, McKean County, Pa. Modification to add two additional sources (Clermont Well 2 and Clermont North Well 2) and increase the into-basin diversion from the Ohio River Basin by an additional 0.504 mgd (peak day), for a total of up to 1.977 mgd (peak day) (Docket No. 20141216).

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 15, 2015.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2015–31845 Filed 12–17–15; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the approved by rule projects rescinded by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: November 1–30, 2015.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, being rescinded for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and § 806.22(f) for the time period specified above:

Rescinded ABR Issued

1. Chesapeake Appalachia, LLC, Pad ID: Carter, ABR–201205015, North Towanda Township, Bradford County, Pa.; Rescind Date: November 19, 2015.

2. Chesapeake Appalachia, LLC, Pad ID: Gene, ABR–201209011, Overton Township, Bradford County, Pa.; Rescind Date: November 19, 2015.

3. Chesapeake Appalachia, LLC, Pad ID: Outback, ABR–201301015, Elkland Township, Sullivan County, Pa.; Rescind Date: November 19, 2015.

4. Chesapeake Appalachia, LLC, Pad ID: Rock Ridge, ABR–201108015, Towanda Township, Bradford County, Pa.; Rescind Date: November 19, 2015.

5. Chesapeake Appalachia, LLC, Pad ID: Walters, ABR–201305007, Mehoopany Township, Wyoming County, Pa.; Rescind Date: November 19, 2015.

6. Chesapeake Appalachia, LLC, Pad ID: Beaver Dam, ABR–201104009, Cherry and Colley Townships, Sullivan County, Pa.; Rescind Date: November 24, 2015.

7. WPX Energy Appalachia, LLC, Pad ID: Nayavich Well Pad, ABR–201105010, Sugarloaf Township, Columbia County, Pa.; Rescind Date: November 24, 2015.

8. Talisman Energy USA, Inc., Pad ID: 05 092 Upham, ABR–201009078.R1, Pike Township, Bradford County, Pa.; Rescind Date: November 27, 2015.

9. Range Resources-Appalachia, LLC, Pad ID: Carmen III Unit #1H Drilling Pad, ABR–201104005, Rush Township, Centre County, Pa.; Rescind Date: November 27, 2015.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.

Dated: December 14, 2015.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2015–31829 Filed 12–17–15; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning an Environmental Review of the Proposed Environmental Goods Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to conduct an environmental review of the proposed Environmental Goods Agreement and request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the Environmental Goods Agreement (EGA), a plurilateral trade agreement currently being negotiated among 17 members of the World Trade Organization (WTO), including the United States. The TPSC invites written comments from the public on the topics that should be included in the scope of the EGA environmental review, including potential positive or negative environmental effects that might result from the trade agreement. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review.

DATES: Comments should be submitted on or before February 1, 2016, to be assured of timely consideration by the TPSC.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2015–0021. If you are unable to provide submissions at *www.regulations.gov,* please contact Ms. Yvonne Jamison (202–395–3475) to arrange for an alternative method of transmission.

FOR FURTHER INFORMATION CONTACT: Questions regarding the submission of comments in response to this notice should be directed to Ms. Yvonne Jamison at (202) 395–3475. Questions concerning the environmental review should be addressed to Mr. Seth Patch at (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On March 21, 2014, USTR notified Congress of the President's intent to enter into negotiations for a WTO Environmental Goods Agreement with an initial group of 13 trading partners. Seventeen WTO members are presently participating in the EGA negotiations: Australia, Canada, China, Costa Rica, the European Union, Hong Kong, Iceland, Israel, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Turkey, and the United States. Through notices in the **Federal Register** and a public hearing (held June 5, 2014, in Washington, DC), the TPSC invited the public to provide written comments and/or oral testimony regarding U.S. interests and priorities with respect to the proposed agreement (see 79 *FR* 17637, 79 *FR* 74803, and 80 *FR* 4332), including products to be included for tariff elimination. Additional information about the proposed EGA can be found at *https://ustr.gov/trade-agreements/other-initiatives/environmental-goods-agreement* and *https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2014/July/WTO–EGA-Promoting-Made-in-America-Clean-Technology-Exports-Green-Growth-Jobs.* Public comments on environmental issues submitted in response to prior notices (80 *FR* 17637, 79 *FR* 74803, and 80 *FR* 4332) requesting comments from the public regarding the EGA will be taken into account in preparing the environmental review and do not need to be resubmitted.

2. Environmental Review

USTR, through the TPSC, will conduct an environmental review of the agreement consistent with Executive Order 13141 (64 *FR* 63169) and its implementing guidelines (65 *FR* 79442). The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), to identify complementarities between trade and environmental objectives, and to help shape appropriate responses if environmental impacts are identified. Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality jointly oversee implementation of the Executive Order and its implementing guidelines. USTR, through the TPSC, is responsible for conducting the individual reviews. Additional background information and examples of prior environmental reviews are available at: *https://ustr.gov/issue-areas/environment/environmental-reviews.*

3. Requirements for Submissions

Persons submitting comments must do so in English and must identify (on the first page of the submission) ''Comments Regarding the EGA Environmental Review.'' In order to be

assured of consideration, comments should be submitted by February 1, 2016. In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2015–0021 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page).

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the submission itself. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges submitters to file comments through the *www.regulations.gov* Web site if at all possible. Any alternative arrangements must be made with Ms. Jamison in advance of transmitting a comment. Ms. Jamison may be contacted at (202) 395–3475. General information concerning USTR is available at *www.ustr.gov*.

Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the *www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Edward Gresser,

Acting Chair, Trade Policy Staff Committee.

[FR Doc. 2015–31781 Filed 12–17–15; 8:45 am]

BILLING CODE 3290–F6–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Colorado

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the Colorado State Highway 470 (C–470) Corridor, Kipling Parkway to I–25 project located in the southern portion of the Denver metropolitan area in Colorado. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 16, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Stephanie Gibson, Environmental Program Manager, Federal Highway Administration Colorado Division, 12300 W. Dakota Avenue, Lakewood, Colorado 80228, 720–963–3013, *Stephanie.gibson@dot.gov* normal business hours are 8:30 a.m. to 5:00 p.m. (Mountain time); or Jon Chesser, Environmental Program Manager, Office of Major Projects, Colorado Department of Transportation, 4201 E. Arkansas Avenue, Shumate Building, Denver, Colorado 80222, 303–757–9936, *Jonathon.chesser@state.co.us,* normal business hours are 8:00 a.m. to 4:30 p.m. (Mountain time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of Colorado: C–470, Kipling Parkway to I–25 project, also known as the C–470 Express Lanes project. Project Overview: The project involves adding one managed, tolled express lane in each direction between I–25 and Kipling Parkway, and a second managed lane as follows: westbound, I–25 to Lucent Boulevard, and eastbound, Broadway to I–25. The purpose of the project is to provide congestion relief, decrease travel delay, and improve corridor reliability between Kipling Parkway and I–25 on the C–470 corridor. The actions by the Federal agencies on the project, and the laws under which such actions were taken, are described in the Revised Environmental Assessment (EA) signed on July 24, 2015, in the Finding of No Significant Impact (FONSI) signed November 20, 2015 and in other key project documents. The Revised EA, FONSI, and other key documents for the project are available by contacting the FHWA or the Colorado Department of Transportation at the addresses provided above. The Revised EA and FONSI documents can be viewed and downloaded from the project Web site at *https://www.codot.gov/projects/c470.*

This notice applies to all Federal agency decisions, actions, approvals, licenses, and permits on the project as of the issuance date of this notice, including but not limited to those arising under the following laws, as amended:

1. General: National Environmental Policy Act [42 U.S.C. 4321–4370h]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, as amended [42 U.S.C. 7401–7671(q)] (transportation conformity).

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]. Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(e)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966 [54 U.S.C. 306108] Archaeological Resources Protection Act of 1977 [16 U.S.C. 470aa–470mm]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c–

2]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 61]. Farmland Protection Policy Act [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act [33 U.S.C. 1251–1387] (Section 404, Section 401, Section 319); Land and Water Conservation Fund Act [16 U.S.C. 460l–4—460l–11]; Safe Drinking Water Act [42 U.S.C. 300f—300j–9.]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Transportation Equity Act for the 21st Century (TEA–21) [23 U.S.C. 103(b)(6)(m), 133(b)(11)] (wetlands mitigation banking); Flood Disaster Protection Act of 1973 [42 U.S.C. 4001–4129].

8. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [PL 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 7, 2015.

John M. Cater,

Division Administrator, Lakewood, Colorado.

[FR Doc. 2015–31487 Filed 12–17–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 567 (Sub-No. 2X); Docket No. AB 568 (Sub-No. 2X)]

Rutherford Railroad Development Corporation—Abandonment Exemption—in Rutherford County, NC; Southeast Shortlines, Inc. d/b/a Thermal Belt Railway—Discontinuance Exemption—in Rutherford County, NC

Rutherford Railroad Development Corporation (RRDC) and Southeast Shortlines, Inc. d/b/a Thermal Belt Railway (TBRY) (collectively, applicants), have jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments and Discontinuances of Service* for RRDC to abandon, and for TBRY to discontinue service over, approximately 4.97 miles of rail line, between milepost SB 175.5 near Alexander Mills and milepost SB 180.47 in Spindale, together with a portion of the Bostic Spur, which runs from approximately the northern right of way line of U.S. 74 Business, a distance of approximately 2,441.4′ westerly to a point at or near Rail Milepost SF–407.40 and Rail Valuation Station 5343+22, in Rutherford County, N.C. (the Lines). The Lines traverse United States Postal Service Zip Codes 28043 and 28160.

Applicants have certified that: (1) No local traffic has moved over the Lines for at least two years; (2) there is no overhead traffic on the Lines that would have to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Lines (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Lines either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on January 19, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 28, 2015. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 7, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Jeffrey A. Bandini, Parker Poe Adams & Bernstein LLP, P.O. Box 389, Raleigh, NC 27602.

If the verified notice contains false or misleading information, the exemptions are void ab initio.

Applicants have filed a combined environmental and historic report that addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. OEA will issue an environmental assessment (EA) by December 24, 2015. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRDC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Lines. If consummation has not been effected by RRDC's filing of a notice of consummation by December 18, 2016,

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: December 15, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–31886 Filed 12–17–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 751X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Bell and Harlan Counties, Ky.

CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately seven-mile rail line on CSXT's Southern Region, Huntington Division, CV Subdivision, Engineering Appalachian Division, also known as the Pucketts Creek Branch between milepost OPC 223.0 and milepost OPC 230.0 in Bell and Harlan Counties, Ky. (the Line). The Line traverses United States Postal Service Zip Codes 40845, 40856, and 40863, and includes two stations, Alva (FSAC 43932/OPSL 19940) at milepost OPC 223.0 and Piedmont (FSAC 43931/OPSL 19930) at milepost OPC 230.0.

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) because the Line is not a through line, no overhead traffic needs to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on January 19, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) [1] must be filed by December 28, 2015.[2] Petitions to reopen must be filed by January 7, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: December 15, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2015–31862 Filed 12–17–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35978]

R. J. Corman Railroad Company/Carolina Lines, LLC—Acquisition and Operation Exemption—The Baltimore and Annapolis Railroad Company d/b/a Carolina Southern Railroad Company

R. J. Corman Railroad Company/Carolina Lines, LLC (RJCS) has filed a verified notice of exemption [1] under 49 CFR 1150.41 to acquire from The Baltimore and Annapolis Railroad Company d/b/a Carolina Southern Railroad Company (CALA) and to operate one mile of rail line between milepost AC 290.0 and milepost AC 289.0, at or near Whiteville, N.C., pursuant to a mediation agreement reached between RJCS and CALA on June 19, 2015.[2]

RJCS certifies that the proposed transaction does not involve a provision or agreement that may limit future interchanges of traffic with a third-party connecting carrier.

RJCS also certifies that its projected revenues upon consummation of the proposed transaction will not result in the creation of a Class I or Class II rail carrier and states that its projected annual revenues will not exceed $5 million.

This transaction may be consummated on January 2, 2016, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 24, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35978, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeremy J. Sylvester, Moynahan, Irvin & Mooney, PSC, 110 North Main Street, Nicholasville, KY 40356.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: December 15, 2015.

[1] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[2] Because this is a discontinue proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during abandonment, this discontinuance does not require an environmental review.

[1] The notice was originally filed on November 25, 2015, but was supplemented on December 3, 2015. Therefore, December 3, 2015, will be the official filing date and the basis for all subsequent dates.

[2] RJCS was authorized previously to operate this one-mile line as incidental, local trackage rights, in addition to being authorized to acquire and operate two interconnected rail lines totaling approximately 74.98 miles between specified points in North Carolina and South Carolina. *R. J. Corman R.R—Acquis. & Operation Exemption—The Baltimore & Annapolis R.R.,* FD 35897 (STB served Jan. 28, 2015), as corrected on November 27, 2015. R. J. Corman Railroad Group, LLC, and R. J. Corman Railroad Company, LLC, were authorized to continue in control of RJCS upon RJCS's becoming a Class III rail carrier. *R. J. Corman R.R. Grp.—Continuance in Control Exemption—R. J. Corman R.R.,* FD 35898 (STB served Jan. 28, 2015).

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2015–31865 Filed 12–17–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 747X)]

CSX Transportation, Inc.—Abandonment Exemption—in Ben Hill County, Ga.

On November 30, 2015, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 0.23-mile rail line between milepost SLA 660.39 and the end of the line at milepost SLA 660.62, in Fitzgerald, Ben Hill County, Ga. (the Line). The Line traverses United States Postal Zip Code 31750 and includes no stations.

According to CSXT, there is currently one customer, Modern Dispersion (Modern), located at the end of the Line. CSXT is seeking to abandon the Line and sell it to Modern so that Modern can expand its pellet shipping operations. Upon a grant of abandonment authority, the Line will be sold to Modern for its use in expanding its shipping facility. CSXT states that it plans to leave the tracks and materials in place and Modern plans to use the Line to load and unload rail cars on its own property through a private side track agreement. CSXT states that it will continue to meet Modern's common carrier requirements and projects an increase in volume based on Modern's plan to redevelop its current location.

According to CSXT, the Line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 18, 2016.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due by March 28, 2016, or 10 days after service of a decision granting the petition for exemption, whichever occurs first. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 7, 2016. Each trail request must be accompanied by a $300 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 55 (Sub-No. 747X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204. Replies to the petition are due on or before January 7, 2016.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: December 15, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2015–31863 Filed 12–17–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Notice of Meeting—Cancellation

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the meeting of the Advisory Committee on Former Prisoners of War (FPOW), previously scheduled to be held at the Audie Murphy VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX, on January 11–13, 2016, *has been cancelled*.

For more information, please contact Mr. Eric Robinson, Designated Federal Officer at (202) 443–6016 or via email at *eric.robinson3@va.gov*.

Dated: December 15, 2015.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2015–31830 Filed 12–17–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Federal Communications Commission

47 CFR Part 64
Rates for Interstate Inmate Calling Services; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375; FCC 15–136]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts comprehensive reforms of Inmate Calling Services, regardless of the technology used to provide service, to ensure just reasonable and fair rates as mandated by the Communications Act.

DATES: The rules in this document will become effective March 17, 2016, and the *Compliance Date* for this Second Report and Order will be January 19, 2016.

FOR FURTHER INFORMATION CONTACT: Lynne Engledow, Wireline Competition Bureau, Pricing Policy Division at (202) 418–1540 or at *Lynne.Engledow@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, WC Docket 12–375, released November 5, 2015. The full text of this document may be downloaded at the following Internet Address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1105/FCC-15-136A1.pdf.* To request alternative formats for persons with disabilities (*e.g.* accessible format documents, sign language, interpreters, CARTS, etc.) send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

I. Introduction

1. Twelve years have passed since Martha Wright of Washington, DC petitioned this Commission for relief from exorbitant phone rates charged by inmate calling service (ICS) providers, so that she might afford telephone contact with her incarcerated grandson. For families, friends, clergy, and attorneys to the over 2 million Americans behind bars and 2.7 million children who have at least one parent behind bars, maintaining phone contact has been made extremely difficult due to prohibitively high charges on those calls. Family members report paying egregious amounts, adding up to hundreds of dollars each month, just to stay connected to incarcerated spouses, parents and children. For over a decade, they have pleaded with this agency for help fighting these excessive and unaffordable phone charges.

2. In the Report and Order, we grant relief, answer the call of those millions of citizens seeking ICS reform, and adopt comprehensive reform of interstate and intrastate ICS calls to ensure just, reasonable and fair ICS rates as mandated by the Act. (Interstate communication ''means communication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia. Consistent with our authority under the Communications Act, this Order applies to all states and U.S. territories including Puerto Rico, Guam, and the U.S. Virgin Islands.) We follow these reforms with a Further Notice that recognizes there is more work yet to be done. While the Commission prefers to rely on competition and market forces to discipline prices, there is little dispute that the ICS market is a prime example of market failure. Market forces often lead to more competition, lower prices, and better services. Unfortunately, the ICS market, by contrast, is characterized by increasing rates, with no competitive pressures to reduce rates. With respect to the consumers who pay the bills, ICS providers operate as unchecked monopolists. The record indicates that, absent regulatory intervention, ICS rates and associated ancillary fees likely will continue to rise. After the adoption of interim interstate rate caps in 2013, there was hope that states would take a more active role in reforming intrastate ICS rates and ancillary fees. While this has occurred in a handful of states, such as Alabama, Minnesota, New Jersey, and Ohio, the unfortunate reality is that many states have not tackled reform and intrastate ICS rates have continued to increase since the *2013 Order.* 78 FR 67956, Nov. 13, 2013.

3. Given this market failure, the Commission has a duty to act to fulfill our statutory mandate of ensuring that ICS rates are just, reasonable, and fair. Ensuring that rates comply with the statute also has several positive public interest benefits. Studies have shown that family contact during incarceration reduces recidivism and allows inmates to be more present parents for the 2.7 million children who suffer when an incarcerated parent cannot afford to keep in touch. One commenter tells us that ''[m]y family paid outrageous amounts, between $300 and $400 a month for the 10 months while I was incarcerated in the state of MD. Their savings were drained just so they could correspond with their only daughter who was pregnant with their first grandchild at the time.'' One mother writes: ''I pay 40 dollars a week for calls. I can't afford them but it puts a smile on my kid's face;'' another writes that her family has, at times, gone without food in order to pay these phone charges, ''so we don't grow apart and so my kids feel like they still have a father.'' These 2.7 million children are already coping with the anxiety of having an incarcerated parent, and often suffer additional economic and personal hardships that hinder their performance in school. By charging inmates exorbitant phone rates, ICS providers prevent incarcerated parents from maintaining a presence in their children's lives through regular phone contact. The testimony of a father in St. Cloud, Minnesota underscores the need for our efforts: ''I want to be able to raise my child even if it's over the phone for the time being. I would love to be in her life as much as possible, but it's hard to do so when the phone [price] is steadily climbing higher and higher. I know I'm paying my debt to society for my crime, but I need to stay in contact with family.''

4. Furthermore, inmates given access to regular phone contact with family are less likely to return to jail or prison. A 2014 report by the Department of Justice found that a staggering 75 percent of individuals released from prison were rearrested within five years. Of the inmates who do find success and reintegrate after release, many credit phone contact and family support during their incarceration. As one former inmate writes, ''The phone was my life line to that family and they got me through it intact. I thank God that my family was able to afford the phone calls. What happens to the families that can't? We all end up paying for it.'' Incarceration costs taxpayers an average of $31,000 per inmate per year. If telephone contact is made more affordable, we will help ensure that former inmates are not sent home as strangers, which reduces both their chances of returning to prison or jail and the attendant burden on society of housing, feeding, and caring for additional inmates.

5. Another commenter stresses how regular phone contact makes prisons and jails safer spaces for inmates and officers alike:

> I get to see my loved one once in every six months or so, and he doesn't get any visitors apart from me, so calling daily helps him retain his sanity. I think the connection he's given to his family is really important; there are so many times that he's called really

angry at other inmates, saying that he just wanted to talk so that he can cool down and not start a fight. If calls are made more affordable, especially for indigent families, it may reduce prison violence as well as make the prisons a safer place for [corrections officers] to work in.

6. The record indicates that our interim interstate rate caps increased call volumes, without compromising correctional facility security requirements. Similarly, we expect our actions in this Order to reduce rates and increase call volume, while ensuring that ICS providers receive fair compensation and a reasonable return. Some commenters have argued that lowering ICS rates will compromise security in correctional facilities and fail to cover the cost of providing calling services. Some have even argued the financial strain from rate regulation could lead to correctional facilities banning inmate calls altogether. However, we find these assertions unpersuasive and unsupported by the record and our experience from the 2013 reforms.

7. While the actions taken to date have been positive in key respects (*e.g.,* lower interstate rates and increased interstate call volume), more remains to be done. The Commission adopted interim interstate rate caps, but over 80 percent of calls to and from correctional facilities are intrastate, and were not subject to the reforms of the *2013 Order.* Throughout this proceeding, the Commission has repeatedly called on states to reform inmate calling within their jurisdictions, but rates remain egregiously high in over half the states. The Commission has the legal authority to reform the rate structure for all ICS calls, and herein we determine it is appropriate and necessary to do so.

8. In addition, we commit to continue evaluating the impact of these reforms and to conduct a review in two years to evaluate the changes in the market and determine whether further refinements are appropriate.

II. Executive Summary

9. In the Order, we adopt comprehensive reform of all aspects of ICS to correct a market failure, foster market efficiencies, encourage ongoing state reforms, and ensure that ICS rates and charges comply with the Communications Act. As a threshold matter, we make clear that the reforms adopted herein apply to ICS offered in all correctional facilities, regardless of the technology used to deliver the service. Specifically, we take the following steps, which together form a comprehensive package of long-overdue reform to inmate calling services:

- Adopt tiered debit and prepaid rate caps that apply to all interstate and intrastate ICS, as well as a tiered rate cap for collect calling (which, after two years, will phase down to the rate caps adopted for prepaid and debit calls);
- Address payments to correctional institutions by excluding site commission costs from our rate caps (we otherwise discourage, but do not prohibit, ICS providers from sharing their profits and paying site commissions to facilities);
- Limit and cap ancillary service charges and address the potential for loopholes and gaming, including third-party services, thus addressing a disturbing trend in which ancillary service charges increased exponentially and unfairly, to the detriment of inmates and their families and in contravention of the statute;
- Prohibit ICS prepaid calling account funding minimums and establish an ICS prepaid calling account funding maximum limit;
- Establish a periodic review of ICS reforms, recognizing that further refinements may be appropriate as the marketplace evolves—thus complementing the Further Notice we initiate today (described in more detail below);
- Make clear that the rate caps and reforms we adopt today operate as a ceiling in states that have not enacted reforms with equal or lower caps on rates and ancillary fees and that we will preempt state laws that are inconsistent with the federal framework;
- Take measures to address ongoing concerns with access to ICS by inmates and their families with communications disabilities, including requiring that the per-minute rates charged for TTY-to-TTY calls be no more than 25 percent of the rates the providers charge for traditional inmate calling services and that no provider shall levy or collect any charge or fee for TRS-to-voice or voice-to-TTY calls;
- Adopt a transition period for rate caps and ancillary service charge reforms of March 17, 2016 for ICS provided in prisons and June 20, 2016 for ICS provided in jails to enable providers time to adjust contracts if necessary, given that the reforms adopted herein constitute regulatory changes and thus may trigger change-in-law provisions in existing ICS contracts;
- Take measures to prevent possible gaming during the transition to the new rules adopted herein;
- Require annual reporting and certification by ICS providers, to allow the Commission to ensure compliance and enable monitoring of developments, and require the providers to be transparent with regard to disclosure of their rates and policies;
- Confirm that section 276 of the Act is technology neutral and thus any service—regardless of name—that meets the definitional criteria for ''inmate calling services'' is subject to our rules, including the reforms adopted today; and
- Make clear that ICS providers may seek waivers if they are unable to receive fair compensation or request that the Commission preempt inconsistent state laws, and encourage the Wireline Competition Bureau to resolve such waivers within 90 days of submission of complete information.

We adopt the following rate caps.

TABLE ONE

Size and type of facility	Debit/prepaid rate cap per MOU	Collect rate cap per MOU as of effective date	Collect rate cap per MOU as of July 1, 2017	Collect rate cap per MOU as of July 1, 2018
0–349 Jail ADP	$0.22	$0.49	$0.36	$0.22
350–999 Jail ADP	0.16	0.49	0.33	0.16
1,000+ Jail ADP	0.14	0.49	0.32	0.14
All Prisons	0.11	0.14	0.13	0.11

We prohibit any ancillary service charges except for the following.

TABLE TWO

Permitted ancillary service charges and taxes	Monetary cap per use/instruction
Applicable taxes and regulatory fees	Provider shall pass these charges through to consumers directly with no markup.
Automated payment fees	$3.00.
Fees for single-call and related services, *e.g.*, direct bill to mobile phone without setting up an account.	Provider shall directly pass through third-party financial transaction fees with no markup, plus adopted, per-minute rate.
Live agent fee, *i.e.*, phone payment or account set up with optional use of a live operator.	$5.95.
Paper bill/statement fees (no charge permitted for electronic bills/statements).	$2.00.
Prepaid account funding minimums and maximums	Prohibit prepaid account funding minimums and prohibit prepaid account funding maximums under $50.
Third-party financial transaction fees, *e.g.*, MoneyGram, Western Union, credit card processing fees and transfers from third party commissary accounts.	Provider shall pass this charge through to end user directly, with no markup.

10. These reforms supersede the reforms adopted in the *2013 Order* and therefore will replace the interim interstate rate caps and cost-based framework previously adopted. Accordingly, the extensive reforms we adopt in this Order constitute material changes of law and may also trigger contractual force majeure clauses. To comply with the new rules we adopt herein, we therefore expect that ICS providers may need to renegotiate many of their contracts with correctional facilities but note that ICS rates in numerous states are already below our adopted caps.

11. While the steps we take today are significant, our work is not complete. With that in mind, in today's Further Notice, we seek additional comment on rates for international calls, promoting competition in the ICS industry, the benefits of a recurring Mandatory Data Collection, as well as a requirement that ICS providers file their ICS contracts with the Commission, video visitation, and other newer technologies to increase ICS options, and seek additional comment on the operations and economic impacts of providing those services as experienced by end users, correctional facilities, and ICS providers.

III. Background

12. In 2003, Martha Wright and her fellow petitioners, current or former prison inmates and their relatives and legal counsel (Wright Petitioners or Petitioners), filed a petition seeking a rulemaking to address high long-distance ICS rates. The petition sought to prohibit exclusive ICS contracts and collect-call-only restrictions in correctional facilities. In 2007, the Petitioners filed an alternative rulemaking petition, asking the Commission to address high ICS rates by requiring a debit-calling option in correctional facilities, prohibiting per-call charges, and establishing rate caps for interstate, interexchange ICS. The Commission sought and received comment on both petitions (Wright Petitions).

13. In December 2012, in response to the Wright Petitions, the Commission adopted a Notice of Proposed Rulemaking seeking comment on, among other things, the proposals in the Wright Petitions. The *2012 NPRM,* 78 FR 4369, Jan. 22, 2013, proposed ways to ''balance the goal of ensuring reasonable ICS rates for end users with the security concerns and expense inherent to ICS within the statutory guidelines of sections 201(b) and 276 of the Act.''

14. On August 9, 2013, the Commission adopted the *Inmate Calling Report and Order and FNPRM (2013 Order),* finding that market forces were not operating to ensure that interstate ICS rates were just, reasonable, and fair. The Commission concluded that, in light of the absence of competitive pressures working to keep rates just and reasonable in the ICS market, the default of cost-based regulation should apply. As such, the Commission focused on reforming interstate site commission payments, rates, and ancillary service charges. The Commission also determined that site commission payments ''were not part of the cost of providing ICS and therefore not compensable in interstate ICS rates.'' Analyzing data submitted into the record and public data, the Commission adopted interim per-minute interstate ICS safe harbor caps of $0.12 for debit and prepaid calls and $0.14 for collect calls and hard rate caps of $0.21 for debit and prepaid calls and $0.25 for collect calls. The Commission gave guidance to ICS providers regarding the process for obtaining waivers of the interim rate caps. The Commission also required that ancillary service charges be cost-based. At the time, the Commission declined to address intrastate ICS, noting instead that it had ''structured [its reforms] in a manner to encourage . . . states to undertake reform and sought comment on intrastate reforms as part of the FNPRM.'' Finally, the record indicates that as a result of our interim interstate rate caps, interstate call volumes have increased as much as 70 percent, while interstate debit and prepaid rates have decreased, on average, 32 percent and interstate collect rates have decreased, on average, 44 percent.

15. To enable the Commission to enact ICS reform, the *2013 Order* adopted a Mandatory Data Collection requiring ICS providers to file information regarding the costs of providing ICS, and an Annual Reporting and Certification Requirement for ICS rates. The Commission noted that the Mandatory Data Collection would help it ''develop a permanent rate structure, which could include more targeted tiered rates in the future.'' Through the data collected pursuant to the Mandatory Data Collection, the Commission obtained significant cost and operational data, including ancillary service charge cost data, from a variety of ICS providers representing well over 85 percent of the ICS market.

16. Prior to the effective date of the *Order,* the United States Court of Appeals for the District of Columbia Circuit stayed three rules adopted by the Commission pending resolution of the appeal, including the rule requiring rates to be based on costs, the rule adopting interim safe harbor rates, and the rule requiring ICS providers to file annual reports and certifications. The court allowed other aspects of the *2013 Order* to take effect, including the interim interstate rate caps and Mandatory Data Collection. Due to the partial stay, the requirement that ancillary service charges be based on costs did not go into effect. As a result,

there have been no reforms to ancillary service charges and fees and they have continued to increase since the *2013 Order.* The litigation has been held in abeyance pending resolution of this Order.

17. Since adoption of the *2013 Order,* the Commission has continued to monitor the effects of its reforms on the ICS industry and pursue additional reform, including holding a workshop entitled ''Further Reform of Inmate Calling Services'' on July 9, 2014. The workshop evaluated options for additional ICS reforms, discussed the effects of the *Order,* the role ancillary service charges play in the ICS market, the provision of ICS at different types of facilities, and communications technologies beyond traditional payphone calling being deployed in correctional facilities.

18. *Second Further Notice of Proposed Rulemaking.* In October 2014, the Commission adopted a *Second FNPRM* (79 FR 69682) and sought comment on several proposals in the record urging comprehensive ICS reform. The proposals the Commission sought comment on suggested a variety of ways to deal with issues identified in the record, including rate caps, site commission payments, and ancillary fees that were offered by various entities with differing perspectives in addressing ICS reform. For example, three ICS providers, GTL, Securus, and Telmate, jointly filed a proposal to comprehensively reform all aspects of ICS. Several other individual ICS providers, including CenturyLink and Pay Tel, submitted their own proposals for reform. The Wright Petitioners, along with several public interest groups, also urged the Commission to consider its proposals for comprehensive reform. Finally, the Commission sought comment on costs incurred by correctional facilities in the provision of ICS and the data received in response to the Mandatory Data Collection.

19. *State Reforms.* Several states have undertaken ICS reform since the *2013 Order* that reflect and are meant to address circumstances specific to their jurisdiction. The Alabama Public Service Commission (Alabama PSC), for example, adopted comprehensive ICS reforms that include tiered intrastate rate caps as well as a restricted number of ancillary service charges at caps it established. The Minnesota Department of Corrections initiated a pilot program in a limited number of correctional facilities in which a flat rate of $0.07 per minute is charged for all local and long-distance debit calls, bringing the cost of a 15-minute call to $1.05, plus applicable tax. New Jersey recently entered into a new ICS contract lowering rates for all interstate and intrastate calls from state prison facilities to $0.04348 a minute effective August 25, 2015. The Ohio Department of Rehabilitation and Correction reduced rates to $0.05 per minute for all ICS calls as of April 1, 2015. In announcing its change, the Ohio Department of Rehabilitation and Correction noted that ''[t]elephone calls are one of the primary means of inmates maintaining connections with family and loved ones during incarceration; maintaining these connections positively influences behavior in prison and the likelihood an offender will succeed upon release from prison.'' Inmates in the West Virginia Division of Corrections now pay $0.032/minute for all domestic ICS. We are pleased that some states have taken positive steps to reduce intrastate rates but remain concerned that many intrastate rates remain high and some have even increased following the *2013 Order.* The actions we take today embrace previous reforms and encourage additional states to follow and enact more-tailored relief in their states. The framework we adopt today acts as a ceiling to enable reforms, such as those undertaken by New Jersey, Ohio, and West Virginia.

IV. Report and Order

A. Rate Caps That Comply With the Statute

20. In this section we adopt tiered rate caps for intrastate and interstate ICS that will allow providers to continue to offer safe and secure ICS while complying with the requirements of the Communications Act. These rate caps will apply to jails, prisons and immigration detention facilities, secure mental health facilities and juvenile detention facilities.

21. A review of the record, including over 100 comments and replies, costs reported in response to the Mandatory Data Collection, and various *ex parte* filings, indicates that, notwithstanding our interim caps on interstate rates, more work still must be done to bring ICS rates in conformance with the mandates of the Communications Act. The record demonstrates that many interstate rates are not ''just and reasonable rates as required by Sections 201 and 202'' and that many interstate and intrastate rates result in compensation that exceeds the fair compensation permitted by section 276. The Commission's finding in the *2013 Order* that the marketplace alone has not ensured that ICS rates are just, reasonable, and fair remains true today. Nor has the risk of complaints filed under section 208, or enforcement actions pursuant to section 201(b) or section 276, been sufficient to keep ICS rates at levels that are just and reasonable and fairly compensatory. We therefore act, pursuant to our statutory authority, to ensure that ICS rates comply with the Communications Act, while balancing the unique security needs related to providing telecommunications service in correctional institutions and ensuring that ICS providers receive fair compensation and a reasonable return on investment.

22. Specifically, we adopt a rate cap of $0.22/MOU for debit and prepaid calls from jails with an ADP of 0–349; a $0.16/MOU cap for debit and prepaid calls from jails with an ADP of 350–999; and a $0.14/MOU cap for debit and prepaid calls from jails with an ADP of 1,000 or more. Debit and prepaid calls from prisons will be capped at a rate of $0.11/MOU. Collect calls from jail facilities will be capped at $0.49/MOU and collect calls from prison facilities will be capped at $0.14/MOU until July 1, 2017, and then transition down on an annual basis to the applicable debit/prepaid rate cap as described herein.

TABLE THREE

Size and type of facility	Debit/prepaid rate cap per MOU	Collect rate cap per MOU as of effective date	Collect rate cap per MOU as of July 1, 2017	Collect rate cap per MOU as of July 1, 2018
0–349 Jail ADP	$0.22	$0.49	$0.36	$0.22
350–999 Jail ADP	0.16	0.49	0.33	0.16
1,000+ Jail ADP	0.14	0.49	0.32	0.14
All Prisons	0.11	0.14	0.13	0.11

23. In the subsections that follow, we describe our methodology for adopting these rate caps. Specifically, we: (1) Discuss the decision to adopt a tiered structure that distinguishes between jails and prisons, and, within jails, based upon ADP, (2) describe the reasoning for adopting the specified tiers, (3) describe the methodology and analysis supporting the specific rate caps adopted, using a carefully considered combination of analysis of the Mandatory Data Collection (including evidence suggesting that some providers submitted inflated cost data), successful reform in certain states, experience with the interim rate caps, and other data in the voluminous record of this proceeding, (4) explain the need for a temporary, separate rate for collect calls, which will phase out over a two-year period to equalize the rate for these calls with those of debit/prepaid calls, (5) reject per-call/per-connection charges and flat-rate calling as inherently unjust, unreasonable, and unfair in contravention of the statute, and (6) explain our legal authority to adopt these reforms.

1. Tiered Structure Distinguishing Between Jails and Prisons

24. Before determining the specific amount of any rate *caps*, a key question before us is the appropriate rate *structure* for ICS—*i.e.*, whether there should be a single unitary rate for inmate calling services regardless of the facility type or size. We find in this Order that the record supports distinguishing between the type of facility (jails vs. prisons) as well as, for jails, tiering based on the size of the facility.

a. Justification for Separate Tiers

25. In both the *2013 FNPRM* (78 FR 68005) and *Second FNPRM*, the Commission sought comment on rate tiering. In the *Second FNPRM*, the Commission also sought comment on the appropriate definition of ''prison'' and ''jail,'' and on the potential suitability of rate tiering based on differences between jails and prisons as well as population size. As discussed below, there was substantial record support for such an approach.

26. *Background.* Some commenters support differentiating rates between different facility types or sizes. For example, Petitioners assert that the ''cost of providing service in these large facilities is substantially less than the cost of providing service in small jails, and that ICS providers can serve these larger facilities with less administrative costs.'' Other commenters assert that ''characteristics unique to different types of facilities'' should lead to rate tiering. Some commenters contend that it costs more to provide ICS in smaller jails than it does in larger jails. These parties argue that a one-size-fits-all rate cap will not work, ignores the record and likely will lead to a violation of sections 201 and 276 of the Act. We note that the Alabama PSC recently adopted rate tiers tied to facility type, with separate rates for jails and prisons.

27. The Los Angeles Sheriff's Department advocates that the Commission ''resist the temptation to set uniform rates'' because the differences in security requirements, inmates, age, infrastructure and maintenance needs of facilities must be accounted for in the Commission's decision-making process.'' The California State Sheriff's Association echoes these concerns, explaining that in California, the smallest jail can hold a maximum of 14 inmates, while the largest jail can hold a maximum of over 14,000 inmates, and contends that accounting for these differences ''is much more important and realistic than attempting to craft a single 'solution' for uniformity's sake.'' NCIC also supports tiering in order to ''balance the needs of inmates, their families, correction facilities and ICS providers.''

28. Moreover, some commenters assert that, without tiering, providers serving small- to medium-sized jails ''would likely be forced out of the market, particularly if the larger companies cross-subsidize between low-cost (Prison) and high-cost (Jail) facilities'' because it is more costly to providers to serve smaller facilities (as confirmed by our analysis of the Mandatory Data Collection). Additionally, there is evidence that some large ICS providers refuse to bid on contracts to serve only smaller institutions—suggesting again that the cost structure of serving smaller institutions is higher than that of larger institutions.

29. Other commenters, however, disagree with a tiered rate approach and counter that the Commission should continue to impose unitary rate caps, similar to the current, interim rate caps. These commenters contend that unitary rates are less complex to understand and to administer, and that no real difference exists between the cost of serving jails and prisons. For instance, GTL and CenturyLink contend that ''there is no clean proxy for cost that could be relied upon to create tiers.'' Additionally, some commenters argue that adopting tiers based on a prison/jail distinction would be arbitrary, especially as many large providers serve both prisons and jails. Securus claims that ''to adopt vastly different calling rates based on that empty [jails vs. prisons] distinction would constitute dissimilar treatment of customers that plainly are similarly situated,'' which it asserts is ''unjustifiable.''

30. *Discussion.* Based on the record and market evidence, we find that tiering based on jail versus prison is appropriate, and therefore reject proposals that we should adopt a unitary rate similar to the unitary rate caps adopted in the *2013 Order.*

31. In the *2013 Order*, the Commission found it appropriate to adopt interim unitary rates for a number of reasons. First, the Commission observed the challenges to setting interim rates, including the fact that although the Commission relied on the best data available to it at the time, that data represented a very small subset of data, and included cost data from locations with varying cost and call volume characteristics. Second, the Commission noted that it considered setting different rate caps based on the size or type of correctional facility, but stated that ''the record contains conflicting assertions as to what those distinctions should be.'' Instead, the Commission adopted interim interstate rate caps ''for correctional facilities generally,'' ''based on the highest cost data available in the record, which [it] anticipated will ensure fair compensation for providers servicing jails and prisons alike.'' Finally, the Commission noted that unitary rates were the focus of the original petition for rulemaking and the focus of the majority of comments at that time. Upon release of that item, the Commission adopted the Mandatory Data Collection to ''enable [it] to take further action to reform rates, including developing a permanent cap or safe harbor for interstate rates, as well as to inform our evaluation of other rate reform options in the Further Notice.'' The responses to the Mandatory Data Collection have greatly expanded the cost data available to us for analysis.

32. We conclude that adopting tiered interstate and intrastate rates accounts for the differences in costs to ICS providers serving smaller, higher-cost facilities, such as the vast majority of jails. A similar concern applies to the potential for over-compensating ICS providers serving larger, lower cost facilities, such as very large jails and prisons. We agree with those commenters who assert that the $0.20 and $0.24 rate caps proposed in the Joint Provider Proposal could result in excessive profits for the largest providers to the detriment of end users who would have to pay inflated rates far

above the providers' costs. For example, in the public portion of its cost data filing Securus noted that its overall cost per minute across all of its ICS contracts is $0.1776. GTL similarly provided its overall cost per minute across all ICS contracts, which it estimated at $0.1341. These averaged, self-reported, costs are well below the $0.20 and $0.24 rate caps proposed by these same providers in the Joint Provider Proposal.

33. The record, and our analysis of costs reported in response to the Mandatory Data Collection, support rate tiering because, holding other factors constant, the costs to serve prisons are lower than to serve jails. This is not surprising. Prisons typically have more stable, long-term inmate populations. For example, there is less than one percent inmate churn in prisons per week compared to an average of 58 percent inmate churn in jails. The record suggests that higher churn rates increase costs to process and grant a new inmate access to calling services, and also when an inmate exits a facility. The record also indicates that prison inmates make fewer but longer calls and providers appear to incur fewer bad debt costs when serving prisons.

34. We also find that economies of scale, such as the recovering of fixed ICS costs over a larger number of inmates, support the tiering approach we adopt today. In the *2013 Order*, the Commission noted that unit or average costs of providing ICS were decreasing as scale increased because of, for example, centralized application of security measures and ''the ability to centrally provision across multiple facilities.'' More generally, providers of ICS typically incur a range of costs that do not scale with volume, sometimes known as fixed costs. For example, the cost of a calling center is largely shared over a provider's entire operations, so the unit costs of the calling center fall quickly as call volumes increase. Similarly, the cost of connecting a facility to the ICS provider's network increases at a much lower rate when minutes of use increase. Indeed, in general, the incremental cost of a minute of use is almost zero. The Kansas Department of Corrections echoes these findings, stating in its support for rate tiering that ''[t]he cost to provide an ICS is largely driven by the size of a facility and length of stay. Larger facilities benefit from the economies of scale that allows agencies and ICS providers to spread the cost among a larger population.'' Pay Tel also reports that there are material fixed costs in providing ICS which can be distributed across larger facilities, like prisons, more readily than smaller facilities such as jails. Indeed, many ICS providers currently offer service to multiple facilities under one contract, reflecting the benefits of centralizing fixed costs across a larger base of customers. Lastly, ongoing industry consolidation supports our finding that there are economies of scale in the provision of ICS, *i.e.*, the incentive to become more efficient through scale is an incentive for providers to enter into mergers.

35. Recent state reforms also support tiering. Indeed, the Alabama PSC recently adopted rate tiers tied to facility type with separate rates adopted for jails and prisons. In December 2014, the Alabama PSC adopted a rate structure that ''provides lower rates [for prisons] in recognition that the per-minute costs for service in prisons is lower than it is for jails.'' In order ''to ensure ample opportunity to correct any funding shortfalls resulting from potential reductions in site commissions,'' the adopted rate caps included a two-year phase-down period from $0.30/minute to $0.25/minute for collect and debit/prepaid calling from jails and $0.25/minute to $0.21/minute for debit/prepaid calling from prisons, while the prison collect rate stays at the initial $0.25/minute rate cap.

36. We disagree with assertions that a tiered rate structure would be difficult for the Commission to administer, for ICS providers to implement, and for correctional officials to oversee. Those commenters who make such assertions already charge different rates across different ICS contracts and provide no real evidence or support for why rate tiers would be any more difficult or challenging than their current approaches.

37. For all of these reasons, we conclude that adopting rate tiers based on facility type as well as size, or ADP, allows us to recognize the differences in the costs of serving facilities of different types as well as providing multiple checks to prevent gaming or manipulation as discussed below. Tiering will limit ''the impact of the higher rates to those facilities most in need, while ensuring that the vast majority of ICS calls are charged at a rate commensurate with the cost of providing the ICS service.''

b. Determination of Facility Type and Average Daily Population

38. *Defining Jails and Prisons.* Given that our rates will differ for prisons and jails, it is necessary to define these key terms with specificity. The Commission sought comment on defining the terms ''prison'' and ''jail'' in the *Second FNPRM.* Subsequent to the *Second FNPRM,* several commenters provided suggested definitions. We have considered these submissions and adopt the following definitions.

39. Specifically, for purposes of this proceeding a jail is defined as the facility of a local, state, or federal law enforcement agency that is used primarily to hold individuals who are: (1) Awaiting adjudication of criminal charges, (2) post-conviction and committed to confinement for sentences of one year or less, or (3) post-conviction and are awaiting transfer to another facility. The term also includes city, county or regional facilities that have contracted with a private company to manage day-to-day operations; privately-owned and operated facilities primarily engaged in housing city, county or regional inmates; and facilities used to detain individuals pursuant to a contract with U.S. Immigration and Customs Enforcement (ICE) and facilities operated by ICE. For purposes of this proceeding a prison is defined as a facility operated by a territorial, state, or federal agency that is used primarily to confine individuals convicted of felonies and sentenced to terms in excess of one year. The term also includes public and private facilities that provide housing to other agencies such as the State Departments of Correction and the Federal Bureau of Prisons; and facilities that would otherwise fall under the definition of a jail but in which the majority of inmates are post-conviction or are committed to confinement for sentences of longer than one year.

40. *Facility or Institution.* The record indicates concern that some ICS providers may try to take advantage of the rate tiering structure we adopt in this Order by increasing the number of ''facilities'' in which they are allowed to charge the higher rate caps adopted for smaller jails above. For example, ICS providers may do this, commenters explain, by seeking to divide a detention facility into sub-units, such as wards or wings. The Commission sought comment on these possibilities in the *Second FNPRM.* Comments received in response confirmed that concerns that providers might try to game our rules were justified. Such gaming would be contrary to this Order, and would serve to frustrate the underlying purposes of sections 201 and 276 of the Communications Act. It would allow providers to appear as though they are serving smaller jails than they actually are, even though they achieve economies of scale by combining multiple small facilities under a single contract, because they are able to centralize services, like call monitoring

and recording, thereby reducing their overall costs. In order to establish and maintain just, reasonable, and fair ICS compensation, we must consider these issues and take steps to ensure that our adopted tiered rate caps cannot be undone by gaming.

41. As such, we find that a jail, as defined above, and a prison, as defined above, cannot be divided into multiple wings, units, or wards by, for example, for the purpose of taking advantage of our tiered rate caps. If interested parties believe such gaming is occurring they may bring the issue to the Commission's attention, at which time the Commission will review the totality of the circumstances (*e.g.,* treatment of the facility under state law, relevant contracts, physical attachment or proximity of units, etc.) to determine whether unlawful gaming has occurred.

42. *Average Daily Population for Jails.* As an initial matter, for purposes of the reforms adopted in this Order, the initial average daily population will be the sum of all inmates in a facility each day in the 12-month period prior to the effective date of this Order divided by the number of days in the year. This definition is consistent with that used by the Department of Justice's Bureau of Jail Statistics. We note that correctional institutions often publicly report their ADP. This publicly-reported population data should be used, where available, to determine the appropriate ADP for a facility. Going forward, when the relevant ADP is not publicly reported, beginning with January 31, 2017, the ADP will be calculated on a calendar year basis as the sum of all inmates in a facility each day between January 1 and December 31 of the previous year, divided by the number of days in the year. The applicable ADP will then be determined as of January 31 of each year pursuant to the ADP from the previous year and will remain in effect throughout that year. Consistent with this approach, if a correctional facility adds a new building or wing to a facility, the inmate population of the new wing will not be accounted for immediately. Rather, the inmate population of a new building or wing will first be considered in the calculations for ADP to be applied in the following year. For example, if a new wing is established anytime between January 1, 2017 and December 31, 2017, its inmate population during this time frame will be included in the ADP to be applied on January 31, 2018. We find this to be the most administratively efficient and feasible option, rather than potentially having numerous rate changes during a calendar year. New buildings or wings may not be filled immediately, and it may take some time before population levels in a newly-established wing increase enough to push the facility as a whole into a new tier. We find these detailed definitions are necessary to ensure that end users are charged just, reasonable, and fair rates and that ICS providers receive fair compensation for the costs they incur in providing ICS to smaller and larger facilities.

43. *Categorization of Certain High-Cost Facilities.* In the *Second FNPRM* the Commission sought comment on suggestions that it either exclude from any adopted rate caps what are reported to be high-cost facilities, such as juvenile detention facilities or secure mental health facilities, or provide a blanket waiver for such facilities. While the Commission did not request that providers separately calculate and report their costs for providing service to secure mental health facilities or juvenile detention facilities outside of jails or prisons in response to the Mandatory Data Collection, we agree with commenters that these facilities may be more costly to serve due to the smaller number of inmates. This is also consistent with our analysis above. We therefore conclude that the costs of providing ICS to juvenile detention facilities and secure mental health facilities are more akin to providing service to jail facilities. To the extent that juvenile detention facilities and secure mental health facilities operate outside of jail or prison institutions, they will be subject to the jail rate caps adopted herein.

2. Tiers for Jails

44. After placing issues relating to the Mandatory Data Collection out for public comment, the Bureau reviewed written comments, met with interested parties, and adopted a template for submission of required data in the Mandatory Data Collection. In it, the Bureau directed ICS providers to document applicable costs and fees by ''contract size.'' Potential contract size categories for jails include 0–99, 100–349, 349–999, and 1000 ADP and greater, and potential categories for prisons include 1–4999, 5000–19,999, and 20,000 ADP and greater.

45. The Commission sought comment on proposed rate tiering in the *Second FNPRM.* Pay Tel asserts that it supports three rate tiers, one for ''small-to-medium sized jails (less than 350 ADP) based on 'demonstrated operational and functional differences between prisons and jails—and the cost differences associated with [the] provision of ICS therein.''' Petitioners support a two-tiered structure and suggest rate caps for facilities with 0–349 ADP and facilities with 350 and over ADP in order to take into account the ''alleged higher costs incurred by small jails. The Joint Provider Proposal does not favor any rate tiers. Securus asserts that if the Commission adopts a tiered rate structure, ''the tiers should be defined in a way that account[s] not only for ADP but also differences in the investment required to serve a site. . . . And, as Securus previously has stated, ADP must be very closely defined such that carriers cannot game the system in the way that they report those figures.''

46. In this Order we adopt rate tiers based on the following ADP for jails: 0–349, 350–999, and 1,000 and greater. We adopt these rate tiers for jails because we find that they most closely resemble the breakdown between small-to-medium jails, large jails, and very large, or mega-jails. We have decided not to include a 0–99 ADP breakdown in the rate tiers in part because, according to the Bureau of Justice Statistics, jails with an ADP under 99 make up less than 10 percent of the inmate population. We also believe that adopting fewer tiers than those requested in response to the Mandatory Data Collection responds to comments in the record expressing concern over potential confusion and burden of multiple rates. By adopting these tiers for jails, we conclude that our rate caps will most closely conform to the costs as filed in the record. As a group, jails are more varied than prisons and, as we have discussed herein, there are economies of scale to be gained as facility size increases. Finally, as discussed below, the data received in response to the Mandatory Data Collection support these tiers.

47. Below we explain how we have determined that our prescribed rates will allow efficient providers to recover their costs. We rely principally upon: (1) Analysis of data received in response to the Mandatory Data Collection, which shows that firms operating efficiently would earn substantial profits under our prescribed rates, (2) evidence suggesting that providers' reported costs in response to the mandatory data collection are overstated, and (3) other evidence in the record, including ICS providers' provision of service in jurisdictions with rates lower than those we prescribe here.

3. Determination of Specific Rate Caps

48. Having determined the basic structure of rate caps, we describe the methodology for the specific rate caps within that structure. Specifically, we find that the following rate caps will ensure that ICS rates are just,

reasonable, and fair for inmates, their families and loved ones, as well as the ICS providers, and will incorporate the costs associated with the necessary security protocols: $0.22/MOU for debit and prepaid calls from jails with an ADP of 0–349; $0.16/MOU for debit and prepaid calls from jails with an ADP of 350–999; and $0.14/MOU for debit and prepaid calls from jails with an ADP of 1,000 or more. Debit and prepaid calls from prisons will be capped at a rate of $0.11/MOU. Collect calls from jails will be capped at $0.49/MOU and collect calls from prisons will be capped at $0.14/MOU until July 1, 2017, and then transition down to the appropriate debit/prepaid rate cap.

a. Marketplace Evidence of Rates in Certain States

49. Evidence of rates at the state level generally provides further support that the rate caps we adopt today allow sufficient room for providers to earn a fair profit. As noted above, Ohio eliminated site commissions and reduced ICS rates by 75 percent to $0.05 for Ohio Department of Rehabilitation and Correction (ODRC) facilities. West Virginia's Division of Corrections recently reviewed bids without regard to site commissions offered by the bidders (*i.e.,* the DOC did not take site commissions into account in deciding the winning bidder). New Jersey recently awarded an ICS contract for state prisons that eliminated site commission payments and reduced rates below $0.05 per minute, yet the winning bidder, GTL, reported to the Commission average 2012 through 2013 ICS costs of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. The Pennsylvania Department of Corrections (DOC) contracted with Securus at a $0.059 per-minute rate for all ICS and the elimination of all ancillary fees, while offering a 35 percent site commission, even though Securus reported to the Commission that its average cost of providing ICS over 2012 and 2013 was [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. Similarly, in New Hampshire, the state DOC lowered intrastate rates to less than $0.06 per minute with a 20 percent site commission. That providers bid for these contracts, and supply ICS at rates consistent with these constraints, strongly suggests that efficient providers can provide ICS at rates closer to $0.05 per minute—less than half of our lowest rate cap of $0.11 per minute. This is not surprising, as a per-minute rate of approximately $0.05 per minute approximates the lowest average per-minute costs reported to us. We observe that it is unlikely that any provider would supply any state if the rates allowed in those states did not at least cover the incremental costs of supplying each of those states, which further suggests that reported costs may be inflated. We also note that no provider clearly argued that such rate levels are the result of cross-subsidization, and there is no data in the record to support such a conclusion. While one provider made statements unsupported by data that might be so interpreted, those statements are too vague to evaluate.

b. Analysis of Data Received in Response to the Mandatory Data Collection

50. *Rate Methodology.* In the *2013 Order,* the Commission adopted the Mandatory Data Collection to enable it ''to take further action to reform rates, including developing a permanent cap or safe harbor for interstate rates, as well as to inform our evaluation of other rate reform options in the Further Notice.'' In 2014, the Wireline Competition Bureau (Bureau) developed a template and related instructions for ICS providers to use in responding to the Mandatory Data Collection. The Commission also provided notice of the data collection, its due date, and information on contacting Bureau staff available to answer specific questions on how to comply with the filing requirement and the template and instructions. The instructions, template, and other related material were posted on the Commission's Web site, and the data collection due date was announced by Public Notice which was also published in the **Federal Register**, 79 FR 35956, Nov. 21, 2014. Responsive data were received in August 2014.

51. The Commission directed the Bureau to create the template in a manner intended to allow a provider to include all costs incurred in the provision of ICS. Without limiting or restricting costs or cost categories, the Bureau directed providers to report their ICS-related costs for telecommunications, equipment, and security, as well as any costs not captured in these categories (*i.e.,* ''other costs''). The Commission directed providers to submit the data for fiscal years 2012, 2013, and 2014, which provided the two most recent years of actual data and one year of partial actual and partial forecasted data. Providers were required to report intrastate, interstate and international ICS cost data in the aggregate for debit, prepaid, and collect calling services. For each service, providers were required to identify which costs were direct or common, and to allocate costs by facility type and size. Providers also submitted call volume data (MOU and number of calls) for each category. The Commission received data filings from 14 of the 25 anticipated ICS provider respondents. We estimate that the 14 responding providers together represent over 90 percent of the market.

52. The debit and prepaid rate caps we adopt are based on 2012 and 2013 data submitted by the 14 responding providers. The caps rely on the 2012 and 2013 data because it represents actual, rather than projected, data, and allows averaging across the two years to account for cost variations that may occur between the years. Costs per minute were calculated using a weighted average per minute cost (which is the same as dividing aggregate costs (*i.e.,* the entirety of all costs reported by the providers for any category) by aggregate minutes of use in that category). This prevents small outliers from having a disproportionate impact on our analysis.

53. Based on the record and our analysis described below, we believe the applicable rate caps will ensure just, reasonable and fair compensation for ICS. We have relied on the cost data and allocations as submitted by ICS providers in calculating these rate caps. We note that the providers cost data reflect their determinations about how to allocate certain common costs, such as call centers and back-office operations. It is generally understood that an economically rational provider will serve a facility if it can recover its incremental cost of doing so, which the record and our analysis indicate will be the case. We take the data at face value, even though the analysis shows that there is significant evidence—both from our own analysis and commenters' critiques—suggesting that the reported costs are overstated. We also find support in the record evidence of increased demand and additional scale efficiencies, which are not included in our quantitative analysis. Our analysis and the record evidence support our conclusion that efficient providers would be able to operate profitably under our rate caps.

54. *Discussion and Analysis.* Based on the record and our own analysis described below, we find that our prescribed rate caps as outlined above are more than sufficient to allow providers to recover efficiently-incurred ICS costs (excluding reported commissions).

55. The record supports our conclusion. Coleman Bazelon, economics consultant for the Wright Petitioners, analyzed our rate caps and concluded that they ''will largely cover the individual ICS providers' costs in

providing service.'' [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] The Bazelon economic analysis does not take into account the evidence that lower rates will spur demand, such that the vast majority of the industry costs will be covered by the rates adopted today.

56. ICSolutions, an ICS provider, states that it ''can comply with the proposed rules'' and notes that this ''strongly suggests that any entity failures in the industry are likely a result of inefficient operations.'' NCIC also supports our rate caps. Praeses ''believes that Providers will generally be able to provide services pursuant to these rate caps at a profit.'' Praeses also reports that interstate call volume and resulting revenue have increased since our 2013 interim reform, with facilities operated by its clients seeing approximately 76 percent interstate call volume increases and overall interstate revenue growth of approximately twelve percent. This is unsurprising, as reduced prices typically lead to higher volume. ICSolutions reports seeing call volumes increase ''by as much as 150%, and revenues increase by about 30%'' when it implements lower call rates. In addition, our rate caps are generally higher than rates that have been adopted in several states that have undertaken reform and there is no evidence in the record that such rates have made provision of ICS unprofitable. Also, nothing in the record suggests that states that have adopted such reforms are different from those states that have not adopted reform with respect to either costs or revenues.

57. Our own analysis likewise shows that the rate caps will permit just, reasonable, and fair recovery for the provision of ICS. Our approach is conservative in its analysis of both costs and call volumes (and hence revenues). It includes all the reported data, assumes they do not overstate costs, and takes no account of likely increases in call volumes that our rates would induce, thereby understating expected revenues. This analysis thus likely reflects a worst-case scenario, and, as discussed below, even in the worst-case scenario, our rates are fair and reasonable.

58. *Costs.* Our analysis of costs supports our conclusion that efficient providers will be assured just, reasonable, and fair compensation under our rate caps. In particular, based on the unaudited costs for 2012 and 2013 reported by the 14 respondents to the Commission's Mandatory Data Collection, the lowest rate cap we prescribe ($0.11) is greater than the average per minute cost of each of the more efficient reporting providers. Two of these providers are quite small, and operate in relatively small jails only. As a result, as discussed below, the expected efficient cost of these small providers on a per minute basis is likely higher than the efficient costs larger reporting providers face, which implies that larger providers should also be able to operate at a profit at our prescribed prices. We recognize that some providers may supply a range of services that go beyond ICS, and the prices that they charge may be used to cross-subsidize these services. However, we do not consider it appropriate for non-ICS services, such as location-monitoring, to be paid for by inmates and their families and friends through ICS rates.

59. Further, we find that providers reporting high costs could recover those costs and receive just, reasonable, and fair compensation under our rate caps through increased efficiencies. Our analysis suggests that providers generally may have been over inclusive in reporting their costs and that the supply of ICS is not fully competitive, implying that the adopted rate caps are conservative. We also note that no providers have submitted evidence that their higher costs may be attributable to higher-quality or more technologically-advanced ICS.

60. Other evidence reinforces our view that respondents' reported costs may in some cases exceed economic costs, and lead us to conclude that our prescribed rate caps will allow efficient firms to recover their economic costs, including a reasonable return. For example, the average per-paid minute cost of each of the seven largest firms substantially exceeds the average per-paid minute average cost of each of three smaller providers. This data point suggests these larger firms are either economically inefficient or that they overstated their costs of ICS provision. On one hand, if there were economies of scale or constant returns to scale in production of calls or call minutes of use, then larger firms would have lower or the same average costs as the smaller firms, implying that these larger firms' reported costs are above efficient levels. On the other hand, if there were diseconomies of scale (that is, the average per-minute cost rises with MOU volumes), then these firms are inefficiently large (they would be more effective broken up into smaller firms), and we should not subsidize that anomaly.

61. More generally, we find above that average costs should fall with the provider's size. However, the reported data (implausibly) show only a very weak negative relationship between average costs and the number of calls or MOU. Similarly, the data (again implausibly) do not support *a priori* assumptions about underlying costs. For example, regression analysis indicates that the firms' costs were highly correlated with different measures of MOU, type of call, and facilities serviced. However, in most specifications the coefficients associated with the MOU and call variables were implausible: they were typically well above the expected marginal cost of an additional MOU. Further, in some specifications, the differences between the marginal costs of different types of calls were implausibly large and statistically significant. Both of these facts (the lack of scale economies in call production and minutes of use and oddities about reported marginal costs) suggest that the data do not reflect the actual economic costs of supply and lead us to doubt the extent to which reported costs accurately reflect efficient costs. Additionally, reinforcing our view that reported costs are inefficiently high, there is evidence that some of the providers' costs include services that are not directly related to the provision of ICS. In short, all these observations make it all the more likely that our prescribed rate caps would allow an efficient provider to earn economic profits.

62. There is also evidence that competition to supply ICS may not always be robust, which in turn suggests providers are able to earn more than economic costs, and if faced with lower revenues, may remain profitable. The most important evidence in this last respect is that the providers' unaudited cost data show that roughly similarly situated providers have substantially different costs. This not only suggests that the higher cost providers are unlikely to be economically efficient, but also that if they were to operate more efficiently, they would have no difficulties in recovering their economic costs. For example, a lack of robust competition would explain why the reported cost data does not seem reflective of underlying costs (a result that is inconsistent with effective competition). Analysis of that data also finds a tight relationship between costs and output levels, both when commissions are included and excluded. This suggests a high degree of homogeneity in the industry between reported costs (with and without commissions) and output. One might expect such results if all bids for ICS were either competitive or non-competitive, but, as noted, other aspects

of the cost data are inconsistent with competition, and other evidence suggests competition, if it exists, is not found everywhere.

63. Two of the six smallest responding providers when ranked by paid MOU would earn substantial imputed profits at our prescribed rates. For example, over 2012 and 2013, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] had an average per paid minute cost of $0.05 (and a similar average per all minute cost) when rounded to the nearest $0.05, earning imputed profits of well over 200 percent. Similarly, in 2012 and 2013, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] had an average per-paid minute cost of $0.10 when rounded to the nearest $0.05, earning imputed profits in excess of 100 percent.

64. In contrast, our conservative approach imputed reductions in providers' ability to recover costs under our initial rate caps to seven of the reporting providers, but we find that all of these providers would be highly profitable if their cost structures resembled those of the two small efficient firms we identified. Four of these are among the six smallest responding providers. Each reported average per-paid minute costs over 2012 and 2013 of $0.25 or higher. That is, in all cases their average per-paid minute costs were more than two and a half times, and in some cases several multiples of, the highest paid MOU average cost of the two small providers with imputed profits. Consequently, if these four providers' average costs were halved, so that they still exceeded those of the two small providers with imputed profits, then all four would operate at a profit given our conservative revenue assumptions. The remaining three providers with imputed reductions in cost recovery are considerably larger than the two small providers with imputed profits discussed above, and more than one supplies services in prisons as well as jails. Yet, each has an average per-paid minute cost that is at least three times as high as that of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] (which we found to have large imputed profits). Again, if these providers' costs were considerably closer to, but still well above those of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL], then they would be able to earn profits while charging rates consistent with our prescribed rate caps. In the two subsequent years, providers' ability to recover costs would change, but in all cases if these providers were as efficient as the two efficient providers discussed above, they would earn an economic profit in all of the years discussed.

65. *Revenue.* Turning to revenue, our analysis likewise demonstrates that our rate caps permit fair, reasonable, and just compensation. Once again, we take the provider's data as filed despite the evidence that they are overstated. Moreover, even assuming the same call volumes as experienced in 2012 and 2013, no other revenue sources, and no improved efficiency in service provision, we can impute in the initial year that all providers, if operating efficiently, would be profitable under our prescribed rate caps. With more realistic assumptions (greater call volumes, revenues from ancillary services, and productivity improvements), it is likely that any provider facing imputed revenue reductions in the range of 10 percent would remain profitable even if its reported costs were not overstated (and we find to the contrary). For example, for the reasons described below and based on record filings, capping rates is likely to increase minutes of use, thus raising revenues, and this would likely make up for such imputed reduction in revenue. The few remaining providers potentially could face larger imputed reductions in revenue (assuming their reported costs were efficient). However, these providers have reported costs significantly higher than the industry average, even more strongly suggesting that they are likely to be inefficient providers. In any event, to the extent such providers can demonstrate that they are unable to receive fair compensation under our rate caps, they would be eligible to seek a waiver as described below.

66. In short, our revenue estimates are likely understatements, for the reasons described below. We also find that many of the providers' reported costs are likely to be higher than efficiently-incurred costs, and this is specifically the case for the carriers just discussed. Consequently, we have a high degree of confidence that our prescribed caps would allow efficient providers of ICS to operate profitably.

67. Our revenue imputation likely underestimates the actual revenues providers would obtain for four reasons. First, our analysis does not take into account the demand stimulation from lower rates. But there is substantial record evidence showing that, to the extent that our caps lower existing rates, they will increase minutes of use and raise provider revenues.

68. Second, we impute rates that in some cases will be lower than the rates the providers may actually charge. The resulting revenue underestimate could be material for six of the providers for which we impute losses at our prescribed rate caps, meaning that as a practical matter they could make up for any shortfall. All these providers have jail contracts with ADPs of at least 350, and some of these providers have a large number of such contracts. To estimate each provider's revenues under the rate caps we adopt today, we calculate the revenues the provider would have earned given the MOU the provider reported for 2012 and 2013 for debit and prepaid calls in the three different jail size categories, 0–349, 350–999, and 1,000+, for prisons, and for collect calls (so, for example, if a carrier had 1,000 debit MOU in the 0–349 category, we assume the provider would earn $220 (= 1,000*$0.22)). This approach can understate revenues because providers reported contracts according to *the sum of the ADP of the facilities covered under the contract,* but in some cases providers will charge different rates in different facilities supplied under the same contract. In that case, when the contract has an ADP of 350 or more, but the provider serves under the contract jails with an ADP that is lower than the contract ADP, our estimate will understate the revenues they would have earned if our prescribed rates were applied. For example, a contract with an ADP of between 350 and 999 that currently sets different rates for different facilities might cover three jails, each with an ADP of 150. In that case, while we would impute a rate of $0.16 to the prepaid and debit MOU reported under that contract, in reality the provider could be entitled to the $0.22 rate cap on all those MOU. Similarly, all jails reported under contracts with an ADP of 1,000 or more were imputed the debit and prepaid rate of $0.14, but some of these jails could have ADPs of less than 1,000, and in some cases of less than 350. If the contract specified separate rates by facility, then the provider could be entitled to either the $0.16 or the $0.22 rate in those smaller jails.

69. Third, our analysis also does not take into account the caps that we impose on ancillary service charges, which likely will lead to an increase in minutes of use. Finally, our analysis does not take into account the fact that international calls are not subject to our rate caps and therefore, such calls will produce more revenue than reflected.

70. A few providers, including GTL, Securus and Telmate, contend that our rate caps are too low and will not allow them to recover their costs. Others assert that our rate caps may be too low with respect to particular facilities. Some representatives of jail facilities express concern that the provision of ICS in

their facilities may be in jeopardy. Based on our analysis and the record, we find these assertions unpersuasive. Several providers dispute their claims, noting that GTL, Securus, and Telmate failed to break out their costs by facility type, and proposed rate caps well above their reported average costs over both prisons and jails. As a result, ''any claim that the Commission's draft rates are demonstrably below carriers' reported costs is wholly unsubstantiated and without merit.'' Our analysis indicates that the rate caps we adopt will permit just, reasonable, and fair compensation. Moreover, we expect that the reforms adopted will lead to increased minutes of use, incentivize increased efficiency, and permit providers to generate increased revenues. Thus, we do not believe that there is a reason for service to facilities to be in jeopardy but, as noted below, there is a process for considering any unique circumstances that may justify a waiver to ensure fair compensation.

c. Evidence That the Mandatory Data Collection Likely Overstates Providers' Costs

71. In addition to the analysis detailed above, evidence in the record suggesting that a number of ICS providers overstated their costs in response to the Mandatory Data Collection provides us with further comfort that the rate caps adopted today are appropriate and ensure fair compensation to the providers.

72. For instance, providers were directed to file a Description and Justification (D&J) with their Mandatory Data Collection response to document and explain their cost submissions. Three providers did not submit a D&J to the Commission. The D&Js received varied widely in detail and thoroughness. Five providers (CenturyLink, GTL, Pay Tel, Securus, and Telmate) claimed a cost of capital of 11.25 percent in developing their cost data submission. (While other providers did not specify a cost of capital, given the length of this proceeding and the fact that the Commission clearly signaled its focus on setting appropriate ICS rates, as well as the fact that these respondents are sophisticated parties, we think that it is reasonable to assume that all responding providers included a cost of capital whether they specified it or not.) The cost of capital has to be estimated and their estimate of 11.25 percent might be significantly higher than the prevailing cost of capital for companies that provide telecommunication services. In any event, none of these companies submitted evidence as to their costs of debt or equity capital or capital structure, the three components of the cost of capital, and so have not justified any cost of capital estimate. In addition, several providers (Securus, Telmate, and CenturyLink) included in their costs financing items as well as interest expense, which is included in the cost of capital. This suggests that these providers, and possibly others, have over-estimated their capital costs, potentially double-counting their cost of debt. The five providers that specifically reported using 11.25 percent account for a large portion of the market, and thus a commensurate weight is reflected in the weighted average caps that we calculate. Consequently, in the unlikely event that a provider omitted its cost of capital, the omission is unlikely to have a significant impact on the weighted average caps. We also note that the Bureau has recommended to the Commission that a zone of reasonableness for the Weighted Average Cost of Capital (WACC) is between 7.39 and 8.72 percent.

73. We also find that the manner in which the data was collected and the clearly-stated purpose of the data collection, which occurred in the context of a Commission effort to set caps on ICS rates, gave providers every incentive to represent their ICS costs fully, and possibly, in some instances, even to overstate these costs. For example, one provider noted in its D&J that it even included in its ICS-related costs amounts for dues, subscriptions, entertainment and meals. We question the appropriateness of including such costs as ICS-related costs but as noted below we accept these reported costs without discounting or manipulating them. We have observed that at least one reporting provider did not actually calculate the percentage of traffic for each service (debit, prepaid or collect) represented but rather used the same percentage for each and merely offered a ''guess'' in reporting its 2014 data projections. This information forces us to call into question the accuracy of this provider's data and how rigorous this provider was in preparing its Mandatory Data Collection response. That the adopted rate caps include such costs, as well as the costs of international calls that are not subject to our rate caps, causes us to conclude that the adopted caps are generous. An analysis of the adopted rate caps shows that some providers will recover more than their stated costs, while others will recover less (because the caps are based on weighted industry averages but, as explained above, we believe all providers can more than recover the efficient costs of ICS supply).

74. Moreover, comments in the record have also highlighted how the data likely overstate costs. For example, the Petitioners' economist, Coleman Bazelon, and Pay Tel's economic consultant Don Wood identified problems they observed with the data. Dr. Bazelon also reported that, based on an analysis that included information not included in the provider's Mandatory Data Collection submissions, the reported costs of Securus and GTL ''include many incorrectly calculated additions such as inappropriately recoverable financing costs.'' Dr. Bazelon reports that, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].

75. After recalculating the providers' costs, Dr. Bazelon then concludes that their reported costs should be discounted by approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. While we do not discount the costs as recommended by Dr. Bazelon and, instead, take a more conservative approach of using the data at face value, this analysis underscores that the data submitted likely overstates costs and, as a result, the rate caps we adopt today are conservative.

d. Alternative Proposals in the Record

76. Numerous commenters have submitted rate reform proposals in the record. The Petitioners, along with several public interest groups, initially urged the Commission to adopt a $0.07 per minute rate cap for all interstate debit, prepaid, and collect calls, with no per-call charge, and no ancillary fees or taxes allowed. GTL, Securus, and Telmate, who describe themselves as ''the primary providers of inmate calling services . . . in the United States and represent[ ] 85% of the industry revenue in 2013,'' jointly filed a proposal to comprehensively reform all aspects of ICS. The Joint Provider Proposal urges the adoption of rate caps of $0.20 per minute for debit and prepaid interstate and intrastate ICS, and $0.24 per minute for all interstate and intrastate collect ICS, effective 90 days after adoption of a final order. The Joint Provider Proposal does not indicate that it is based on cost data received in response to the Mandatory Data Collection. In addition, the Joint Provider Proposal was signed by only three of the 14 ICS providers that responded to the Mandatory Data Collection. Pay Tel submitted what it calls an ''Ethical Proposal,'' in which it proposes rate caps of $0.08 per minute for all prisons regardless of population, $0.26 per minute for jails with 1–349 ADP, and

$0.22 per minute for jails with 350 plus ADP. The Commission sought comment on these proposals in the *Second FNPRM.*

77. In response to the *Second FNPRM,* Petitioners submitted another reform proposal. The Petitioners propose a rate of $0.08/minute for prepaid and debit calls and $0.10/minute for collect calls from all prisons and jails with over 350 beds. Petitioners propose a rate of $0.18/minute for prepaid and debit calls and $0.20/minute for collect for facilities with fewer than 350 beds. Petitioners suggest that the Commission adopt these tiered rates to account for higher churn rates, increased non-revenue calls, and higher bad debt issues experienced in smaller facilities. In its comments to the *Second FNPRM,* PPI supports a cap of $0.05 to $0.07 per minute.

78. Several commenters submitted economic justifications for their rate proposals, each of which relied on a slightly different subset of the data in the Mandatory Data Collection. For the reasons described below, the Commission declines to adopt any of these proposals.

79. After comments were received in response to the *Second FNPRM,* Pay Tel filed an additional proposal based on its economic consultant's analysis of the data filed in response to the Mandatory Data Collection. The company proposes tiered per-minute rate caps, for all call types, plus institution cost recovery amounts to be added to those caps. The rates (rate cap plus additional facility cost recovery) would range from $0.10/min for prisons to $0.29/min for jails of 0–349 inmates. Specifically, Pay Tel's economic consultant, Don Wood, excluded from his analysis, and subsequent proposed rate caps, the data from ATN, Encartele, and Protocall because he did not receive data from those providers, and from Combined Public Communications, Custom Teleconnect and Correct Solutions, because he deemed them ''unreliable for the purpose at hand.'' Mr. Wood then observed that the remaining eight reporting ICS providers' data included no description of how their cost studies were performed, and stated that ''a number of the studies are decidedly imperfect, and more complete documentation would certainly be desirable.'' Regardless, Mr. Wood suggested that ''key results of these studies should be relied upon by the Commission when making any decisions regarding the level and structure of ICS costs.'' We conclude that our approach is more appropriate because it includes data from all providers, rather than excluding six of the fourteen reporting providers' data. This approach is less reliable than our rate caps because of its selective nature. While we agree that the data are not perfect, we do not believe it is appropriate to ignore the filed data and we find Mr. Wood's rationale for excluding certain providers' data unpersuasive without additional justification. As such, the rate caps adopted herein are derived from all data filed in the record.

80. In comments to the *Second FNPRM,* the Wright Petitioners' economist, Coleman Bazelon, identified problems he observed with the data received in response to the Mandatory Data Collection. For example, Dr. Bazelon identified inconsistencies in how providers categorized and allocated costs. Dr. Bazelon then discussed the rate caps that the Wright Petitioners' proposed in their comments. These rate caps were based on Securus' and GTL's average cost data, which Dr. Bazelon then discounted because of concerns regarding Securus' cost-reporting methodology. As noted above, Dr. Bazelon found errors in Securus' and GTL's submissions, which led them to likely overstate their reported costs. After adjusting for these errors, the Wright Petitioners suggest that an appropriate rate cap for service to prison facilities should be $0.08/minute for debit/prepaid calling and $0.10/minute for collect calling.

81. We appreciate Dr. Bazelon's analysis highlighting that the data are likely to be overstated, but we do not believe it is appropriate for our purposes. Dr. Bazelon's analysis suggests that one provider may have overstated its costs by some significant amount. We find Dr. Bazelon's analysis of the submitted data troubling and believe that his conclusions, if true, might support discounting cost data from certain providers. (We note, however, that our filing instructions did not specify in detail how providers should account for the data that Dr. Bazelon discussed, although we required providers to identify and explain all costs in the accompanying Description and Justification. The lack of specific instruction regarding the method of cost reporting should not have been interpreted as license to manipulate or over-report cost data, and the reference to the penalty for willful false statements should have made that evident.) While we are concerned that the analysis from Dr. Bazelon suggests that costs were overstated, we do not believe it is appropriate to adopt a rate cap based on discounting a single provider's costs when we have data from 13 other providers. In addition, we determine above that we should not manipulate the data but more conservatively accept the providers' costs as filed to avoid potentially arbitrary means of working with the data.

82. Alabama Public Service Commission Utility Services Division Director Darrell Baker likewise reviewed the data. His proposal includes four tiers each for prisons and jails, based on inmate population, with both rate caps and additional facility cost-recovery amounts, yielding rates ranging from $0.12/min (prisons with more than 19,999 inmates) to $0.25/min (jails of less than 100 inmates). In support of his proposal for prison rates, Mr. Baker relied on cost data from only seven of the reporting 14 providers. He excluded from his rate cap and cost-recovery calculations the seven smallest reporting providers, on the basis ''that the . . . [remaining] providers serve the overwhelming majority of jails and prisons and that . . . an analysis of their data should provide accurate and reliable results that are applicable across the entire industry.'' In support of his proposal for jail rates, Mr. Baker relied on data from only six of the reporting providers, excluding one of the seven remaining providers' data because that ''[o]ne provider's cost per MOU deviates substantially from the cost per MOU of other providers.'' We find Mr. Baker's approach problematic because it eliminated the higher cost data in the record. Put another way, the seven smallest providers submitted what were among the highest reported costs of providing ICS and the other excluded provider by process of elimination must be a larger provider that is responsible for a more-significant portion of ICS minutes of use. Additionally, Mr. Baker appears to have given no consideration to potential justifications, if any, for that provider's higher costs. We are unable, on the record before us, to exclude providers' reported data in calculating the appropriate rate caps.

83. The comments in the record largely agree that the data are problematic but disagree on the reasons why and the overall effect on the reported data. Each analysis described above is based on a different data set and criticizes the data for slightly different reasons. We take seriously the concerns that the commenters have raised about inconsistencies in the data, and for at least some of the reasons described above, conclude that the reported data likely overstates the providers' actual costs. But, as explained herein, we are unable to agree with and do not adopt any of the commenters' choices about which data to exclude or discount.

e. Rate Caps for Collect Calls

84. In this section, we conclude that it is appropriate to put in place a temporary, distinct rate structure for collect calls, with a two-year phase down after which rate caps for collect calls will be the same as those of debit and prepaid calls.

85. In the *2013 Order,* the Commission established a rate cap for interstate debit and prepaid calling and a separate rate cap for interstate collect calling. The interim interstate collect calling rate cap was $0.25. In setting this separate rate cap, the Commission recognized that, based on the data available at the time, collect calling can be more expensive for ICS providers to offer than debit and prepaid calling. The Commission encouraged facilities to move away from collect calling, noting that the use of prepaid calling helps called parties to better manage their budgets for ICS, thus making end-user costs for maintaining contact more predictable. The Commission also noted that debit and prepaid calling address the problem of call blocking associated with collect calling by enabling service providers to obtain payment for calls up front, thus eliminating the risk of nonpayment.

86. In the *Second FNPRM,* the Commission sought comment on retaining the differentials between debit/prepaid and collect calling. The Commission noted that data received from the Mandatory Data Collection suggest that collect calling costs are higher than costs for prepaid and debit calls, and that collect calling accounted for less than nine percent of revenue producing minutes in the data collection in 2013. Commenters suggest that collect calling is more costly to provide because of bad debt, billing costs, uncollectible debts and issues related to collection of non-payment. For example, some commenters still assert that the Commission should adopt a higher rate cap for collect calling, largely because of the higher costs associated with collect call service. The Commission, along with several commenters, has noted that use of collect calling in correctional facilities has dropped significantly in recent years. Data received in response to the Mandatory Data Collection confirm this decline. Between 2012 and 2014, collect-calling minutes of use decreased over 50 percent, from 15 to 7 percent of minutes of use. CenturyLink recently told the Commission that ''that traditional collect calling represents a small and *declining* percentage of inmate calls.''

87. Based on our analysis of the record, including data submitted in response to the Mandatory Data Collection, we predict that collect calling usage will continue to decrease in the future. We do not want to include high collect calling costs in debit and prepaid rate tiers because that would compel the majority of ICS end users that do not use collect calling to subsidize such calls. In light of that concern, and because we continue to encourage correctional institutions to move away from collect calling, as the Commission did in the *2013 Order,* we adopt a separate rate cap tier for collect calling. This separate tier is consistent with the Commission's prior actions in adopting a separate collect calling rate tier based on data indicating that collect calls were more expensive than other types of ICS calls. Since the adoption of our interim rate caps, only one provider has been granted a waiver based on an assertion of unreasonable or unsustainable rate caps, further supporting the reasonableness of the rate of the interim collect calling rate caps.

88. We adopt a collect calling rate cap based on the cost data received in response to the Mandatory Data Collection, as well as a two-year step-down transitional period, as follows. First, we adopt a collect calling rate of $0.49/per minute for all jails and $0.14 for all prisons until July 1, 2017. Beginning July 1, 2017, we adopt a rate of $0.36/per minute for jails of 0–349 ADP, $0.33/per minute for jails of 349–999 ADP, and $0.32/per minute for jails of 1,000 or greater ADP, and $0.14/per minute for all prisons. This rate is halfway between the initial rate and the rates that are adopted in this Order for debit and prepaid calling. Finally, effective July 1, 2018 and beyond, we adopt a collect calling rate of $0.22/per minute for jails of 0–349 ADP, $0.16/per minute for jails with 359–999 ADP, and $0.14/per minute for jails of 1,000 or greater ADP, and $0.11/per minute for all prisons, in order to arrive at rates that are identical to those adopted in this Order for jails and prisons and the respective tiers therein.

89. We conclude that these separate tiers for collect calling rates will phase out after a two-year transition period. This two-year framework is justified by the data filed in response to the Mandatory Data Collection, showing that collect calling volume is decreasing and will most likely be at a nominal level in two years. By adopting a two-year glide path, the rates ICS providers are permitted to charge phase down over time, with certainty and sufficient time to adapt to a changed landscape that includes reduced use of collect calling overall. We find that this transitional approach will be administratively efficient for both providers and the Commission, as it involves a straightforward two-year step-down process and reflects our expectation that providers will gain efficiencies in their contracts and collect calling, and that they will thus more easily adjust to the lower rate caps adopted for debit and prepaid calling.

90. Moreover, the record supports a uniform rate for collect calls. Indeed, several commenters no longer support a separate rate cap for collect calling, indicating that collect calling costs may not, in fact, differ significantly from debit or prepaid calling costs, or that collect calling accounts for a relatively small portion of calls. The record indicates that this is because correctional institutions favor debit or prepaid calling over collect calling. For example, when the Commission adopted the *2013 Order,* evidence in the record indicated that collect calling was the only ICS option offered in four states and now the record indicates that collect calling is the only ICS option in one state. As the Commission has stated previously, we encourage providers and facilities to move away from collect calling for the many efficiencies and cost savings that other types of calling offer. Finally, we find that a two-year transition will allow the Bureau to monitor collect calling and address any potential traffic arbitrage issue that might occur if providers shift calling patterns to take advantage of the higher collect calling rate caps.

91. We acknowledge that the collect calling rate caps will be higher in year one than several of the collect calling caps proposed in the record. We expect that these caps will serve as backstops, not a target for providers, as efficiencies are gained by providers, and contracts are changed, or new contracts are entered into between parties. As discussed above, we expect that the trend towards declining collect calling volume will continue, and the adopted rate caps may be further modified in response to further data received as part of the MDC adopted herein.

92. We delegate to the Bureau the authority to seek comment on the possibility of adjusting the adopted collect calling rate cap if necessary to address any gaming issues that may arise prior to completion of the phase-down. As part of the annual reporting and certification requirement adopted herein, the Bureau will be monitoring collect call volume in order to review trends and to ensure that gaming does not occur. As discussed below, the

Commission also plans to collect rate data, including data about collect calling rates that will further inform this review.

f. Cost-Benefit Analysis

93. In adopting these rate caps, we have carefully considered each proposal or suggestion from the extensive comments in the record and weighed its potential benefit against any potential burden it may impose, bearing in mind our statutory mandate that ICS rates must be just, reasonable, and fair, maximizing the public benefit from any proposal we adopt. We find, on balance, that the benefits of our rate caps outweigh any potential burden that may be imposed. For example, regular family contact not only benefits the public broadly by reducing crime, lessening the need for additional correctional facilities and cutting overall costs to society, but also likely has a positive effect on the welfare of inmates' children. Ensuring just and reasonable ICS rates will foster regular contact between inmates and families, reduce the economic burden on ICS end users, support more cost-effective communication between inmates and their counsel, and produce cost savings for the justice system.

94. Additionally, as the Commission discussed in the *2012 NPRM,* studies show that regular contact with family reduces inmate recidivism. Children who continue to stay in touch with their parent in prison exhibit fewer disruptive and anxious behaviors. Yet, according to one study, only 38 percent of inmates reported ''at least'' monthly phone calls with their children. Real telephone contact between inmates and their loved ones at high rates places a heavy burden on inmates' families because families typically bear the burden of paying for the calls. The Government Accountability Office (GAO) has twice recognized the conclusions of Federal Bureau of Prisons officials that contact with family ''aids an inmate's success when returning to the community'' and thus lowers recidivism. Moreover, the GAO has found that ''crowded visiting rooms make it more difficult for inmates to visit with their families'' and that ''[t]he infrastructure of the facility may not support the increase in visitors as a result of the growth in the prison population.''

95. As discussed above, there is little dispute that the ICS market is experiencing market failure. Numerous commenters have expressed as much. Various parties encourage the Commission to reform rates within inmate calling, and some offer specific reform proposals. Reforms are necessary to ensure that the benefits discussed above, which are in the public interest, will be realized.

96. The Order recognizes, however, that imposing rate caps may impose burdens on some providers. We have taken steps to minimize burdens on providers. As discussed below, we allow a 90-day transition period for the rate caps adopted in this Order to take effect for prisons and six months for the applicable rate caps to take effect in jails. We find that this length of time adequately balances the pressing need for reform while affording ICS providers and facilities sufficient time to prepare for the new rates. Further, our rate caps are designed to ensure that efficient providers will recover all legitimate costs of providing ICS, including a reasonable return, and, to the extent a provider can demonstrate special circumstances, it may seek relief from our rules in the form of a waiver. Specifically, the Commission will consider requests from a provider arguing that particular facts, when considered in the context of the totality of the relevant circumstances, deprive the provider of fair compensation or have a substantial and deleterious effect on competition in the ICS market.

97. Additionally, the rate caps adopted in the Order include fewer tiers than the number of tiers used in the data requested in our Mandatory Data Collection. The Commission collected data, for example, on the costs of serving jail facilities with 0–99 ADP, a grouping comprising less than 10 percent of the inmate population, but we did not adopt that as a rate tier, thereby mitigating any administrative burden on providers of adding a separate rate tier for this comparatively small grouping. The rate caps we adopt today respond to commenter concerns regarding potential confusion and burden caused by multiple rates. We also adopt a single rate cap for prisons, which should minimize the burden on providers that serve prisons. Finally, we disagree with those commenters who assert that adopting a tiered rate structure would be unduly burdensome and difficult for the Commission to administer and for ICS providers and correctional officers to implement. We find these allegations unsupported and commenters provide no persuasive evidence that our rate tiers would be more difficult for them to administer than the current approaches.

4. Rejection of Certain Types of Charges

a. No Per-Call or Per-Connection Charges

98. *Background.* Per-call or per-connection charges are one-time fees often charged to ICS users at call initiation. In the *2013 Order,* the Commission noted problems with per-call charges, ''potentially rendering such charges unjust, unreasonable and unfair.'' Problems included calls dropped ''without regard to whether there is a potential security or technical issue, and a per-call charge . . . imposed on the initial call and each successive call.'' The Commission expressed ''serious concerns about such charges'' and sought comment about the risks of such charges, but did not ban them.

99. In the *Second FNPRM,* the Commission sought additional comment about such charges. First, the Commission asked if it should consider per-call or per-connection charges to be part of the ICS rate and ''therefore subject to the section 276 mandate to ensure fair compensation.'' Second, the Commission asked, in the alternative, if it should consider per-call or per-connection fees more analogous to the ancillary fees discussed in section 276(d). The Commission asked if there are ''instances in which the correctional facility or some other third party assesses a per-call or per-connection fee,'' and, if so, the Commission sought comment on its authority to ban such charges. Finally, the Commission sought comment on whether the elimination of per-call charges would allow for just and reasonable interstate and intrastate ICS rates and fair compensation for ICS providers, on ''transitions'' away from such charges, and on its legal authority to act on per-call or per-connection charges.

100. We received limited comment in the record, but all supported the elimination of per-call or per-connection fees. For example, HRDC supports the ''elimination of per-call charges'' for existing contracts. Legal Services for Prisoners with Children asserts that ''per-call'' or connection fees are ''unreasonably high'' and that the Commission ''should ban these charges'' or, ''at the very least,'' should introduce a ''dropped call'' provision that ''prohibits ICS providers from charging multiple times for a call that has been reinitiated within a few minutes.'' Pay Tel notes that if the Commission adopts ''any rate cap regime—including Pay Tel's Proposal—that does not allow providers to charge end users an upfront surcharge or per-call surcharge, it will

successfully eliminate the problem of premature disconnection of calls.''

101. *Discussion.* We disallow the use of per-call or per-connection charges pursuant to our legal authority to ensure just, reasonable, and fair ICS rates. No evidence in the record supports a conclusion that these charges are a necessary part of cost recovery for ICS calls. Indeed, no commenters indicated that these fees are tied to a cost that providers incur in initiating a call. Providers did not break out per-call or per-connection costs when they filed their per-minute costs in response to the Mandatory Data Collection, indicating that any costs incurred on a per-call basis were included in their per-minute cost calculations. Allowing providers to recover such charges on top of the per-minute rates we adopt in this Order would therefore risk allowing double recovery. Additionally, these fees appear to be less prevalent than they once were. Recent provider-drafted reform proposals in the record do not include per-call or per-connection charges, and many recently-adopted ICS contracts likewise do not include these fees. All of these factors indicate to us a trend away from the inclusion of such fees. Finally, we agree with the Commission's earlier finding in the *2013 Order* that allowing such fees may encourage providers to charge end users for dropped calls, which could lead to the ''assessment of multiple per-call charges for what was, in effect, a single conversation,'' which has no place in a framework for just, reasonable, and fair compensation. We find that disallowing such fees is in the public interest because it will decrease the cost to end users for shorter ICS calls and allow more contact between inmates and their loved ones.

b. No Flat-Rate Calling

102. *Background.* In the *2013 Order* the Commission noted that commenters raised issues regarding per-call charges that may be unjust, unreasonable, and unfair; callers are often charged more during a single conversation when calls are dropped, which the record reveals can be a frequent occurrence, thus resulting in multiple calls for a single conversation, each subject to a separate flat-rate charge. The Commission stated that ''a rate will be considered consistent with our rate cap for a 15-minute conversation if it does not exceed $3.75 for a 15-minute call using collect calling, or $3.15 for a 15-minute call using debit, prepaid, or prepaid collect calling.'' Rule 64.6030 mirrors this language and was intended to illustrate that the rate for a five-minute collect call must be capped at $1.25 and the rate for a five-minute debit or prepaid ICS call must be capped at $1.05, while a 30-minute collect call could cost consumers no more than $7.50 and a 30-minute debit or prepaid ICS call no more than $6.30.

103. *Discussion.* Subsequent to the *2013 Order,* Securus sought additional guidance on this issue, asking whether providers were allowed to impose a flat rate based on the interim rate caps for a 15-minute call regardless of actual call duration. That is, it wished to know if it could charge a flat fee of $3.75 for a collect call of any duration up to 15 minutes. The Commission sought comment on Securus' question, as well as on whether it should revise the existing rules to prohibit flat-rate charges or to develop new rules prohibiting flat-rated charges.

104. The record reflects minimal support for this practice. The Alabama PSC opposes Securus' proposed clarification, stating that ''flat-rate pricing allows providers to maximize call revenues and to dictate phone usage to the end users.'' It further asserts that flat-rate calling increases complaints related to dropped calls and penalizes inmates that want to make shorter calls. Several commenters suggest that ICS providers will benefit from a ban on flat-rate calls because it will lower their costs related to consumer complaints and bill adjustments. HRDC notes that the proposed flat rates ''only fall within the rate caps when a full 15-minute call is actually completed'' and argues that ''this practice does not reflect the spirit'' of the Commission's *2013 Order.* Pay Tel asserts that ''numerous ICS providers have taken advantage of this language and vague guidance since release of the ICS Order and are charging end users a flat rate of $3.15 or $3.75 per call, even if the call is disconnected prior to expiration of fifteen minutes,'' which it asserts is ''an abuse of the intent of the Commission's rules.''

105. We prohibit the imposition of flat-rate calling. There is minimal record support for such charges, which penalize those who make shorter calls (the record indicates that ICS calls last typically less than 15 minutes). If an end user is charged for a 15-minute call but the duration of that call is less than 15 minutes, the price for that call is disproportionately high. We also agree with those commenters who assert that allowing providers to charge a flat rate based on a 15-minute call does not comport with our requirement to make ICS rates just, reasonable, and fair. As such, we ban flat-rate calling rate plans.

5. Legal Authority for Intrastate and Interstate Rate Caps

106. *Background.* In the *2013 FNPRM,* the Commission tentatively concluded that section 276 affords it broad authority to reform intrastate ICS rates and practices that deny fair compensation, as well as to preempt inconsistent state requirements. The Commission sought comment on these tentative conclusions. Multiple commenters supported the Commission's tentative conclusion that it has jurisdiction over intrastate as well as interstate ICS rates. These commenters argue that section 276 provides the Commission with clear jurisdiction, and that it must regulate intrastate rates to ensure comprehensive ICS reform. After examining the record, we affirm the tentative conclusion that intrastate ICS rates are well within the Commission's jurisdiction for the reasons described below.

107. Our authority to ensure the reasonableness of rates and practices for interstate ICS is not in dispute. Under section 201(b) of the Communications Act, the FCC is empowered to ''prescribe such rules and regulations as may be necessary'' to ensure that ''[a]ll charges [and] practices . . . for and in connection with [interstate] communication service'' by wire or radio are ''just and reasonable.'' Section 276 directs the Commission to ''establish a per call compensation plan to ensure that all payphone service providers''—which the statute defines to include providers of ICS—''are fairly compensated for each and every completed intrastate and interstate call.'' (The Commission has previously found that the term ''fairly compensated'' permits a range of compensation rates that could be considered fair, but that the interests of both the payphone service providers and the parties paying the compensation must be taken into account.) We find that these statutory sections provide the Commission with the authority to regulate interstate ICS rates and practices, including the use of per-call or per-connection fees as well as flat-rate calling.

108. *Legal Authority to Reform Intrastate Rates.* The Commission's authority over intrastate telecommunications is, except as otherwise provided by Congress, generally limited by section 2(b) of the Act, which states that ''nothing in this Act shall . . . give the Commission jurisdiction with respect to . . . intrastate communication service by wire or radio.'' As the Supreme Court has held, however, section 2(b) has no

effect where the Communications Act, by its terms, unambiguously applies to intrastate services. We conclude that such is the case here.

109. Under section 276 of the Communications Act, the Commission is charged with implementing Congress's directive ''that all payphone service providers [be] fairly compensated for each and every completed intrastate and interstate call.'' Section 276 contains several express references both to ICS and intrastate calling, making it clear that the Commission has the authority to regulate intrastate ICS calling. For example, section 276 requires the Commission to broadly craft regulations to ''promote the widespread development of payphone services for the benefit of the general public'' including, notably, ''the provision of *inmate telephone service in correctional institutions,* and any ancillary services.'' In addition to this general grant of jurisdiction, section 276 includes a mandate to ''establish a per call compensation plan to ensure that *all* payphone service providers are fairly compensated for each and every completed *intrastate* and interstate call using their payphone.'' Section 276 also expressly directs the Commission to ''discontinue the *intrastate* and interstate carrier access charge payphone service elements. . .and all *intrastate* and interstate payphone subsidies.'' In addition, section 276 explicitly grants the Commission authority to preempt state requirements to the extent they are inconsistent with FCC regulations.

110. Furthermore, significant judicial precedent supports the Commission's authority to regulate intrastate ICS. In *Illinois Public Telecommunications Association,* the U.S. Court of Appeals for the D.C. Circuit found that the Act's requirement that ''all payphone service providers are fairly compensated'' provides the FCC with ''authority to set local coin call rates''—which included intrastate service rates. Additionally, in *New England Public Comm'ns Council, Inc.* v. *FCC,* the same court found that ''section 276 unambiguously and straightforwardly authorizes the Commission to regulate . . . intrastate payphone line rates.'' Therefore, we conclude that both section 276 and the associated case law give the Commission the authority to regulate ICS provider compensation for intrastate calls, including the rates ICS providers charge end users, per-call or per-connection charges, and flat-rate charges.

111. We find arguments that the Commission lacks the authority to regulate intrastate ICS unpersuasive. For example, we disagree with commenters who argue that section 276 is limited to prohibiting discrimination by Bell operating companies (BOCs). While section 276(a) includes provisions specifically prohibiting discrimination by BOCs, we do not believe Congress intended for that subsection to limit the scope of the remaining provisions of section 276. For example, section 276(b)(1) expressly mandates that the Commission adopt regulations addressing five specific subjects related to payphone services; only two of those subjects—clauses (C) and (D)—relate to preventing BOC discrimination.

112. In addition, although section 276(a) refers to Bell operating companies, and applies only to the BOCs, section 276(b) refers more broadly to ''payphone service providers.'' If Congress had intended for the regulations prescribed under section 276(b) to be limited to the narrow purpose of effectuating the nondiscrimination goals set forth in section 276(a), it easily could have made that clear. Instead, Congress made clear that it was conferring a broader mandate in section 276(b), stating that: ''[i]n order to promote competition among payphone service providers and to promote the widespread deployment of payphone services . . . , the Commission shall take all actions necessary . . . to prescribe regulations that . . . [*inter alia*] ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone[s] . . . .''

113. We also disagree with commenters who argue that the Commission has never determined that section 276 extends to intrastate rates or that section 276 applies only to ''local calls made from a payphone and paid with coins.'' Section 276 does not specify that compensation is only for calls paid by coin but rather ''each and every'' call. Indeed, the very Commission order under review in *Illinois Public Telecommunications* held that the Commission had the authority to regulate intrastate payphone rates and preempt state regulation of intrastate rates. Therefore, the Commission's position regarding its authority over intrastate rates under section 276 has remained consistent.

114. *Rate Caps are Just, Reasonable and Fair.* As noted above, we have accepted the data submitted by providers in response to the Mandatory Data Collection as reported even though there is evidence that they are overstated. As a result, we believe our rate caps are conservative and include sufficiently generous margins to allow providers to earn a profit. More generally, it is well-established that rates can be lawful if they fall within a zone of reasonableness, and hence a particular state's cap might be lower than our caps and still fall within that zone. The rate caps we adopt today are intended both to ensure that ICS rates are ''just and reasonable'' and do not take unfair advantage of inmates, their families, or providers consistent with the ''fair compensation'' mandate of section 276.

115. The Commission has broad discretion in establishing just and reasonable rates, as long as it articulates a rational basis for its decisions and as long as the result is not confiscatory. As the Supreme Court has explained in construing the similar ''just and reasonable rates'' provision of the Natural Gas Act, ''the Commission is not required by the Constitution or the Natural Gas Act to adopt as just and reasonable any particular rate level; rather, courts are without authority to set aside any rate selected by the Commission which is within a 'zone of reasonableness.''' Section 276(b) charges us with ensuring that ''all payphone service providers [be] fairly compensated.'' This provision must be read in conjunction with our obligation under section 201(b) to ensure that charges and practices be just and reasonable. Neither section 276(b) nor 201(b) require us to allow for recovery of costs that are not just, reasonable and fair.

116. We recognize that some ICS providers may see their profits decrease because the adopted caps are below the costs they reported to us under the Mandatory Data Collection (assuming that MOU stay constant). The Commission has broad authority to set rate caps to apply to a particular service and does not have to set provider-specific rates that embody a rate of return for each individual provider. Indeed, as at least one provider has explained in this proceeding, courts have recognized that the use of industry-wide average cost data to set rates is not arbitrary, and therefore agencies may use composite industry data or other averaging methods to set rates. We therefore find that the rates we adopt today are reasonable for the reasons provided above and will allow economically efficient—possibly all—providers to recover their costs that are reasonably and directly attributable to ICS. The costs reported by the providers that are above our rate caps represent significant outliers, suggesting that their reporting methods may have varied from those of other providers or that

they may be less efficient than their peers. Indeed, encouraging efficiency will lead to lower rates, which will both benefit end users as well as increase calling demand, thus furthering the dual goals of section 276 ''to promote competition among payphone service providers'' and encourage the ''widespread deployment of payphone services to the benefit of the public.''

B. Payments to Correctional Institutions

117. The record indicates that, in many cases, ICS bids are predicated on the winning providers' willingness to share part of its ICS revenues with the correctional facility. These payments, commonly referred to as ''site commissions,'' may take the form of monetary payments, in-kind payments, exchanges, or allowances. In this Order, we define the term ''site commission'' broadly, to encompass any form of monetary payment, in-kind payment requirement, gift, exchange of services or goods, fee, technology allowance, product or the like.

118. After carefully considering the evidence in the record, we affirm our previous finding that site commissions do not constitute a legitimate cost to the providers of providing ICS. Accordingly, we do not include site commission payments in the cost data we use in setting the rate caps established in this Order. We conclude that we do not need to prohibit site commissions in order to ensure that interstate rates for ICS are fair, just, and reasonable and that intrastate rates are fair. We reiterate, however, that site commissions have been a significant driver of rates and that ICS rates have dropped dramatically in states that have eliminated site commissions. We therefore encourage other states and correctional facilities to curtail or prohibit such payments as part of an effort to further ensure that inmates and their families have access to ICS at affordable rates.

119. We recognize that some states have adopted reasonable rates that include a margin sufficient to allow providers to pay site commissions, thus demonstrating that it is possible to have rates that are consistent with our rate caps but still allow for the payment of site commissions. The decision to establish fair and reasonable rate caps for ICS and leave providers to decide whether to pay site commissions—and if so, how much to pay—is supported by a broad cross-section of commenters, including consumer advocates, such as the Wright Petitioners; ICS providers, such as CenturyLink, NCIC and ICSolutions; representatives of correctional facilities, such as Praeses; and state regulators, such as the Alabama PSC. This broad support from practically every type of interested party underscores the reasonableness of our approach. We will continue to monitor the market and will take appropriate action if we find that, notwithstanding our rate caps, site commissions are somehow driving ICS rates to levels that are unjust, unreasonable, or unfair.

1. Background

120. In the *2002 Order,* the Commission concluded that, consistent with prior precedent, site commissions ICS providers paid to inmate facilities were not a cost of providing payphone service, ''but represent an apportionment of profits between the facility owners and the providers of [ICS].'' In the *2012 NPRM,* the Commission sought comment on its longstanding conclusion that site commissions are not a cost of providing ICS, and additional comment and data on site commissions and their impact on ICS rates.

121. In the subsequent *2013 Order,* the Commission affirmed the previous determination that site commissions ''are not costs that are reasonably and directly related to the provision of ICS'' and determined that site commissions were ''a significant factor contributing to high [ICS] rates.'' The Commission concluded that, ''under the Act, [site] commission payments are not costs that can be recovered through interstate ICS rates.'' The Commission noted, however, the possibility that correctional facilities may incur costs in making ICS available to inmates and sought comment on whether there were any such costs that should be compensable through ICS rates.

122. In the *Second FNPRM,* the Commission sought additional comment on potential reforms to site commissions and its legal authority to ''restrict the payment of site commissions in the ICS context pursuant to sections 276 and 201(b) of the Act.'' As the Commission explained, site commissions ''distort[] the ICS marketplace'' by creating incentives for the facilities to select providers that pay the highest site commissions, even if those providers do not offer the best service or lowest rates. The Commission cited responses to the Mandatory Data Collection showing that ICS providers paid over $460 million in site commissions in 2013 alone. Press reports have cited even higher figures. These payments represent a significant portion of total ICS revenues. Indeed, as the Commission has noted, site commissions can amount to as much as 96 percent of gross ICS revenues. The Commission, therefore, sought comment on whether it should prohibit all site commission payments for interstate and intrastate ICS. The Commission also sought comment on whether correctional institutions incur any costs in the provision of ICS, and requested data demonstrating that any costs that facilities bear are ''directly related to the provision of ICS.'' To the extent that correctional facilities were found to incur costs ''reasonably and directly related to making ICS available,'' the Commission sought comment on whether recovery of those costs should be ''built into any per-minute ICS rate caps.''

2. Discussion

123. Although we do not prohibit providers from paying site commissions, we do not consider the cost of any such payments in setting our rate caps. (Regardless of whether site commission payments constitute an ''appointment of profits'' or a cost to the provider, they cannot be recovered through ICS rates unless they are ''reasonably and directly related to the provision of ICS.) Evidence submitted in response to the *Second FNPRM* reinforces the Commission's conclusion that the site commissions ICS providers pay to some correctional facilities are not reasonably related to the provision of ICS and should not be considered in determining fair compensation for ICS calls. HRDC, for example, describes site commissions as ''legal bribes to induce correctional agencies to provide ICS providers with lucrative monopoly contracts.'' Other parties use less colorful language, but still indicate that site commissions often ''have nothing to do with the provision'' of ICS. We agree with commenters opposed to recovery of site commissions in ICS rates and find that site commission payments should not be included in our rate cap calculations.

124. We therefore agree with inmate advocates, such as the Wright Petitioners and the Civil Rights Coalition, a group of 20 national civil rights and social justice organizations; providers, such as CenturyLink and NCIC; United States Senators; and state regulators, such as the Alabama PSC that, at this time, we should focus on our core ratemaking authority in reforming ICS and not prohibit or specifically regulate site commission payments. While we continue to view such payments as an apportionment of profit, and therefore irrelevant to the costs we consider in setting rate caps for ICS, we do not prohibit ICS providers from paying site commissions. (Of course, providers' rates must comply

with our rate caps, regardless of whether the provider pays site commissions.)

125. The record supports excluding site commission payments from the costs used to calculate the rate caps for ICS. Indeed, even many of the commenters that oppose a prohibition on site commissions urge the Commission to consider only costs related to the provision of ICS in calculating the rate caps. If site commissions were factored into the costs we used to set the rate caps, the caps would be significantly higher. Passing the non-ICS-related costs that comprise site commission payments including contributions to general revenue funds, onto inmates and their families as part of the costs used to set rate caps would result in rates that exceed the fair compensation required by section 276 and that are not just and reasonable, as required by section 201.

126. We note that several commenters argue that the programs currently supported by site commissions should be paid for out of tax funds collected from the population at large, or from other sources. HRDC, for example, argues that ''all taxpayers should fund the cost of operating correctional facilities, including the cost of providing ICS,'' just as homeowners pay taxes to fund schools, regardless of whether they have school-age children. We need not reach such arguments to support our decision. Rather, we conclude that, because the programs in question are unrelated to the provision or use of ICS, the burden of paying for them may not, under the Communications Act, be imposed on end users of ICS. As the Commission has explained, how facilities use the site commission payments they receive from ICS providers is irrelevant to our analysis: ''[t]he Act does not provide a mechanism for funding social welfare programs or other costs unrelated to the provision of ICS, no matter how successful or worthy.'' Consistent with the record in this proceeding, as well as the Commission's decision in the *2013 Order,* we therefore exclude site commission payments from our rate cap calculations.

127. In the *Second FNPRM,* the Commission sought comment on whether it could or should prohibit site commissions. A variety of commenters support such a prohibition, primarily based on their belief that a rule against site commissions is needed to ensure that ICS rates are fair, just, and reasonable. Other commenters, primarily sheriffs and others associated with correctional facilities, favor the continued use of site commissions. As noted above, many of these parties, however, appear to be concerned mostly with ensuring that facilities can recover costs they incur in allowing access to ICS. As a threshold matter, as noted herein the record is not clear as to whether the correctional facilities in fact bear a cost in the provision of ICS that is unique to the provision of phone service in addition to the costs of operating a correctional facility. The record suggests that site commissions are used mainly to fund a wide and disparate range of activities, including general governmental or correctional activities unrelated to the costs of providing ICS by either the provider or facility. Even assuming facilities do incur costs tied to the provision of ICS, we have addressed such a concern by not prohibiting providers from sharing their profits with correctional facilities to recover such costs, if appropriate. Some of these commenters also argue that site commissions should be preserved because they provide an important incentive for facilities to make ICS available to their inmates. Another group of commenters question the Commission's legal authority to prohibit site commissions and argue that prohibiting site commissions would not produce any material benefit. A number of commenters, representing a wide range of interests, urge the Commission to follow the lead of the Alabama PSC and restrict site commissions only indirectly, by imposing caps on ICS providers' rates, thereby limiting the amount of profit available to pay site commissions. The Wright Petitioners, among others, suggest that we adopt a similar approach here, arguing that the Commission should ''simply establish an ICS rate that complies with Sections 201, 205, and 276 of the Act, and let ICS providers and correctional authorities allocate the revenue in any manner they wish.'' ICS provider NCIC ''agrees that jails and prisons should be allowed [to seek] site commission payments after the FCC caps the rates, ancillary fees and convenience payment options, which will reduce commission payments to reasonable levels to provide cost-recovery.'' GTL disagrees, however, arguing that under the Alabama model, ''providers must generate revenue to pay the unconstrained site commissions . . . which puts upward pressure on end-user prices.'' In fact, GTL and others contend that a regulatory regime that permitted providers to make site commission payments, but did not take those payments into account in setting the rates would result in an unconstitutional ''taking'' in violation of the Fifth Amendment, and is ''arbitrary and capricious.''

128. Based on the evidence in the record, we conclude that we do not need to prohibit site commissions at this time to achieve the statutory directives of ensuring that ICS rates are just, reasonable, and fair. The fact that we do not prohibit site commission payments does not mean, however, that we have failed to address site commissions. To the contrary, we have addressed the harmful effects of outsized site commissions by establishing comprehensive rate caps and caps on ancillary service charges that may limit providers' ability to pass site commissions through to ICS consumers. We have also made the considered decision to establish caps on rates and ancillary service charges and allow market forces to dictate adjustments in site commission payments. As noted below, this approach is consistent with the Commission's general preference to rely on market forces, rather than regulatory intervention, wherever reasonably possible. Our expectation that ICS providers and correctional facilities will find an approach that meets their needs and complies with our rate caps is neither arbitrary nor capricious. In fact, evidence in the record demonstrates that ICS rates can be set at levels that are well within our rate caps while allowing for fair compensation and still leaving room for site commission payments. For example, in Pennsylvania, the per-minute rate of $0.059 includes a 35 percent site commission. Similarly, in New Hampshire, the state DOC lowered intrastate rates to less than $0.06 per minute with a 20 percent site commission. Thus, it is possible to have reasonable rates and fair compensation without expressly prohibiting site commissions.

129. We emphasize that the actions we take here are based on our ratemaking authority and are intended to ensure fair, just, and reasonable ICS rates. The caps and restrictions we impose on providers' rates should eliminate or substantially reduce the ability of site commissions to inflate rates above providers' costs or reasonable profit to otherwise distort ICS rates. As explained elsewhere in this Order, we have seen some positive steps toward the lowering and/or elimination of site commissions and we believe that this trend, coupled with the actions we take today, constitutes a reasonable means of addressing ICS issues one step at a time, given the fact that some portion of some site commissions are said to represent the recovery of reasonable institutional

costs. We reiterate that we will, however, continue to monitor the ICS market and will not hesitate to take additional action to prohibit site commissions, if necessary.

130. Our decision not to prohibit site commission payments should not be viewed as an endorsement of such practices. Rather, our decision simply reflects our focus on achieving our statutory objectives with only limited regulatory intervention. We understand the positions of those parties calling for the regulation of site commission practices, or even those calling for a complete ban of them. We also acknowledge that some commenters have questioned our legal authority to prohibit site commissions. Other parties argue that we have clear authority to regulate site commission payments. Ultimately, however, we do not need to determine whether we have authority to ban site commission payments, given our decision to take a less heavy-handed approach, similar to that adopted by the Alabama PSC. This approach is consistent with the Commission's general preference to rely on market forces, rather than regulatory fiat, whenever possible.

131. We expect that the approach adopted in this Order will result in lower site commissions, and strongly encourage additional jurisdictions to eliminate site commissions altogether to help ensure that inmates and their families have access to ICS at affordable rates. We applaud recent efforts by New Jersey and Ohio to eliminate site commissions. The per-minute intrastate ICS rates in these states have dropped considerably (from $0.15 to under $0.05 in New Jersey and $0.39 to $0.05 in Ohio). Pay Tel estimates that in eight states that have eliminated site commissions the rates average less than $0.07/minute. The actions taken by these states demonstrate that site commissions can be eliminated without sacrificing facilities' ability to implement robust security protocols. Additional states continue to take similar steps to curb or prevent the use of site commissions in their state prison systems and we urge other states to take similar actions. We also reiterate that rates can be significantly below our rate caps and still offer ICS providers sufficient profit to allow them to pay reasonable site commissions.

132. Further, we note that, despite what some entities appear to suggest, this Order does not maintain the *status quo* in the ICS market. To the contrary, we conclude that our actions in this Order constitute changes in law and/or instances of force majeure that are likely to alter or trigger the renegotiation of many ICS contracts. We also think it reasonable to anticipate that ICS providers are on notice of these changes in law and, going forward, will not enter into contracts promising exorbitant site commission payments that they will not be able to recover through their ICS rates under our rate caps. Indeed, we anticipate that the reforms adopted in this Order will help recalibrate ICS market competition by motivating correctional facilities to evaluate bids based on factors other than the highest site commission. However, as noted above, we will monitor the market and will take appropriate action if our prediction proves inaccurate.

a. Facility Costs Related To Providing ICS

133. *Background.* In the Mandatory Data Collection, the Commission required ICS providers to submit their costs related to the provision of ICS, including their telecommunications, equipment and security costs. For example, in the Mandatory Data Collection Instructions, the Bureau directed ICS providers to include ''security costs incurred by the ICS provider in the provision of inmate calling services, such as, but not limited to, voice biometrics technology and call recording and monitoring.'' In their responses, ICS providers indicated that the data they filed included costs associated with security features relating to the provision of ICS.

134. In the *Second FNPRM,* the Commission noted that the record to-date was mixed regarding how much, if anything, facilities spend on ICS. It sought comment on the ''actual costs'' that facilities may incur in the provision of ICS and the appropriate vehicle for enabling facilities to recover such costs. The Commission also sought comment on whether any such costs should be recoverable through the per-minute rates ICS providers charge inmates and their families. In response, some law enforcement representatives assert that correctional facilities incur costs related to ''call monitoring, responding to ICS system alerts, responding to law enforcement requests for records/recordings, call recording analysis, enrolling inmates for voice biometrics, and other duties,'' including ''administrative duties'' that arguably are related to ICS. Some ICS providers, however, contend that many of the activities the facilities claim as ICS-related costs are, in fact, handled by the ICS provider. For example, Securus states that it performs most ICS-related tasks for facilities, including handling U.S. Marshal inquiries, cell phone detection and interception, listening to calls, and providing call recordings to courts. Similarly, GTL explains that the ''established industry protocol'' is for ICS providers to handle security duties for the correctional facilities they serve, either as part of a turnkey ICS product or as a condition of the contract award, regardless of the size of the facility.

135. Although some commenters argue that allowing ICS creates costs for facilities, others question whether correctional facilities incur any costs that should be passed on to consumers as part of the per-minute rates for ICS. One issue is whether the costs parties seek to attribute to ICS are, in fact, costs that facilities would incur regardless of whether they allowed ICS. Andrew Lipman, for example, argues that many correctional facilities seek payment for ''activities that have nothing to do with the provision of a telecommunications service.'' These parties argue that the costs facilities seek to pass on to ICS providers and users are more properly classified as law enforcement costs related to operating a correctional facility that should be borne by the government and not ICS users.

136. Even commenters asserting that facilities incur costs that are properly attributable to the provision of ICS do not agree on the extent of those costs. A group of the largest ICS providers, for example, notes that while they support the recovery of ''legitimate costs incurred by correctional facilities that are directly related to the provision of inmate calling services,'' they cannot agree on how those costs should be calculated. The NSA suggests that the Commission approve a ''compensation amount for the security and administrative duties performed in jails in connection with ICS that is an additive amount to the ICS rate.'' Relying, in large part, on the results of a survey it took of its members, as well as analyses submitted by other parties, NSA suggests that this additive amount should range from $0.01 to $0.11 per minute, depending on the size of the facility being served.

137. Several commenters offer critiques of NSA's survey data, however. GTL's economic consultant, for example, concludes that NSA's latest proposal would offer facilities ''significantly larger'' annual compensation than would be justified by estimates derived from the analyses conducted by itself and other parties, particularly for small facilities such as jails with an ADP below 350. Even Pay Tel, which generally supported the NSA's survey as a ''robust and significant dataset,'' agrees that NSA failed to remove outliers from its calculations and that NSA included

costs that are ''typically associated with on-going investigations that would not be considered for Cost Recovery purposes.'' Andrew Lipman notes that the NSA survey was based on only three months of data from only approximately five percent of NSA's members and that NSA had not provided any indication of whether the survey respondents were representative of NSA's broader membership. Mr. Lipman also points out that the NSA did not provide the raw data, a copy of the survey, any information on the methodology used by members to allocate time, or detailed descriptions of the tasks encompassed by various categories of costs, such as ''administrative,'' ''security'' or ''other.'' Relying on other evidence in the record, Mr. Lipman suggests that it would be unreasonable for providers to agree to pay more than $0.01–$0.03 per minute to reimburse facilities for any costs they may incur in agreeing to make ICS available to inmates. Darrell Baker of the Alabama PSC recommends a cost recovery rate of $0.04 per minute for jails of all sizes and $0.01 to $0.02 per minute for prisons, while an earlier analysis from GTL yields median cost recovery rates of $0.005 per minute for prisons and $0.016 per minute for jails.

138. *Discussion.* The record contains a wide range of conflicting views regarding whether correctional facilities incur any costs that are directly and reasonably related to making ICS available and that must be recovered through ICS rates. As at least one commenter points out, ICS continues to be offered in states that have prohibited payments from ICS providers to facilities. This evidence undermines claims that facilities incur unique costs that are attributable to ICS and that must be recovered from ICS rates. These claims are further undermined by the fact that ''[n]one of the correctional facilities and associations submitted sufficient detail in this proceeding to support the amount of their alleged costs, or to demonstrate that these costs meet the used and useful standard.''

139. Some commenters argue that the costs claimed by facilities are ''basic law enforcement activities [such as surveillance and investigation of calls] and not costs for providing a telecommunications service.'' The record is not clear that the costs facilities claim to incur due to ICS would actually be eliminated if the facilities ceased to allow inmates to have access to ICS. Moreover, providers indicate that costs that facilities claim to incur in allowing ICS are, in fact, borne directly by the providers. Those costs are already built into our rate cap calculations and should not be recovered through an ''additive'' to the ICS rates. Accordingly, while we strongly encourage the elimination of site commission payments, we do not dictate what an ICS provider can do with its profits and conclude that the most reasonable and fair approach is to leave it to ICS providers and facilities to negotiate the amount of any payments from the providers to the facilities, provided that those payments do not drive the provider's rates above the applicable rate cap. We note, however, that evidence submitted in the record—and discussed above—indicates that if facilities incurred any legitimate costs in connection with ICS, those costs would likely amount to no more than one or two cents per billable minute. Our rate caps are sufficiently generous to cover any such costs.

140. As noted above, some parties contend that correctional facilities will remove or limit access to telephones if the Commission acts to limit site commission payments. We find it highly unlikely, however, that facilities would eliminate or limit access to ICS as a result of this Order. Given that we do not ban site commissions, facilities have no basis for taking such extreme measures. Notably, the record contains no indication that ICS deployment has decreased in states that have eliminated site commissions. This is unsurprising, given what we anticipate would be an intensely negative backlash to such an action. In addition, the record indicates that ICS provides valuable, non-monetary benefits to correctional facilities, such as correctional management and incentives to inmates who exhibit good behavior.

b. Ensuring Fair Compensation

141. Some parties argue that it would be confiscatory for the Commission to exclude the costs of site commission payments from our rate cap calculations without also explicitly prohibiting ICS providers from paying such commissions. According to these parties, ICS providers will not be able to afford the site commission payments demanded of them by correctional facilities if the providers' revenues are limited by the rate caps established here. These claims rest largely on the fact that existing ICS contracts may obligate providers to pay site commissions to the facilities they are serving. As explained further below, we conclude that these concerns are largely unfounded.

142. For the same reasons set forth in the *2013 Order,* we reject arguments that the reforms we adopt herein effectuate unconstitutional takings. The offering of ICS is voluntary on the part of ICS providers, who are in the best position to decide whether to bid to offer service subject to the contours of the request for proposal (RFP). There is no obligation on the part of the ICS provider to submit bids or to do so at rates that would be insufficient to meet the costs of serving the facility or result in unfair compensation. We also reiterate that our rate caps are based on the reported costs that the providers themselves submitted into the record without any adjustment by the Commission. Thus, the rate caps provide ample room for an economically efficient provider of ICS to earn a reasonable profit on its services. The fact that our rate caps do not include an explicit allowance for site commission payments does not render them confiscatory. As explained above, the record does not support a conclusion that site commission payments are costs that are ''reasonably related to the provision of ICS.'' The fact that providers choose to pay site commissions is not enough to render them compensable through the ICS rate, particularly in light of section 276's requirement that ICS compensation must be ''fair.'' Excluding site commission payments from the rate cap calculation is no different than excluding any other cost that is not reasonably related to the provision of the service. For example, if a provider decided to purchase a fleet of private jets to ferry its executives from place to place, we would not prohibit such an expenditure, but—because the purchase of private jets is not ''reasonably related'' to the provision of ICS—we would not include such an expense in the costs used to determine a fair compensation rate for ICS.

143. In addition, we re-emphasize that a party carries a heavy burden if it seeks to demonstrate that a regulation creates an unconstitutional ''taking.'' For instance, to succeed on a ''takings'' claim, a party must demonstrate that the losses caused by the regulation in question are so significant that the ''net effect'' is confiscatory. When confronted with a ''takings'' claim, courts will examine the net effect of the regulation on the company's enterprise as a whole, rather than on a specific product or service. Thus, it is not enough for a provider to show that it is losing money on a particular service or in serving a particular customer. Instead, a provider seeking to show that our rate caps are confiscatory will have to demonstrate that any cognizable harm caused by our regulations is so severe that it meets the high bar for a takings with respect to the company as a whole, *e.g.,* by ''destroying the value of [the provider's]

property for all the purposes for which it was acquired.'' Moreover, providers have been on notice for years that the Commission might adopt rate caps, or even eliminate site commissions. Thus, any claims that our actions today upset ''investment-backed expectations of ICS providers'' are likely to fail, particularly claims from providers that recently entered into new contracts with high site commissions in an effort to circumvent possible Commission regulations. We find it unlikely that our rates will result in a ''taking,'' but the waiver process described below should offer providers an adequate avenue for relief if they find our ICS regulations unworkable.

C. Ancillary Service Charges and Taxes

1. Background

144. The record contains evidence that ancillary service charges have increased since the *2013 Order,* which highlights the fact that, absent reform, ICS providers have the ability and incentive to continue to increase such charges unchecked by competitive forces. Indeed, the continuing growth in the number and dollar amount of ancillary service charges represents another example of market failure necessitating Commission action. These charges are unchecked by market forces because inmates and their families must either incur them when making a call or forego contact with their loved ones. Ancillary service charges inflate the effective price consumers pay for ICS. According to some estimates, ancillary service charges may represent as much as 38 percent of total consumer ICS payments. The sheer number of ancillary service charges, their varying nomenclature, and the variability of the amounts charged make for a confusing system.

145. The record overwhelmingly supports the need to reform ancillary service charges. While we would prefer to allow the market to discipline rates, the evidence since the Commission's *2013 Order* confirms that ancillary service charges have not only increased, but new charges have appeared. We find our statutory directive requires us to adopt reforms to limit ancillary service charges. As described below, we adopt caps for certain ancillary fees, and we prohibit all other charges that are ancillary to ICS.

146. Our Mandatory Data Collection confirmed that various ICS providers charge a plethora of ancillary service charges, and that different providers may describe the same charge by different names. Commenters suggest that ancillary service charges inflate the cost of ICS to end users without justification. For example, some providers charge account set-up, maintenance, closure, and refund fees. Praeses contends that ''[p]roviders should not be permitted to charge any ancillary fees to recover . . . intrinsic ICS costs, such as validation fees or fees related to Facility-required security.'' This distinction between what is an intrinsic part of providing ICS, and what is not, has helped us to select the ancillary service charges we find appropriate and to ban all other ancillary service charges.

147. In responding to the unique challenges posed by escalating ancillary fees, this Order establishes a limited list of ancillary fees that the Commission will permit ICS providers to charge. The amount of each of these fees is capped, and ICS providers are restricted from charging any ancillary fees not specifically allowed in our Order. For fees for single-call and related services and third-party financial transaction fees, we allow providers to pass through only the charges they incur without any additional markup. We limit automated payment fees to $3.00, live agent fees to $5.95, and paper statement fees to $2.00. Apart from these specific fees, no additional ancillary service charges are allowed. Taxes are discussed separately and must be passed through with no markup. We also take action to avoid potential loopholes in these rules, such as artificial limits on minimum and maximum account balances that could require inmates to reload accounts frequently and unnecessarily increase costs borne by consumers. This approach involved analyzing the data submitted by carriers, as well as comments in the record, to determine which fees ICS providers should legitimately be able to charge end users.

2. Discussion

148. *Review of Ancillary Service Charges in the Record.* In response to the Mandatory Data Collection, the Commission received some data regarding ancillary service charges, but providers did not follow consistent approaches in assessing and labeling such fees, and allocated and reported these costs in inconsistent ways. Accordingly, in the *Second FNPRM* the Commission sought comment on these data inconsistencies and on the ancillary service charge data generally. The Commission also sought comment on prohibiting separate ancillary service charges for functions that are typically part of normal utility overhead and should be included in the rate for any basic ICS offering, and asked if certain types of ancillary service charges, such as refund charges, should be disallowed altogether.

149. In response to the *Second FNPRM,* commenters disagreed over the exact nature of the reforms that should be implemented, but the majority agreed that many or all ancillary service charges should be eliminated. ICS provider CTEL claims that ancillary service charges, not site commissions, drive high ICS calling rates. ICS users also supported reforming ancillary service charges with examples of the impact of such charges on their ability to make calls. Even when consumers are made aware of the fees, they can still seem unjustified or unclear. The record indicates that ICS providers can receive fair compensation and provide secure services with a simplified ancillary service charge structure.

150. *Prohibiting Ancillary Service Charges.* The Commission sought comment on prohibiting ancillary service charges altogether. Certain parties argued that the best approach to ancillary service charges was to ban them outright. The Wright Petitioners, for example, contend that no cost data in the record justifies the existence of ancillary fees, and that ancillary fees differ significantly among providers for no reason except that ICS providers will charge as much as they can. If the Commission does not eliminate ancillary service charges, then the Wright Petitioners contend that any rules addressing ancillary service charges must specifically identify the fees that may be charged and prohibit all others. PLS argues the Commission should prohibit ancillary service charges because many of these fees bear no relation to ICS costs.

151. *Reducing Categories of Ancillary Service Charges.* The Commission also sought comment on limiting the number of allowable ancillary service charges. Many commenters support this approach as enabling ICS providers to still earn a profit, while providing their services at just and reasonable rates. CenturyLink explains that ''the overall cost of ICS to inmate families will not be reduced without restrictions on ancillary fees'' and recommends that the Commission ''eliminate all but a narrow class of ancillary fees and impose reasonable rate caps on those that it allows.'' One commenter explains that ancillary fees have ''no actual relation to actual costs borne by ICS providers and have become a mechanism by which providers sustain or increase their overall revenues.'' Indeed, even ICS providers have recognized the need for reform and have submitted various proposals to that end.

152. Parties differ about which ancillary service charges should be capped. For example, a number of commenters believe that the Commission should eliminate all fees for services that a consumer is required to pay in order to access basic ICS, including, but not limited to, account set-up, maintenance, funding, refund, and closure fees. In addition, Praeses suggests that ''[a]ll costs that Providers necessarily and unavoidably incur as part of completing an inmate call should be recovered through ICS rates. As a result, Providers should not be permitted to charge any ancillary fees to recover such intrinsic ICS costs, such as validation fees or fees related to Facility-required security.''

153. Of additional concern is the ability of ICS providers to evade any limitation on a particular ancillary service charge simply by changing its name. ICSolutions notes that if an RFP for ICS prohibits a specific fee, some bidding ICS providers simply rename it or create a new fee to take its place. Other commenters contend that if ICS providers want to impose additional ancillary service charges, then they should ask for a waiver from the Commission or a rule modification.

154. This concerns us because it suggests that ICS providers are using ancillary service charges as a loophole to increase revenues and undermine the impact of the interstate rate caps adopted in the *2013 Order.* Illustrating the impact this trend has on consumers, Pay Tel explains that if a family has $100 to spend on inmate calling for the month, ancillary fees can consume up to $60, leaving only $40 for the actual phone calls. Ancillary fees often increase the average cost of a 15-minute call to as much as $8.33, more than double the price of a 15-minute call at the Commission's interim rate caps adopted in the *2013 Order.* Some commenters also raise concerns that some ICS providers may impose unfair rates by instituting minimum or maximum amounts that may be deposited for prepaid calling accounts.

155. *Proposals in the Record.* The Commission has focused on market failure with regard to unchecked and escalating ancillary service charges in this proceeding, including releasing a public notice prior to the *2013 Order* seeking additional information about this topic. Since 2012, the Commission has received several proposals detailing comprehensive ICS reform approaches, and had the benefit of observing real world models regulating ancillary service charges.

156. *Alabama PSC Reforms.* In the *Second FNPRM,* the Commission noted that the Alabama PSC had implemented an approach to ancillary service charges that both limited the kinds of allowable ancillary service charges and capped the fees for those charges. Specifically, the Alabama PSC authorized, but capped, separate ancillary service charges for particular services, including a $3.00 maximum fee for debit/credit card payment, $5.95 maximum fee for payment via live agent, $3.00 maximum cap for bill processing for collect calls billed by a call recipient's local telecommunications service provider, $5.95 maximum cap on third-party payment services, five percent cap on inmate canteen/trust fund transfers, and a $2.00 maximum cap on paper billing statements. The Commission sought comment on this approach.

157. In the *Second FNPRM,* the Commission specifically asked whether the Alabama PSC's rate caps for credit card payments ($3.00 maximum) and live operator assisted payments ($5.95) would be appropriate for the Commission to adopt. Many commenters seeking to reform ancillary service charges focused not only on reducing the kinds of ancillary service charges that may be imposed, but also on imposing caps on the fees that may be charged for the approved ancillary service charges. Some commenters expressed concern that unreasonable costs would continue to be passed through to end users if regulations only specified the ancillary service charges that may be levied, without also imposing caps on those charges.

158. *Joint Provider Proposal.* In the *Second FNPRM,* the Commission also sought comment on the Joint Provider Proposal's suggestions for ancillary service charge reform. This proposal would voluntarily eliminate a number of types of fees, including per-call fees, account set-up fees, billing statement fees, account close-out and refund fees, wireless administration fees, voice biometrics and other technology fees, and regulatory assessment fees, and cap charges for non-eliminated fees. The Joint Provider Proposal supported a $7.95 cap for three years on debit/credit card payment or deposit fees, a cap for three years at existing fees (as high as $14.99) for calls billed to a credit card and as high as $9.99 for calls billed to a mobile phone, and a cap on money transfer fees at the existing level (as high as $11.95), plus a $2.50 administrative fee cap. Joint Provider Proposal supporters claim that their proposal will ''dramatically alter the economic landscape of the ICS industry, making it possible for providers to forego many fees and cap others at current levels.''

159. Some commenters criticize the Joint Provider Proposal as retaining the most lucrative ancillary service charges, and undermining reform efforts by allowing the large providers to maintain their dominant positions. CTEL asserts that smaller ICS providers lack the market power to impose high ancillary service charges. The Alabama PSC also states that it ''cannot emphasize strongly enough that the outliers in terms of excessive ancillary fees are the providers that submitted the Proposal to the Commission.''

160. *Pay Tel Proposal.* On October 3, 2014, Pay Tel submitted an *ex parte* describing a proposal for comprehensive reform, including rate reform, a proposed approach for site commission payments, reporting requirements, and a proposal for ancillary service charge reform. The Commission sought comment on this proposal in the *Second FNPRM.* The Wright Petitioners agree with Pay Tel that there should be specific guidelines for the disclosure of rate and ancillary fee information.'' The Alabama PSC, Wright Petitioners, CenturyLink, and NCIC agree with Pay Tel's suggested ancillary service charge rate caps in a number of respects. Securus, however, argues that Pay Tel mischaracterizes the Joint Provider Proposal, and that, to justify its own proposal, Pay Tel grossly overestimates the amount of ancillary service charges that consumers will have to pay under the Joint Provider Proposal.

3. Establishing Limited List of Permitted Ancillary Service Charges

161. After careful consideration of the record, including analysis of the Mandatory Data Collection, we conclude that reform is necessary to address ever-increasing fees that are unchecked by competitive forces and unrelated to costs. ICS providers, which typically have exclusive contracts to serve a facility, have the incentive and ability to continue to extract unjust and unreasonable ancillary service charges. As a result, we conclude it is necessary to reform the ancillary service charge structure imposed on consumers by ICS providers, as shown in Table Four below. All other ancillary service charges not specifically included in Table Four are prohibited. (Thus, providers would be prohibited from imposing charges for biometric technology, for example.) We conclude that the allowable charges will facilitate communications between inmates and their loved ones and will allow ICS providers to recover the costs incurred for providing the ancillary service associated with the relevant fee. We find no other examples in the record of

ancillary services that are actually provided today and that have a cost that warrants recovery.

162. Our approach is supported by the record and will reduce the cost of service for millions of consumers. Even so, as with all reforms adopted in this Order, we will reevaluate these charges in two years to determine if adjustments are appropriate. We expect that these caps will serve as backstops as efficiencies are gained by providers, and contracts are changed, or new contracts are entered into between parties. For example, the record indicates that the recently-adopted New Jersey state correctional institutions' ICS contract specifically prohibits ''discretionary fees,'' which include bill statement fees, monthly recurring wireless account maintenance charges, account setup fees, funding fees, refund fees, and a single bill fee. Finally, we believe it is reasonable to expect that the ancillary service charge caps may encourage providers to more efficiently provide ancillary services, potentially stimulating competition among ICS providers to the added benefit of consumers and in keeping with section 276's statutory mandate. The reforms are intended to facilitate the proper functioning of the ICS market.

163. Each of the entries in Table Four focuses on the particular functions related to each type of charge listed below. (Thus, even if a provider renames one of its fees to match the terminology in this table, that will not be sufficient to make an allowable ancillary service charge. Also, each individual ancillary service charge that an ICS provider levies must serve one of the permitted functions in order to qualify as a permissible ancillary service charge, regardless of the precise terminology used. In the event of dispute, the Commission will evaluate the fee charged to a consumer on the basis of the totality of the circumstances, judged from a reasonable consumer's point of view, to determine whether the fee serves one of the permitted functions. Automated payments include payments by interactive voice response (IVR), web, and kiosk.)

TABLE FOUR

Permitted ancillary service charges and taxes	Monetary cap per use/instruction
Applicable taxes and regulatory fees	Provider shall pass these charges through to consumers directly with no markup.
Automated payment fees	$3.00.
Fees for single-call and related services, *e.g.,* direct bill to mobile phone without setting up an account.	Provider shall directly pass through third-party financial transaction fees with no markup, plus adopted, per-minute rate.
Live agent fee, *i.e.,* phone payment or account set up with optional use of a live operator.	$5.95.
Paper bill/statement fees (no charge permitted for electronic bills/statements).	$2.00.
Prepaid account funding minimums and maximums	Prohibit prepaid account funding minimums and prohibit prepaid account funding maximums under $50.
Third-party financial transaction fees, *e.g.,* MoneyGram, Western Union, credit card processing fees and transfers from third-party commissary accounts.	Provider shall pass this charge through to end user directly, with no markup.

164. *Data Analysis.* Based on our analysis of the ancillary service charge cost data submitted in response to the Mandatory Data Collection and the record, we conclude that the caps we adopt for ancillary service charges will allow ICS providers to recover their reported costs attributable to providing these services and earn fair compensation. Ten of the fourteen ICS providers that submitted data in response to the Mandatory Data Collection included cost and revenue data for ancillary service charges. One provider did not report any direct costs related to ancillary service charges and one provider reported only one ancillary service charge. The reported *rates* for ancillary service charges range from $0.08 to $10.97 per use for automated payments, from $2.49 to $5.95 per use for transactions handled by a live agent, and from $1.50 to $5.00 for paper billing fees. In comparison, ICS providers report that they incur *costs* for ancillary service charges ranging from $0.10 to $6.58 when they offer automated payments, $2.49 to $5.26 when they offer transactions handled by a live agent, and $0.08 to $2.88 when they offer paper billing. These numbers serve to illustrate the enormous difference between the charges imposed on ICS end users and the much lower costs to ICS providers of offering those services. The ancillary service charge caps we have selected fall within a reasonable range of the reported costs for the services, and are supported by the record for each fee cap as explained below.

165. We also note that some jurisdictions have banned ancillary service charges and that providers have complied with such regulations. This suggests that ancillary service costs can be recovered with reasonable ICS rates. Accordingly, our ancillary service charge caps should more than adequately compensate for the costs incurred. Moreover, we conclude that the annual reporting, certification and data collection requirements adopted herein regarding ancillary fee information will ensure compliance with the requirements. We will use this information to ensure that ICS providers are complying with the reforms adopted herein.

166. *Ancillary Services Charge Cap Methodology.* The reforms we adopt herein represent a middle ground between the various proposals in the record. First, we determined which categories of ancillary service charges should be allowed. Next, we evaluated the information obtained through our Mandatory Data Collection as discussed above, and comments in the record addressing the specific proposals in and in response to the *Second FNPRM.* We conclude that prohibiting ICS providers from recovering their costs reasonably and directly related to making available an ancillary service would not allow ICS providers to receive fair compensation for those services. We also conclude that certain proposed high ancillary service charges, such as those in the Joint Provider Proposal, would result in excessively compensatory fees and would violate our requirement to make ICS rates just, reasonable and fair to end users. Therefore, we adopt caps on fees for ancillary service charges that will allow ICS providers to recover the costs incurred for providing the ancillary service associated with the relevant fee while ensuring just, reasonable, and fair

rates to end users. Below we explain the analysis that went into determining the appropriate cap for each category of permitted ancillary service charge.

167. *Automated Payment Fee.* We permit up to a $3.00 automated payment fee for credit card, debit card, and bill processing fees, including payments made by interactive voice response (IVR), web, or kiosk. This approach is supported by the record and more than ensures that ICS providers can recoup the costs of offering these services. The Commission specifically sought comment on automated payment fees in the *Second FNPRM.* For example, the Commission asked whether a $3.00 cap for debit and credit card payment fees via the web, an IVR, or a kiosk was an appropriate charge. We find support for our approach from numerous commenters, including the Alabama PSC, which concluded, as we do, that a $3.00 cap for credit card processing and bill processing is appropriate. This $3.00 cap is also supported by Pay Tel, which charges this amount for automated payments. In addition, multiple parties support this approach in the record, including the Wright Petitioners, CenturyLink, and NCIC—all of which agree this amount is an appropriate cap for automated payments. Securus, one of the largest ICS providers in the market, asserted that allowing end users to pay with credit cards costs the company more than $3.00. The credit-card processing costs that Securus cites indicate to us that it is an outlier, especially since, as just discussed, companies that are much smaller than Securus acknowledge that they can process credit card payments at a $3.00 rate. We find that a $3.00 cap on automated payments is supported by the reported *costs* of providing the service as opposed to other *rates* for the service.

168. *Live Agent Payment Fee or Account Set Up.* We allow ICS providers to recover up to $5.95 when consumers choose to make use of an optional live operator to complete ICS transactions. We have recognized that interaction with a live operator to complete ICS transactions may add to the costs of providing ICS. Thus, we allow an ancillary service charge to compensate providers for offering this optional service. As with the other ancillary service charges we have determined are appropriate, in the *Second FNPRM,* the Commission also specifically asked commenters about the $5.95 maximum fee for live operator assisted payments. For the live agent phone payment of $5.95 that we adopt, we note that multiple ICS providers including, CenturyLink, NCIC, and Pay Tel, as well as the Wright Petitioners, and the Alabama PSC, all agree that this is the correct rate. This $5.95 fee may only be charged once per interaction with a live operator, regardless of the number of tasks completed in the call, and live operator calls may not be terminated in order to attempt to charge this fee an additional time. We will monitor any complaints we receive with regard to the live agent fee that suggest that providers are attempting to circumvent the limitations this rule sets forth.

169. *Paper Bill/Statement Fee.* We permit a cap of $2.00 for optional paper billing statements. In the *Second FNPRM,* the Commission noted that the Alabama PSC had capped the charge for a paper bill or statement, and asked commenters to explain whether this, and other approaches taken by the Alabama PSC, were reasonable and would lead to just and reasonable rates and fair ICS compensation. Multiple commenters agreed. Specifically, the $2.00 paper bill charge we adopt is supported by the Wright Petitioners, Pay Tel, and the Alabama PSC, while CenturyLink argues that the rate should be marginally higher at $2.50 per bill.

170. *Third-Party Financial Transaction Fee.* In the *Second FNPRM,* the Commission asked how it should ensure that money transfer service fees paid by ICS consumers are just and reasonable and fair. The record establishes that inmates' families frequently do not have bank accounts, and therefore rely on third-party money transfer services such as Western Union or MoneyGram to fund calls with inmates. Third-party financial transaction fees as discussed herein consist of two elements. The first element is the transfer of funds from a consumer via the third-party service, *i.e.,* Western Union or MoneyGram, to an inmate's ICS account. (We use these two services as an example but do not foreclose the possibility that there are other third-party financial transaction services. Credit card payment processing also falls under the discussion here.) The second element is the ICS provider's additional charge imposed on end users for processing the funds transferred via the third party provider for the purpose of paying for ICS calls. We find that this first aspect of third-party financial transaction, *e.g.,* the money transfers or credit card payments, does not constitute ''ancillary services'' within the meaning of section 276. The record suggests that ICS providers have limited control over the fees established by third parties, such as Western Union or credit card companies, for payment processing functions.

171. However, the record indicates that ICS providers are imposing significant additional charges, as high as $11.95, for end users to make account payments via third parties, such as Western Union or Money Gram, and sharing the resulting profit with those third-party financial institutions. We find that the ICS providers' additional fee or mark-up to the third-parties' service charges function as a billing-and-collection related charge, on top of the third-party charge, that the Commission has authority to address. Providers have offered no cost-based justification for imposing an additional fee on end users on top of the third-party money-transfer service or financial institution fee, nor have they explained what (if any) functions they must necessarily perform to ''process'' a transfer already transferred from the third-party provider. Therefore, as discussed in more detail below, we require that ICS providers pass through to their end users, with no additional markup, the money transfer or third-party financial transaction fees they are charged by such third parties. (The record indicates that no additional markup is warranted on top of the fees charged by the third-party payment providers.)

172. Our adopted approach ensures that, in transactions like these, ICS providers do not receive excessive compensation, while also protecting consumers from unreasonable additional fees that result in unjust and unreasonable ICS rates. We find support for our third-party financial transaction fee approach from parties such as CenturyLink and NCIC, and the Alabama PSC additionally urges the Commission to require ICS providers to ''eliminate the provider ancillary charge premium they assess on top of the $5.95 payment transfer fee available to their customers from Western Union and MoneyGram.''

173. *Prohibited Fees.* As explained above, our approach to fees charged for ancillary services specifically enumerates the charges permitted and bans all other ancillary service charges. We find no other examples in the record of ancillary services that are actually provided today and that have a cost that warrants recovery. While we place limits on the types of ancillary service charges we allow, we note that it is important to have payment options that permit the consumer simply to pay for service without incurring any additional charges. Many commenters, including ICS providers, agree that these basic or standard methods, such as making

payments by check or money order, must remain available without charge. Securus, for example, has assured the Commission that ''[p]ayment by check or money order always will be available and free of charge.'' In accordance with our decision to allow only the specific ancillary service charges we enumerate in this Order, we clarify that no charges are permissible for payment by check or money order.

174. At this time, we do not find it necessary to eliminate all ancillary service charges to be consistent with our statutory objectives and policy goals for ICS reform. We are mindful of and concerned about the potential for continued abuse of ancillary service charges, and we will monitor the implementation of these caps and determine if additional reforms are necessary in the future. By limiting the scope of ancillary service charges, we also resolve other problems presented in the record. We prohibit all other ancillary service charges not enumerated because the record did not demonstrate that any other ancillary services are reasonably and directly related to the provision of ICS, nor are they necessary to ensure that ICS providers receive fair compensation for providing service. Permitting any other ancillary service charges would promote unfair, unjust, and unreasonable rates to end users, and would thus be contrary to our statutory mandate. Further, we find that removing a substantial number of unjustifiable charges not only benefits consumers, but also reduces compliance costs for ICS providers by allowing them easily to identify whether a particular charge is permitted by our rules. Additionally, since we have determined that the only justifiable ancillary service charges are the ones we specifically enumerated, there are no countervailing costs that would outweigh our selected approach.

175. *Purchase Minimums and Maximums.* In the *Second FNPRM,* the Commission asked commenters whether anything should be done about policies, such as funding minimums and maximums that may restrict consumers' access to ICS. In response, some parties raise concerns that some ICS providers are engaging in unjust and unreasonable practices and imposing unfair rates by instituting minimum or maximum amounts that may be deposited for prepaid calling accounts. CenturyLink, for example, contends that ''[p]roviders might impose high purchase minimums and complex refund policies to obtain captured funds. Providers might also adopt low purchase maximums to force customers to have to repeatedly re-purchase services and generate transaction fees.'' Similarly, ICSolutions urges the Commission to regulate minimum and maximum funding requirements, arguing that high minimum funding requirements ''can preclude consumers from receiving calls from their loved ones,'' while low maximums can force consumers to ''fund their account more frequently, so that [the provider] can charge more ancillary fee payments.'' Furthermore, NCIC points out that ''payments for prepaid service by money order or check [are] available free of charge to ICS end users but this payment method is frequently impractical because of the excessive latency involved in establishing service (up to ten days for some providers).'' Thus, inmates are essentially forced into entering into more costly prepaid options, many of which require minimum payments and/or impose maximum limits on deposits.

176. We agree that high purchase minimum requirements can lead to unfair compensation by forcing consumers to deposit relatively large sums of money even if they only want to make one short call or by driving consumers to more expensive calling options. Thus, high purchase minimums can effectively allow providers to charge exorbitant amounts for single calls. Such a result would be antithetical to the Commission's goals and to the requirements of sections 201 and 276.

177. An artificial limit on maximum account deposits could also lead to gaming and loopholes. CenturyLink points out that low maximums on deposits can allow providers to increase transaction fees. A provider may refuse to permit a consumer from depositing more than a certain amount of money into an inmate calling account in a single transaction, thereby compelling the consumer to engage in additional transactions and, as a result, incur multiple ancillary service charges. Thus, providers could circumvent our reforms by placing artificially low limits on deposits and requiring consumers to incur ancillary charges every time they add additional money to an account.

178. In order to prevent ICS providers from obtaining unfair compensation by inflating costs for end users relating to maximum and minimum deposits, we prohibit ICS providers from instituting prepaid account minimums, and require that any provider that limits deposits to set the maximum purchase amount at no less than $50 per transaction. Data from the Mandatory Data Collection show that the average call length reported by respondents was approximately 13 minutes. Under our new rate structure, that means the average cost of a call from a prison would be about $1.43. Accordingly, a $50 maximum per transaction would mean that consumers will be able to make a relatively large number of calls with a single deposit (on average about 35 calls). We find that allowing a lower limit would create an unacceptable risk that providers would be able to compel consumers to incur multiple ancillary service charges, as explained above. We note, however, that the record also reflects concerns that setting the floor for maximum allowable deposits too low could create risks for ICS providers, including the potential for fraud. Allowing providers to institute maximum deposit amounts, but requiring that those maximums be no lower than $50, strikes a reasonable balance between the competing concerns expressed in the record. We also note that various providers have instituted maximum deposit policies that conform to our requirement of no less than a $50 maximum per transaction, and in some circumstances have even instituted higher maximum deposit limits. As noted below, we will continue to monitor the ICS marketplace and to investigate any attempts, such as these, to circumvent our rate caps or our rules governing ancillary charges. Due to the history of the large number and ever-changing and growing nature of ancillary service charges, as described in the record, we will be diligent in identifying any providers that violate the new rules covering ancillary service charges, third-party financial transaction fees, and minimum and maximum account funding. Accordingly, we delegate to the Bureau the authority to clarify the rule as necessary, after public notice and an opportunity to comment, where appropriate, to ensure that the reforms adopted in this Order relating to ancillary service charges and third-party financial transaction fees are properly reflected. This includes seeking comment on prohibiting additional ancillary fees if there is evidence of abuse of the permitted charges.

4. Cost-Benefit Analysis

179. After careful consideration, we find that our approach to adopt simple ancillary service charge caps provides significant and important benefits to ICS end users, outweighing any potential burdens to providers. As discussed above, we conclude that reform is necessary to address ever-increasing and multiplying fees that are unchecked by competitive forces and unrelated to costs. We find that the allowable ancillary service charges will facilitate communications between inmates and their families, while enabling ICS

providers to recover the costs incurred for providing the associated ancillary services.

180. It is clear that market failure exists with regard to ancillary service charges. Numerous parties cite specific instances of such market failure or abuse among ancillary service charge categories. Additionally, commenters request the Commission take action to curb these abuses by adopting reforms.

181. By creating simple rate caps and limiting the scope of ancillary service charges, we resolve these problems and reform ancillary charges. We prohibit all ancillary service charges not specifically allowed, not only for the foregoing reasons, but also because the record did not demonstrate that any other ancillary services are reasonably and directly related to the provision of ICS or necessary to ensure that ICS providers receive fair compensation for providing service. Further, we find that removing a substantial number of unjustifiable charges not only benefits consumers, but also reduces compliance costs for ICS providers by allowing them easily to identify whether a particular charge is permitted by our rules, thus reducing the burden on them. As noted below, however, to minimize any potential burdens associated with ancillary service charges, we will reevaluate these charges to determine if adjustments are appropriate.

5. Fees for Single-Call and Related Services

182. *Background.* The record indicates that single-call and related services are a growing part of the ICS market. These options, such as single-call services, are billing arrangements whereby an ICS provider's collect calls are billed through third-party billing entities on a call-by-call basis to parties whose carriers do not bill collect calls. A single-call service thus may be used for calls placed from the inmate facility to mobile phones or a telecom service where the called party does not have an account, does not want to establish an account, or does not know the party can establish an account with the ICS provider. Although some efficiencies may derive from single-call and related services, the record is replete with evidence that some of these services are being used in a manner to inflate charges, and may be offered at unjust, unreasonable, or unfair rates, and/or at rates above our interim rate caps or rate caps adopted in this Order. The record also highlights substantial end-user confusion regarding single-call services.

183. A significant problem with single-call and related services is that they end up being among the most expensive ways to make a phone call. In the *Second FNPRM,* the Commission sought comment on the prevalence of single-call services and whether rates for such services are just and reasonable.

184. There is a diversity of views in the record on single-call and related services. CPC believes that single-call services should be treated as ancillary services subject to rate caps and that consumers must be notified of the option to set up a prepaid account instead. Several commenters believe that all of these single-call and related services should be eliminated because they are simply an ''end run'' around the Commission's rate caps. The Wright Petitioners note that any proposed rate caps should also apply to single-call services, along with a $3.00 funding fee. PPI also argues that, in the alternative, charges for single call services should be restricted to a reasonable deposit fee, plus a reasonable capped call fee. As the Alabama PSC notes, ''[t]he regulator's duty is to set fair and reasonable rates for ICS calls.''

185. ICSolutions notes that the single-call or related service charge is often $9.99 or $14.99, regardless of whether the call lasts one minute or 10 or 15 minutes, and that these rates are 300 percent or 376 percent higher than the effective interstate rate caps. It contends that such calls pose a danger to consumers, and that providers manipulate consumers into selecting these calling options even though less costly call options may exist. Other providers share ICSolutions' concern that single-call or related services are used to ''inflate ancillary fees'' at the expense of end users. CenturyLink, ICSolutions, and NCIC, among others, expressed concern about the use of third parties, including unregulated subsidiaries, to provide single-call or related services at high fees, and about revenue-sharing arrangements that enable ICS providers to recoup all or a portion of the ancillary service charge as profit outside our rate caps. Additionally, the Alabama PSC analyzed these single-call services in a jail, and found that ''[a]lthough single payment calls account for 14% of the calls and 17% of the minutes at the facility, they are responsible for 42% of all the revenue generated.'' Conversely, GTL urges the Commission not to regulate these services, arguing the Commission does not have jurisdiction to do so. Securus similarly argues that single-call and related services should not be considered ancillary services because they are optional and are not intended to be a substitute for traditional ICS calls. Securus asserts that if the Commission regulates the rates for single-call and related services, ICS providers will be forced to stop offering them, and inmates and their friends and families will have fewer calling options by which to stay in touch.

186. *Discussion.* We agree with commenters that suggest single-call and related services are another form of ancillary service charges. The additional costs stemming from single-call and related services are ancillary to the provision of ICS because they are additional fees charged to consumers, based on the consumer's discretion and desire to make use of such a service because, for example they want to speak to the incarcerated person as quickly as possible in order to arrange their release. We therefore believe that reform is necessary and that it is appropriate to address unreasonable charges. As a result, for single call and related services, we permit ICS providers to charge the amount of the third-party financial transaction (with no markup) added to a per-minute rate no higher than the applicable rate cap. These reforms are necessary to ensure that when end users decide to take advantage of single-call and related services, the rates for such calls comply with the statute.

187. Unlike the ancillary service charge caps adopted above, we do not find that single-call and related services are reasonably and directly related to the provision of ICS, but are ancillary to ICS. We believe that charges for single-call and related services inflate the effective price end users pay for ICS and result in excessive compensation to providers. Accordingly, for single-call and related services, the Commission will allow ICS providers to charge end users for each single call in a manner consistent with our approach to third-party financial transaction fees—*i.e.,* ICS providers may charge the amount of the third-party financial transaction (with no markup) added to a per-minute rate no higher than the applicable rate cap. This approach is consistent with our overall approach to reforming both ICS per-minute rates and ancillary service charges. It will ensure just and reasonable rates for end users that are based on actual costs incurred by ICS providers.

188. The record supports our reforms to fees charged for single-call and related services. We have authority to reform ancillary service charges and we therefore disagree with ICS providers that argue we lack authority. Moreover, our approach in no way interferes with contracts between ICS providers and third-party payment processors or

mobile phone companies because our rule simply prevents ICS providers from adding additional fees to the cost of these calls. It does not dictate what fees an ICS provider itself may choose to pay or not pay these third parties for services rendered.

189. We have also heard from commenters that a major problem with single-call and related services is that customers are often unaware that other payment options are available, such as setting up an account. To help alleviate the problem of customers continually paying set up fees for single-call and related service calls, we encourage providers to make clear to consumers that they have other payment options available to them. This is consistent with our discussion and analysis regarding consumer disclosure requirements below. We will continue to monitor the use of such calling arrangements and seek specific information about them in the Further Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**.

6. Taxes and Regulatory Fees

190. The record in this proceeding indicates that ICS providers charge ICS end users ''fees under the guise of taxes.'' In an effort to ensure just, reasonable and fair ICS rates, in the *Second FNPRM,* the Commission asked ''whether the cost of regulatory compliance should be considered a normal cost of doing business and as such should be recovered through basic ICS rates, not additional ancillary fees.'' In response, Lattice asserts that ''ICS providers also must be permitted to continue to collect pass-through charges such as state and local taxes, universal service and numbering charges, and other federal, state and local fees.''

191. ICS providers are permitted to recover mandatory applicable pass-through taxes and regulatory fees, but without any additional mark-up or fees. The Commission has defined a government mandated charge as follows: ''amounts that a carrier is required to collect directly from customers, and remit to federal, state or local governments.'' Non-mandated charges are defined to be ''government authorized but discretionary fees, which a carrier must remit pursuant to regulatory action but over which the carrier has discretion whether and how to pass on the charge to the consumer.'' Commission precedent prohibits providers from placing a line item on a carrier's bill that implies a charge is mandated by the government when it is in fact, discretionary.

192. We agree that the ability to collect applicable pass-through taxes and regulatory fees without adding a markup is important and consistent with precedent. However, we reiterate that it is misleading ''for carriers to state or imply that a charge is required by the government when it is the carriers' business decision as to whether and how much of such costs they choose to recover directly from consumers through a separate line item charge.'' As such, we do not permit fees or charges beyond mandatory taxes and fees, and authorized fees that the carrier has the discretion to pass through to consumers without any mark up. This will help ensure, consistent with the goals of the reforms adopted in this Order, that ICS end user's rates are just, reasonable and fair because they are paying the cost of the service they have chosen and any applicable taxes or fees, and nothing more. This approach has support in the record, including from the Joint Provider Proposal and Pay Tel.

7. Legal Authority

193. We reaffirm the Commission's finding in the *2013 Order* that it has jurisdiction over interstate ICS ancillary service charges and further find that we have authority to reform *intrastate* ancillary service charges. The Commission sought comment in the *Second FNPRM* as to whether it is also authorized to regulate intrastate ancillary service charges. In response, several commenters took the position that section 276 of the Act authorizes the Commission to regulate intrastate ancillary service charges. We agree.

194. We find that the Commission has the legal authority to adopt necessary reforms to interstate, intrastate, and international ancillary service charges. In the *2013 Order,* the Commission addressed interstate charges and found that billing and collection services provided by a common carrier for its own customers are subject to section 201, and are therefore, subject to Commission regulation. The Commission explained that it has jurisdiction ''to regulate the manner in which a carrier bills and collects for its own interstate offerings, because such billing is an integral part of that carrier's communication service.'' We reaffirm that finding here. Thus, providers are on notice that efforts to circumvent our rate caps through artificially high ancillary fees will not be tolerated.

195. Although ''ancillary services'' are not defined by statute, and there is some disagreement in the record on this point, the dictionary meaning of the term ''ancillary''—''providing *necessary support* to the primary activities or operation of an organization, institution, industry, or system''—is instructive. Additionally, section 276(b)(1)(A) specifies that any compensation plan set forth by the Commission must ensure that providers ''are fairly compensated for each and every *completed intrastate and interstate call . . . .*''

196. In the discussion above, we find that we have jurisdiction over *intrastate* ICS charges, pursuant to section 276 of the Act. We also note that section 276(d) defines ''payphone service'' as ''the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any *ancillary services.''* Thus, we believe it is clear that Congress provided the Commission with authority over ICS-related ''ancillary services.'' Based upon the plain language of these statutory provisions and the common definition of the term ''ancillary,'' we find that the term ''ancillary services,'' as used in section 276(d), is reasonably interpreted to mean services that *provide necessary support for the completion of international, interstate and intrastate calls* provided via ICS. We find that section 276 authorizes the Commission to regulate charges for intrastate ancillary services, such as billing and collection services, to the extent those charges involve the completion of a call, or other communications services. Such charges are quite literally the ''necessary support'' essential for the completion of inmate phone calls. Indeed, often the only purpose for establishing ICS accounts is to fund communication with inmates; therefore, these charges are reasonably understood to be ancillary to the completion of phone calls. As such, we conclude that billing-and-collection-related ancillary services such as account set up and transaction fees fall within the Commission's jurisdictional authority and will be regulated in the manner described above.

D. Periodic Review of Reforms

197. While the *2013 Order* and today's reforms are a significant step forward, we are committing to continuing to review the ICS market, including both costs and rates, to ensure that regulation remains necessary and that the reforms we adopt herein strike the right balance. The reforms adopted in this Order may facilitate changes in the ICS market that potentially could make it function properly and enable the Commission to reduce regulations. At the same time, changes in the market, for example, may necessitate additional modifications to the reform we adopt today. We will incorporate lessons learned from the prior data collection to

improve quality and eliminate anomolies. While the policies adopted in this Order have been carefully designed based on the record before us, we remain dedicated to evaluating how changing circumstances impact the nature and scope of reform. The Commission has the authority to take steps to effectively monitor compliance with this Order going forward.

198. To enable the Commission to take further ICS reform action, identify and track trends in the ICS market, as well as monitor compliance with the reforms adopted herein, we adopt a second, one-time Mandatory Data Collection to occur two years from publication of Office of Management and Budget (OMB) approval of the information collection. We believe it is appropriate to be able to conduct a review of the ICS market including ICS costs, rates and ancillary service charges to ensure that any regulations continue to be necessary to fulfill our statutory objectives and to ensure that any such reforms and rate caps reflect current market dynamics and costs.

199. In the *Second FNPRM,* the Commission sought comment on the benefits of establishing a review process. The Commission also sought comment on the Wright Petitioners' suggestion that the Commission commit to review the interim rates adopted in the *2013 Order.* In its comments, HRDC states generally that periodic reviews by the Commission to evaluate the ways in which ICS reforms impact phone rates, ancillary service charges and competition in the industry are ''essential to ensure that the reforms create and maintain the proper incentives to drive ICS rates to competitive levels.''

200. We find that, on balance, Petitioners' proposal for a periodic review of ICS data is not necessary at this time, nor is it the best tool for monitoring compliance with the Order. Therefore, we establish a less onerous requirement, which we anticipate will provide significant benefit at minimal cost. In lieu of the Petitioners' proposal, we adopt an approach similar to the one used by the Commission in a prior payphone order establishing the per-call rate for payphones, in which the Commission determined that it would ''have to periodically review the cost-based compensation rate in order to ensure that it continues to 'fairly compensate' PSPs and promote payphone competition and widespread deployment of payphones.'' The Commission explained that, ''[e]specially when market conditions have changed significantly, it is incumbent upon us to reexamine whether the conditions resulting in the recent Commission-prescribed rate still apply.'' As with that situation, we conclude that the Commission should have the tools necessary to review the reforms that we adopt in this Order, in light of changing market conditions, to ensure that the rates continue to be just, reasonable, and fair. As explained above, ancillary service charges also significantly impact the effective rates ICS providers charge, and should therefore be part of this review.

201. To allow for consistent data reporting and to prevent duplicative filings, we direct the Bureau to develop a template for submitting the data and provide ICS providers with further instructions to implement the data collection. We direct the Bureau to complete a review of ICS costs and rates within one year from the date data is submitted, and we delegate to the Bureau authority to require an ICS provider to submit such data as the Bureau deems necessary to perform its review. Information in response to the forthcoming data collection may be filed under the *Protective Order* in this proceeding and will be treated as confidential.

202. Several commenters have expressed concern for the lack of transparency regarding ICS rates and fees. We share the concern that ICS contracts are not sufficiently transparent and we find adequate evidence, such as numerous public records lawsuits, to support HRDC's assertion that members of the public must ''unnecessarily expend time and money to obtain records'' of ICS contracts. We also recognize evidence suggesting that the information regarding ICS contracts and rates that is publically available may not be reliable. Therefore, we encourage ICS providers and facilities to make their contracts publicly available.

E. Harmonization With State ICS Rules and Requirements

203. Below, we provide guidance to ICS providers, correctional facilities and state regulatory bodies on the effect of the comprehensive reforms adopted herein on ICS requirements in the states and the Commission's authority to regulate these services pursuant to section 276 of the Communications Act.

1. Background

204. In the *2013 Order,* the Commission sought comment on its tentative conclusion that section 276 ''affords the Commission broad discretion to regulate intrastate ICS rates and practices . . . and to preempt inconsistent state requirements.'' Commenters' responses were mixed. The Commission then followed up by seeking more focused comments on issues related to preemption and harmonization of state ICS requirements. Several commenters support preemption of state laws and requirements that are inconsistent with the federal regime, while a small number of commenters oppose such preemption and question our authority to preempt state requirements related to intrastate ICS. As discussed below, we now adopt the tentative conclusion the Commission first expressed in the *2013 Order,* and hold that we have the authority to preempt state requirements that are inconsistent with the rules we adopt in this Order. More specifically, we conclude that a state requirement that ICS be provided at a particular rate that exceeds the caps we have adopted would trigger change-in-law provisions or require renegotiation. If for some reason that does not occur for any particular contract, parties can file a petition with the Commission seeking the appropriate relief. State rates below our rate caps or ancillary fee caps will not be preempted.

205. The rate caps and reforms adopted herein should operate as a ceiling in areas where states have not enacted reforms. This is consistent with Commission precedent in which it has determined that rates at or below a newly-enacted rate cap were not to be changed. We strongly encourage all states to evaluate additional measures to reduce and eliminate site commissions and ensure that rates for inmate calling services are as low as possible while still ensuring that robust security protocols are in place. Our actions today serve to ensure that a much-needed default framework is in place in areas where states have not acted to curb ICS rates.

206. In the *Second FNPRM,* the Commission sought comment on a number of issues related to the preemption of state regulation of ICS, as well as the potential to harmonize state requirements that are inconsistent with the Commission's comprehensive framework for regulation of both interstate and intrastate ICS. Among other questions, the Commission sought comment on its belief that it has ''broad discretion to find that a particular state requirement, or category of state requirements, is either consistent or inconsistent with Commission ICS regulations under section 276(c)'' and to preempt those regulations that are inconsistent.

207. Several commenters support preemption, urging the Commission to establish a uniform framework for both interstate and intrastate ICS. ICS

provider Lattice, for example, argues that ''[s]ound public policy as well as the Communications Act and FCC precedent all support FCC reform across all ICS.'' Lattice contends not only that ''[s]ection 276 grants the Commission express authority to preempt state requirements to the extent they are inconsistent with FCC regulations,'' but that ''preemption of state regulation is required to fulfill the requirements of section 276.'' Pay Tel also argues that the Commission has authority over intrastate ICS, and must ''preempt inconsistent state regulations.'' Additional commenters echo these assertions, arguing that the Commission has jurisdiction over both interstate and intrastate rates and must preempt inconsistent state requirements. Indeed, the Wright Petitioners state that ''there is no debate that the FCC has the authority to preempt those state regulations that conflict with regulations adopted in this proceeding.''

208. Other commenters contend that the Commission lacks the authority to preempt state ICS requirements. According to the Arizona Corporation Commission (ACC), for example, ''[s]ection 276 must be read in *pari materia* with 47 U.S.C. 152's reservation of authority over intrastate matters.'' The ACC further asserts that ''the primary purpose of section 276 was to prevent unfair competition by incumbent local exchange carriers against the payphone providers [and t]he other express purpose of this section was to ensure that payphone providers were fairly compensated for all calls placed using their payphones.'' In addition, the ACC claims that state regulation of intrastate ICS is part of the states' ''historic police powers'' and therefore should not be preempted unless preemption ''was the clear and manifest purpose of Congress.''

2. Discussion

209. NARUC and the ACC argue that our authority under section 276 is limited to interstate services, and that our regulations must be narrowly targeted to address concerns about anticompetitive conduct by incumbent local exchange carriers. We disagree. These arguments are contradicted by the plain language of section 276. As explained above, the statute provides the Commission with the authority to regulate both interstate and intrastate ICS. Similarly, although section 276 addresses potential discrimination by Bell operating companies, it also contains provisions related to other subjects, including compensation for ''payphone service providers,'' a group that, by definition, encompasses providers ''of inmate telephone service in correctional institutions, and any ancillary services.'' Furthermore, we believe that section 276's broad mandate stands in stark opposition to ACC's and NARUC's attempts to narrowly confine the Commission's ICS-related preemption authority.

210. Pay Tel urges the Commission to preempt state-imposed intrastate rates that are below the adopted caps, arguing that any rates that deviate from the Commission's caps are ''by definition, 'inconsistent''' and must be preempted. We disagree. The primary purpose of the rate caps we adopt today is to ensure that ICS rates are ''just and reasonable'' and do not take unfair advantage of inmates or their families. State requirements that result in rates below our caps advance that purpose and there is no credible record evidence demonstrating or indicating that any requirements that result in rates below our conservative caps are so low as to clearly deny providers fair compensation. Evidence in the record shows that ICS can be provided at rates at or below $0.05 a minute. We applaud the efforts some states have made to lower ICS rates and hope other states follow their lead. Our goal is affordable rates that provide fair compensation, and the federal framework we adopt today is meant to serve as a backstop to ensure rates are consistent with the statute in absence of state action.

211. We are mindful, however, of the fact that we also have a statutory obligation to ensure that payphone service providers, including ICS providers, are ''fairly compensated.'' If any state adopts intrastate requirements that result in providers being unable to receive fair compensation, providers may either seek appropriate relief in that state or from the Commission. We will review the relevant state requirements if they are brought to our attention in a petition and will decide at that time what, if any, remedial actions are warranted. If any party believes that a particular form of relief is called for, that party should clearly state the requested relief in a petition and set forth the legal authority for granting such relief. As noted above, section 276 explicitly grants the Commission authority to preempt state requirements to the extent they are inconsistent with FCC regulations. Accordingly, if a provider is able to demonstrate that a particular state law or requirement is inconsistent with the rules we adopt in this Order, we will, consistent with section 276, preempt the inconsistent requirement. We strongly encourage providers to seek relief from the relevant state entity before approaching the Commission, however. We also note that there is no presumption that state-mandated rates deny fair compensation simply because they are lower than our rate caps. To the contrary, as noted above, we encourage states to enact additional reforms to inmate calling service and to drive intrastate rates as low as possible, consistent with the need to ensure fair compensation, retain service quality, and maintain adequate security.

212. Consistent with the regulatory approach adopted herein, providers may be able to comply with such statutory requirements without charging rates that exceed our rate caps. Given the absence of clear evidence indicating whether there are any state laws or other requirements that, in practice, would require providers to charge rates that exceed our caps, we need not decide whether any laws currently exist that are ''inconsistent'' with our regulatory framework. To the extent there are state requirements, including possible contractual requirements, that make our rate caps onerous for a particular provider, the affected provider may file for preemption of the state requirement or seek a temporary waiver of the rate caps for the duration of any existing contract. We note that any waiver request should include a discussion of the provider's efforts to renegotiate the subject contracts and the outcome of such efforts. We delegate to the Bureau the authority to rule on such petitions and to seek additional information as needed. We also direct the Bureau to endeavor to complete review of any such petitions within 90 days of the provider submitting all information necessary to justify a waiver.

3. Existing Contracts

213. As the Commission has previously noted, ICS contracts ''typically include change of law provisions.'' We expect that the new rate caps and other requirements adopted in this Order constitute regulatory changes sufficient to trigger contractual change-in-law provisions that will allow ICS providers to void, modify or renegotiate aspects of their existing contracts to the extent necessary to comply with the new rate caps and/or to relieve the providers from site commission payments that would prove to be unduly onerous once this Order takes effect. The record regarding implementation of the 2013 interim rate caps indicates that such changes were implemented quickly. Indeed, the Commission has previously highlighted the fact that the record ''indicates that ICS contracts are amended on a regular basis.'' For

instance, the record indicates that Securus provided nine days' notice to facilities prior to implementing the rate caps adopted in the *2013 Order.* The record also indicates that GTL had a four-day transition period after executing a new contract to serve the state of Ohio.

214. Parties have further argued that invoking contractual change of law provisions and engaging in renegotiations with correctional facilities would materially affect ICS providers' ability to conduct their daily business. Yet the Commission saw little such impact regarding implementation of the 2013 interim rate caps. Those rate caps affected all interstate calls throughout the country, much like today's reforms will affect calls nationwide. Our experience with the Commission's previous reforms leads us to conclude that, for ICS providers that choose to invoke existing change of law provisions—and subsequently to engage in renegotiations with the facilities they serve—any inconvenience imposed on them in doing so will not materially affect the providers' ability to conduct their day-to-day business. Finally, the negotiations for any new or renewed contracts can and should be informed by the decisions in this Order, including our adoption of new rate caps for ICS.

215. ICS providers that have entered into contracts without change-of-law provisions did so with full knowledge that the Commission's ICS proceeding has been pending since 2012. Even so, we encourage facilities to work with those ICS providers during the transition period described below which we believe provides ample time to renegotiate contracts, if necessary, to be consistent with this Order. If any provider believes it is being denied fair compensation during the transition or implementation of the reforms adopted in this Order—due, for example, to the interaction of our rate caps with the terms of the provider's existing service contracts—it may file a petition seeking a limited waiver of our new rate caps or seek preemption of the requirement to pay a site commission, to the extent that it believes that such a requirement is a state requirement and is inconsistent with the Commission's regulations. Finally, negotiations for any new or renewed contracts can and should comply with the decisions in this Order, including our limitation on site commission payments and our adoption of new rate caps.

216. We note that the contractual provisions to which a state subjects itself, or its subdivision, may reasonably be subsumed within the ''state requirements'' addressed by section 276(c). Therefore, if a state or a political subdivision thereof uses a contractual agreement as a vehicle to impose certain requirements regarding rates or other aspects of ICS, we would consider, on a case-by-case, fact-specific basis, preempting those requirements to the extent they are ''inconsistent with the Commission's regulations'' as set forth in this Order. Without deciding whether preemption is factually or legally warranted in any particular case, we note that a contrary interpretation could leave states and localities free to undermine the Commission's implementation of section 276 by doing so via a contract, rather than a state law or regulation, which result appears to be counter to Congress's objectives in enacting section 276(c). As the Commission has noted in this very proceeding, ''agreements cannot supersede the Commission's authority to ensure that the rates paid by individuals who are not parties to those agreements are fair, just and reasonable.'' To the extent ICS providers require waiver relief, they may take advantage of the procedures described below.

F. Waivers of Rules Adopted in This Order

217. In the *2013 Order,* the Commission held that an ICS provider that ''believes that it has cost-based rates for ICS that exceed our interim rate caps'' may file a petition for waiver for good cause. The *2013 Order* also confirmed that the Commission's standard waiver process applies to ICS providers. The Commission delegated to the Bureau the authority to approve or deny waiver requests. The Commission articulated the following factors that the Bureau could consider in reviewing a waiver request: Costs directly related to the provision of interstate ICS and ancillary services; demand levels and trends; a reasonable allocation of common costs; and general and administrative cost data. The Commission also noted that, because the adopted interim interstate rate caps were set at conservative levels, it expected that petitions for waiver ''would account for extraordinary circumstances.'' Additionally, the Commission held that, for ''substantive and administrative reasons,'' waiver petitions would be evaluated at the holding company level. The Bureau processed three requests for waiver of the interim interstate rate caps following this guidance and granted a temporary waiver to one provider.

218. In the *Second FNPRM,* the Commission sought comment on the waiver process detailed in the *2013 Order.* Several commenters object to the use of this waiver process to address concerns about the sufficiency of the rate caps. Some ICS providers ask that we review waiver petitions on a facility-by-facility basis in order to review locations where the costs of service exceed the rate caps. One commenter requests an expedited waiver process to allow the adoption of products or services involving costs paid to a third party, such as those involving a software agreement or new security feature. Commenters also suggest that the Bureau issue a blanket waiver excluding juvenile detention centers, secure mental health facilities, and jails with small populations, from our rate caps.

219. We have relied on the Mandatory Data Collection in establishing the rate caps adopted above. For the reasons previously given, we believe our rate caps are more than sufficient to allow carriers to receive fair compensation. We agree with the Petitioners that a tiered rate cap approach, as adopted herein, will reduce the need for waivers. We recognize, however, that we cannot foreclose the possibility that in certain limited instances, our rate caps may not be sufficient for certain providers. For those instances, we reaffirm the waiver standard for ICS providers adopted in the *2013 Order* and delegate to the Bureau the authority to rule on such waivers. Accordingly, an ICS provider that believes the rate caps for interstate and intrastate ICS do not allow for fair compensation may seek a waiver pursuant to the guidance articulated in the *2013 Order.* ICS provider waiver petitions may be accorded confidential treatment to the extent consistent with rule 0.459. We direct the Bureau to endeavor act to on such waivers within 90 days of the provider submitting all information necessary to justify a waiver. As the Commission previously stated, waiver petitions should be filed at the holding-company level. We believe that this approach best captures the way the majority of the ICS market functions; specifically that ICS providers serve multiple facilities utilizing centralized infrastructure, thus spreading related costs across their correctional facility customer base whenever possible. Furthermore, as described in the *2013 Order,* providers will be expected to provide data showing why they are unable to meet their costs under the applicable rate caps. We reiterate that ''unless and until a waiver is granted, an ICS provider may not charge rates above the [applicable] rate cap and must comply with all aspects of this Order . . . .'' However, consistent with Commission precedent,

exigent circumstances may warrant that the Bureau provide interim relief during the pendency of its review of a waiver request.

220. We also conclude that there is insufficient evidence available at this time to support a blanket waiver to providers incurring third-party technology costs or serving high-cost facilities. The Bureau will consider waiver petitions, including those from providers claiming to serve high-cost facilities, and evaluate the details specific to such petitions on a case-by-case basis.

G. Disability Access to ICS

1. Background

221. In the *2012 NPRM,* the Commission noted that ''there is evidence in the record to indicate that inmates with hearing disabilities may not have access to ICS at reasonable rates using TTYs [text telephones].'' Specifically, the Commission cited evidence that ''deaf and hard of hearing inmates who use TTYs have to pay more than their hearing counterparts'' because ''the average length of a telephone conversation using a TTY is approximately four times longer than a voice telephone conversation.'' In light of this record, the Commission sought comment about the ICS access available to deaf and hard of hearing inmates and about the rates such inmates paid for ICS.

222. In the *2013 Order,* the Commission clarified that ICS providers may not collect additional charges for calls made through any type of telecommunications relay service (TRS). In the *Second FNPRM* that accompanied the *2013 Order,* the Commission also noted commenters' assertions that TTY calls take ''at least three to four times longer than voice-to-voice conversations to deliver the same conversational content.'' The Commission, therefore, tentatively concluded that per-minute ICS rates for TTY calls should be 25 percent of the rate for standard ICS calls, and sought comment on this proposal. In addition, the Commission sought comment on a number of other issues related to ICS for inmates who are deaf and hard of hearing, including: (1) Whether and how to discount the per-minute rate for ICS calls placed using TTY; (2) whether action is required to ensure that ICS providers do not deny access to TRS by blocking calls to 711 and/or state established TRS access numbers; (3) the need for ICS providers to receive complaints on TRS and file reports on those complaints with the Commission; and (4) actions the Commission can take to promote the availability and use of video relay service (VRS) and other assistive technologies in prisons.

223. The Commission asked additional questions about accessible ICS in the *Second FNPRM.* Specifically, the Commission sought comment on the following: (1) The actual relative length of TTY-to-TTY and TTY-to-voice calls as compared to voice-to-voice calls; (2) the claim that no ICS provider charges for voice-to-TTY or TTY-to-voice calls because ''the 'interexchange company holding the [state] TRS contract carries the call to the called party,' '' and if true, whether the final reduced ICS rates for TTY calls should only apply to TTY-to-TTY calls; (3) whether AT&T and other entities that provide TRS are providing ICS for TRS calls placed by inmates; (4) how the Commission's relay service registration requirements can be met in a correctional facility setting where the equipment is handled by several users; and (5) the availability of and security concerns relating to devices used with newer technologies, such as videophones used for VRS and point-to-point video communications, devices used for IP CTS, and devices used for IP Relay.

224. Since 2012, when the Commission first sought comment on access to ICS for inmates who are deaf or hard of hearing, the Commission has continued to receive filings expressing concern about these prisoners' lack of access to telephone services that are functionally equivalent to the services available to users of traditional voice services. The Washington Lawyers' Committee (WLC), for example, claims that correctional facilities often fail to make TRS available to inmates. Similarly, Helping Educate to Advance the Rights of the Deaf (HEARD) asserts that ''deaf prisoners in several states have had no telecommunications access for several years, while deaf detainees often spend their entire time in jail with no telecommunication.'' According to the Rosen Bien Galvan & Grunfeld (RBGG) law firm, its clients ''routinely report that their access even to outdated and disfavored [TTYs], particularly in county jail facilities, is limited to nonexistent and that their ability to communicate with loved ones and attorneys is thereby impaired.'' RBGG further asserts that, even when correctional facilities have TTYs, ''they are often not actually available to our clients because they are broken, because staff does not know they exist, or because staff does not know how to use the machines.''

225. In response to the *Second FNPRM,* Securus and GTL contend that correctional facilities, not the ICS providers, ''set correction facility policy as to the amount of access that hearing-impaired inmates (or any inmates) have to telecommunications services.'' GTL also asserts that ''disability access concerns are being addressed by the industry'' and that GTL's inmate calling services and the rates for those services are ''fully compliant with the requirements of the Americans with Disabilities Act (ADA), the Communications Act of 1934, as amended, and current Commission requirements.''

2. Discussion

226. *Functionally Equivalent Access.* We now take measures to address the various concerns and ongoing reports regarding the lack of equal telephone access by inmates. As an initial matter, we note that this proceeding has generally referred to individuals who are ''deaf and hard of hearing,'' in discussing accessibility matters. Because inmates who are deaf-blind or have speech disabilities also use TRS, they, too, have the same or similar policy concerns as inmates who are deaf or hard of hearing. Accordingly, we will now refer more generally to inmates with ''communication disabilities'' when discussing these accessibility issues. Additionally, we note that while our focus here is primarily on calls that are made *by* inmates with these disabilities, some of the policies we adopt requiring access to TRS will also benefit inmates who need to place calls *to* people with such disabilities.

227. Section 225 of the Act requires every common carrier that provides voice services to offer access to TRS within their service areas. Accordingly, all common carriers must make available, or ensure the availability, to their customers of those types of TRS that the Commission has required to be mandatory services provided to the public. At present, the Commission mandates two forms of TRS: TTY-based TRS and speech-to-speech (STS), both of which are provided over the PSTN. We remind ICS providers of their obligations to ensure the availability and provision of these forms of TRS. Consistent with these obligations, ICS providers also may not block calls to 711, a short form dialing code that is used to access TRS provided by state-run TRS programs.

228. We note that several parties have requested that the Commission require correctional facilities to provide more ''modern'' forms of TRS as well, along with the equipment needed to access those services. These parties assert that TTYs are largely outdated and that videophones and captioned telephones

are the standard modes of communication for people with communication disabilities. For example, RBGG urges the Commission's ''active intervention'' to encourage facilities to adopt modern communications technologies, such as videophones. Similarly, the National Association of the Deaf (NAD) asserts that ''correctional facilities should be required to install and provide access to the telecommunications equipment required by deaf and hard of hearing inmates—whether it's a TTY, videophone, captioned telephone, or even an amplified telephone or one that is amplified and has large buttons.''

229. The Communications Act requires TRS to be provided ''in a manner that is *functionally equivalent* to the ability of a hearing individual'' to use conventional voice telephone services. We agree with commenters that limiting all inmates with communication disabilities to one form of TRS, particularly what many view as an outdated form of TRS that relies on TTY usage, may result in communication that is not functionally equivalent to the ability of a hearing individual to communicate by telephone. However, as noted above, at this time, only two forms of TRS, TTY-based TRS and STS, are mandated services for all common carriers. While the Commission *authorizes* compensation from the Interstate TRS Fund for VRS, IP Relay, and both PSTN-based CTS and IP CTS, it does not *mandate* that these types of services be provided by any common carrier at this time. Accordingly, while we are only able to require ICS providers to make TTY-based TRS and STS available to inmates with communication disabilities, or to inmates who communicate by telephone with users of these services at this time, we strongly encourage correctional facilities to work with ICS providers to offer these other forms of TRS.

230. Several inmates with communications disabilities that have commented in the record note that in some instances, using a Telecommunication Device for the Deaf (TDD) is unsatisfactory because ''[o]ur family members and friends who are deaf, are no longer using the obsolete TDD system.'' We reaffirm our existing policy of strongly encouraging correctional facilities to provide inmates with communication disabilities with access to TTYs, as well as equipment used for advanced forms of TRS, such as videophones and captioned telephones. In addition, we strongly encourage correctional facilities to comply with obligations that may exist under other federal laws, including Title II of the ADA, which require the provision of services to inmates with disabilities that are as effective as those provided to other inmates. Access to more advanced forms of TRS, including VRS, IP Relay, CTS, and IP CTS, may be necessary to ensure equally effective telephone services for these inmates. We recognize that some facilities have already begun providing access to alternative forms of TRS, often as the result of litigation brought under these other statutes. We strongly encourage other facilities to continue this trend voluntarily, without the need for further litigation. The Commission will monitor the implementation and access to TRS in correctional institutions and may take additional action if inmates with communications disabilities continue to lack access to functionally equivalent service.

231. *Rates.* Several commenters have also expressed concern about the costs inmates with communication disabilities incur when they use TTYs. HEARD, for example, asserts that TTY calls are ''at least four times slower than voice-to-voice conversations'' and that ''this time estimation does not account for varied literacy levels of users; 'garbled' transmissions that frequently occur in loud settings or with incompatible newer telephone technology; or the time required to connect to the operator, and subsequently to the party being called, among other things.'' One commenter describes his experience as an inmate with communications disabilities:

> [a]fter you give the relay operator your name for the collect call the relay operator put[s] you back on hold once again to see if charges will be accepted by the party at the other end of your call. This process takes at least 5 to 8 minutes. This time is part of the 15-minute time limit that the Department of Corrections has on their timers for each call. Now keep in mind that a regular call costs a total of about $2 but the relay service had a $3.62 hook up fee, then so much per minute after that so you only get 5 to 7 min. and you have to call back and repeat this process.

232. Given the differences between TTY and traditional voice service, several commenters argue that TTY users should be charged a discounted rate for ICS calls. The Prison Law Office, for example, has argued that if the Commission does not take into account the relatively slow speeds of TTY-based conversations, it will be ''in effect placing a surcharge on deaf prisoners.'' The Commission itself tentatively concluded in the *2013 Order* that the per-minute ICS rate for TTY calls should be set at 25 percent of the safe harbor rate of $0.12/minute for debit/prepaid calls and $0.14/minute for collect calls.

233. Neither ICS providers, nor any other commenters, dispute arguments that TTY calls are longer, and therefore more expensive to consumers than non-TTY calls. Instead, Securus merely contends that it receives no additional compensation for this type of call above its tariffed rate. GTL, for its part, generally asserts that its ICS and associated rates are ''fully compliant with the requirements of the Americans with Disabilities Act, the Communications Act of 1934, as amended, and current Commission requirements.''

234. We find that the record overwhelmingly supports the conclusion that TTY calls take significantly longer than voice conversations, due to factors that include the longer time it takes the TTY user to type—rather than speak—his or her part of the conversation; the time delays that occur while the text is transmitted; and the technical difficulties that appear to affect TTY calls disproportionately compared to voice calls. TTY calls through TRS can take even longer than calls between two TTY users, because of the need for such calls to be set up before the communications assistant can connect the TTY user to the voice telephone user, and the need for the communications assistant to transcribe the spoken part of the call and relay it to the TTY user.

235. Given that there does not appear to be any dispute in the record over whether TTY calls take longer to transact than voice calls involving similar content, the question remains whether inmates with communication disabilities (or their families) should be required to pay more for ICS calls than their hearing counterparts simply because they need to rely on TTYs to communicate with their friends and relatives. As explained below, we find that it would be unfairly discriminatory to require TTY users to pay more per call than users of traditional voice telephone equipment.

236. In the *2013 Order,* the Commission clarified that it would be inconsistent with section 225 of the Act for ICS providers to collect ''additional charges'' (*i.e.,* charges in excess of those charged by the ICS provider for functionally equivalent voice communications service) for calls made through any type of telecommunications relay service. The *2013 Order,* however, did not address the relevance of section 276 to ICS provider charges for TRS calls. Section 276, which requires the Commission to ensure that ICS

providers ''are fairly compensated for each and every completed intrastate and interstate call,'' also states that TRS calls ''shall not be subject to such compensation.'' Thus, we believe it is reasonable for the Commission to interpret 276(b)(1)(A) to mean that TRS calls are not subject to the per-call compensation framework adopted herein. Specifically, section 276 exempts both emergency calls and TRS calls from the fair compensation mandate. The exemption of emergency calls means that providers may not charge for emergency calls. We believe it is reasonable to interpret the pairing of TRS with emergency calls as an indication that Congress also intended TRS calls be provided for no charge. Therefore, we prohibit ICS providers from assessing charges for ICS calls between a TTY device and a traditional telephone.

237. As for TTY-to-TTY calls, we find that, because such calls, by their nature, are of longer duration than voice calls, and because inmates with communication disabilities do not have the alternative of placing voice calls, it would be unfairly discriminatory to require TTY users to pay more per call than users of traditional voice telephone equipment. This finding is compelled not only by the evidence in the record, but also by the language of the relevant statutory provision. Section 276 requires the Commission to establish a ''per call compensation plan'' to ensure that payphone providers, including ICS providers, are fairly compensated for ''each and every . . . call.'' Such per-call compensation must be ''fair'' not only to the provider but also to the party paying for the call. Because of the significantly longer time that is necessarily consumed by TTY calls—as compared to the duration of voice telephone ICS calls—we conclude that, to ensure fair compensation on a per-call basis, ICS providers should offer TTY calls at lower per-minute rates than are charged for voice calls, even if such lower rates do not provide the level of *per-minute* compensation determined to be fair for voice telephone calls in the ''per call compensation plan.'' We reach this decision because of the per-call discrimination that would result were we to set the same rates for both types of calls.

238. Accordingly, for the reasons described above, we require that the rates charged by ICS providers for TTY-to-TTY calls be no more than 25 percent of the rates the providers charge for traditional inmate calling services. We recognize that this discounted rate may not represent the same level of compensation that is provided for voice telephone calls carried over the same networks, but we have considered any additional costs that might be incurred by providers in setting the rate caps for ICS and concluded that there is enough room within the general rate caps to ensure the providers are still fairly compensated. Thus, ICS providers can expect to recover the cost of the TTY discount through the rates they charge other users, who account for the vast majority of ICS calls.

239. In setting the mandatory discount for ICS calls involving TTYs, we are cognizant of Securus' claim that it cannot track TTY calls separately from other ICS calls and that any type of TRS-related billing requirement ''would be extremely time-consuming and burdensome.'' If Securus, or any other ICS provider, finds it too burdensome to track TTY calls and bill customers the discounted rate for those calls, it may opt to provide TTY-to-TTY calling for free. We expect the cost of forgoing the discounted fees for the relatively small number of TTY users of ICS will be nominal and that providers will be able to recover those costs through the ''cushion'' we have built into our rate caps. We find that the benefit to inmates that use TTY and TRS technologies outweighs any nominal costs to ICS providers. Finally, we note that facilities and ICS providers can avoid costs related to TRS calls by allowing inmates to use IP-based forms of TRS, such as VRS, IP Relay and IP CTS. However, the record indicates that ''only a handful of prisons are equipped with videophones (*e.g.,* Vermont, Virginia, and Wisconsin) and no prison or jail is known to have installed captioned telephones, many using security as an excuse for discrimination.'' These calls would not require the services of an ICS provider and would be provided free of charge to both the user and to the facility.

240. *Disability-Access Related Reporting.* In discussing ICS disability access issues in the *2013 Order,* the Commission asked whether ICS providers should be required to collect and report: ''(i) Data on TRS usage via ICS, and (ii) complaints from individuals that access TRS via ICS.'' The Commission also sought comment ''on the benefits and burdens, including on small entities, of imposing these reporting requirements.''

241. In the *Second FNPRM,* the Commission again sought comment on possible recordkeeping and reporting requirements specific to accessible ICS. Specifically, the Commission asked if ''ICS providers [should] be required to report to the Commission the number of disability-related calls they provide, the number of problems they experience with such calls, or related complaints they receive?'' In response, the NAD asserts that the Commission should require ''complaints, technical problems, how much telecommunications access is provided as compared to non-deaf or hard of hearing inmates, and whether there is access to modern telecommunications equipment.'' HEARD asserts that ''[t]he Commission can generate a genuine sense of accountability simply by requiring ICS providers to collect and report data on calls made using relay service, especially if prisoners and family members are paying for the service.'' More specifically, HEARD suggests that, pursuant to the Commission's existing consumer complaint procedures, correctional facilities should be required to report how long they have been without relay service or access, and if a recent change in the ICS provider preceded the problem.

242. Securus counters that ''tracking of TTY is not possible'' and that culling out calls would require Securus ''to write a new computer application for its billing system'' and ''establish 'separate databases at each correctional facility to identify inmates that may use a TTY device or call friends or family that require the use of a TTY or similar device.' '' Securus further asserts that this difficulty is ''compounded for any facility that does not use Prison Identification Numbers in association with its inmate telephone system.'' Securus asserts generally that any type of TRS-related billing or call recordkeeping requirement ''would be extremely time-consuming and burdensome.''

243. GTL separately asserts that the new technologies it is introducing, which are ''better categorized as advanced communications services (ACS), enhanced services, or simply new technologies'' are already subject to certain disability access requirements, including recordkeeping and reporting requirements. GTL is specifically referring to rule 14.31, which requires ACS providers discontinuing a product or service to create and keep records (for a two year period) relating to: (1) Their efforts to consult with individuals with disabilities; (2) the accessibility features of their products and services; and (3) the compatibility of their products and services with peripheral devices or specialized customer premise equipment commonly used to help individuals with disabilities achieve access. Additionally, ACS providers must file an annual compliance certificate with the Commission.

Finally, ACS providers facing formal or informal accessibility complaints must produce responsive records to the Commission upon request.

244. After reviewing the record, we adopt the reporting requirements proposed by HEARD and supported by NAD. Specifically, we require all ICS providers to include in the Annual Reporting and Certification filing described below: (1) The number of disability-related calls they provided; (2) the number of dropped disability-related calls they experienced; and (3) the number of complaints they received related to access to ICS by TTY and TRS users, *e.g.,* dropped calls, poor call quality and the number of incidences of each. We agree with HEARD that these reporting requirements will foster accountability on the part of ICS providers. We believe these reporting requirements will encourage providers to actively address problems affecting users' ability to access TRS (including TTY) via ICS. Moreover, the reports will give the Commission the information needed to assess ICS providers' compliance with the requirements adopted herein, as well as those imposed by section 225, including the statutory requirement that individuals with communications disabilities must be able to engage in communication by wire or radio ''in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability,'' as well as the requirement that TRS be provided ''in the most efficient manner.''

245. Securus' main objection to the reporting requirements appears to be related solely to the difficulty of tracking TRS calls. But the record indicates that TRS calls make up only a small portion of ICS calls. Moreover, TTY-based TRS calls require specialized equipment and/or require calling a designated number such as 711. Either scenario should facilitate tracking TTY-based TRS calls. For instance, it should not be difficult to track a relatively small number of calls made from specialized equipment located in a correctional facility. Moreover, any burdens associated with providing limited reporting on these calls are far outweighed by the benefits such reporting will offer in terms of greater transparency and heightened accountability on the part of ICS providers. For example, our reporting requirements will facilitate monitoring of issues related to TRS calls, encourage greater engagement by the advocacy community, and provide the Commission the basis to take further action, if necessary, to improve inmates' access to TRS.

246. We further address concerns regarding the burdensomeness of our reporting requirements by establishing a safe harbor that will allow ICS providers to avoid any reporting obligations if certain conditions are met. Specifically, if an ICS provider either (1) operates in a facility that allows the offering of additional forms of TRS beyond those we currently mandate or (2) has not received any complaints related to TRS calls, then it will not have to include any TRS-related reporting in the Annual Report detailed below, provided that it includes a certification from an officer of the company stating which prong(s) of the safe harbor it has met. If the facility an ICS provider serves either ceases allowing additional forms of TRS beyond those we mandate or the ICS provider begins to receive TRS-related complaints, however, it must include all required TRS reporting information in its next Annual Report. We note that a report that includes the number of TRS calls provides important context for determining whether the number of complaints or dropped calls reported by a provider is problematic. We believe that allowing these safe harbors will provide equal or superior benefits over the reporting requirements because if taken advantage of they help mitigate ICS providers' concerns over the burdens associated with reporting (although we believe these burdens are minimal), and will help drive the adoption of more modern forms of TRS by correctional facilities, which helps further the deployment of ICS as well as helps maintain or increase contact between more incarcerated persons and the outside world.

247. *Cost-Benefit Analysis.* We find that the reporting and recordkeeping requirements related to disability-access ICS calling adopted in this Order are not overly burdensome. Parties have complained that the disability access communications within correctional facilities are not priced at rates that are just, reasonable, and fair, and that Commission intervention is necessary.

248. As discussed above, we conclude that these recordkeeping requirements are necessary to foster accountability on the part of ICS providers, and will encourage providers to address problems limiting users' ability to access TRS (including TTY) via ICS. Further, the reporting requirements will give us the information we need to assess ICS providers' compliance with the requirements adopted herein, as well as those imposed by section 225.

249. We find unpersuasive the objections raised to the reporting requirements. Reporting the number of problems and complaints associated with TRS calls does not seem unduly burdensome. TRS calls make up only a small portion of ICS calls. Moreover, as noted above, TTY-based calls require specialized equipment and/or require calls to a designated number, such as 711; either scenario should allow for ease of tracking. Moreover, any burdens associated with providing limited reporting on these calls are far outweighed by the benefits such reporting will offer in terms of greater transparency and heightened accountability on the part of ICS providers. We further mitigate any potential burden from our reporting requirements by establishing safe harbors that allow ICS providers to avoid any reporting obligations if certain conditions are met, as discussed more fully above.

H. Section 276 Is Technology Neutral

250. We confirm the findings in the *2013 Order* that section 276, by its terms, is technology neutral with respect to inmate calling services. As such, our rules adopted herein apply to ICS regardless of the technology used to deliver the service. Therefore, if a particular service meets the relevant definition in our rules, then it is a form of ICS that was subject to our interim rules and that is subject to the rules we adopt today. The nomenclature used to describe a service is not dispositive of whether the service is or is not ICS. Whether any particular service meets those definitions requires a fact-specific inquiry that we may adjudicate if necessary. (We note that our definition of ''inmate telephone'' is broad and does not inherently rule out advanced services, and that the burden is on the provider in the first instance to determine whether it is providing ICS, and if it is not certain, to seek guidance from the Commission, for example in the form of a Declaratory Ruling.)

I. Transition and Existing Contracts

251. In establishing the transition, we balance the critical goal of providing necessary relief to consumers from unreasonably high ICS rates while remaining mindful of the potential impact on ICS providers and facilities to ensure a smooth transition to implement the new reforms. In designing our transition for this Order, we build on the lessons learned from implementing the 2013 ICS reforms. The record does not indicate that providers experienced difficulties implementing the rate caps within 90 days after the *2013 Order*'s publication in the **Federal Register**. For example, the record shows that one provider sent a one-page letter to its customers informing them of the rate

changes to be implemented as a result of the Commission's *2013 Order.* The letter provided nine days' notice before rates changed. While we find that a multi-year transition period for new rate caps is unnecessary, we recognize that the new rate caps and ancillary service charge framework adopted in this Order may require some adjustment time for ICS providers and facilities. Accordingly, the reforms adopted in this Order will become effective March 17, 2016 for prisons and June 20, 2016 for jails.

252. This transition period reflects a careful balancing of the important goal of expediting relief to end users while allowing the necessary time to prepare for any impact our new rules may have on ICS providers and correctional institutions. In adopting the transition, we note as a threshold matter that the issue of ICS reform has been pending for years and, with the substantial progress made in recent years through the *2013 Order* and *Second FNPRM,* ICS providers and facilities have been on notice that the Commission may reform ICS. With that consideration in mind, we transition to our new rules March 17, 2016 for prisons and June 20, 2016 for jails. Below we also discuss the effect of our adopted reforms on existing ICS contracts.

1. Transition Proposals in the Record

253. In the *Second FNPRM,* the Commission sought comment on a variety of transition paths for the new rules and encouraged commenters advocating for a transition to identify the appropriate transition framework and the justifications for doing so. For example, the ICS providers that submitted the Joint Provider Proposal suggested that ''[t]he new rate caps should become effective 90 days after adoption, along with any site commission reductions and ancillary fee changes outlined below.'' They further asserted that ''[t]his period for implementation should ensure ICS providers and correctional facilities have adequate time to implement the new rate caps and any corresponding reductions in site commissions, including any contract amendments or adjustments that may be necessary.'' Pay Tel suggested a 90-day, after final order publication transition period for transaction fees, third-party money transfer service fees, and ancillary fees and an 18-month transition period for jail and prison rate caps. In the *Second FNPRM* the Commission also specifically sought comment on the 90-day delayed effective date we implemented in the *2013 Order* as well as a two year transition.

254. In response to the *Second FNPRM,* many interested parties submitted detailed comments explaining how the Commission should structure the transition to new rules for ICS rates. Commenters advocated for a variety of transition period lengths and the responses varied depending on the type of fee being transitioned. Some commenters suggested that all of the new rate caps, ancillary service charges, and other charges should be transitioned together. For example, GTL explained that ''[i]t is unlikely that the Commission's goal of achieving market-based ICS rates will occur without simultaneous Commission action to establish backstop rate caps for all ICS rates, to transition site commissions to admin-support payments, and to define industry-wide ancillary service charges and fee caps.'' We took such arguments into consideration in designing our transition.

255. At the other end of the spectrum, commenters advocating for a longer transition contend that longer transitions are necessary to ensure that correctional authorities and ICS providers can plan for the new regulatory regime. As discussed above, facilities have received certain inducements, such as site commissions, from ICS providers for selecting them to be the sole provider of ICS in their facilities. These commissions have been used for a variety of purposes, some of which are wholly unrelated to the provision of ICS to inmates and their families. We acknowledge that our adopted rules and requirements may affect facility budgets, and we want to ensure that those facilities have time to account for disturbances to their budgets, which is why we are not adopting an immediate transition.

256. Proponents of the shorter length transitions note that ICS providers and facilities have been on notice of upcoming changes and have successfully adjusted quickly to new rules in the past. For example, NJAID and NYU IRC explain that ''[i]n New Jersey and around the country, states and localities were able to implement the 2013 Order within ninety days. Moreover, these governments have been on notice since the issuance of the First FNPRM in 2013.'' Commenters advocating for shorter length transitions expressed confidence that 90 days was sufficient time to implement caps and would be the timeliest option. Indeed, some parties argued that no more than 60 days are necessary to complete the transition. Conversely, others worry that abbreviated transitions, such as 90-day transitions, will not be feasible for facilities to implement. However, other commenters point out that ''[a]lmost every ICS contract has a provision for renegotiation due to changes in the regulatory environment, so no one year grace period should be required for implementation of rates and fees.'' CenturyLink is concerned that a 90-day transition is not ''realistic,'' and advocates for a substantially longer transition period. NSA argues that a 90-day transition is not sufficient for jails, in particular. NSA notes that the sheer number of contracts to be renegotiated would require additional time to complete, specifically noting that there are ''over 2000 jails in the country and only a ''handful of ICS providers.'' Thus, NSA explains, each ICS provider would have to renegotiate ''potentially hundreds of contracts with Sheriffs and jails in a 90-day period.'' According to NSA, 90 days is not enough time to allow providers to negotiate all of these contracts and for those contracts to be approved by the relevant authorities. These concerns are echoed by Praeses and others. We agree that these parties raise valid concerns regarding the time needed to transition all of the country's jails to the new rate regime. Accordingly, we adopt a six-month transition period for jails, in order to give providers and jails enough time to negotiate (or renegotiate) contracts to the extent necessary to comply with all of the rules adopted herein. We do not believe an extended transition is necessary for prisons to obtain new or revised contracts, however. There are far fewer prisons/departments of correction than jails (typically one per state) and providers are likely to prioritize negotiations with prisons over negotiations with jails, particularly given that prisons tend to house much larger inmate populations and generate significantly more ICS revenues than jails. Moreover, according to the record more than 10 prison systems already have rates at or below our rate caps. Therefore, we adopt a 90-day transition period for prisons.

2. Implementation of Reforms and Transition Periods

257. The record reflects commenters advocating for immediate transitions and also for transition periods ranging from 90 days to up to three or four years. We find the arguments for a shorter transition period to be the most persuasive. The immediate transition and long transition options are impractical. For example, proponents of an immediate transition generally explained that longer transition periods are not necessary and would only serve to delay relief from quickly reaching inmates and their families. Despite such

arguments, we think that the reforms adopted in this Order warrant providing some amount of time to ensure a smooth transition for end users, providers, and facilities.

258. As explained above, the record clearly shows that charges for ancillary services have increased since the *2013 Order.* This highlights that ICS providers have the incentive and ability to increase ancillary service charges absent reform, which could have the effect of frustrating the Commission's and Congress's policy goals by undermining the rate caps we adopt. While we have received substantial comment in the record about the challenges associated with transitioning for our site commission action and rate caps, the record lacks explanation as to why an immediate transition for ancillary service charges would be burdensome for ICS providers. As such, we find that transitioning ancillary service charges on March 17, 2016 for prisons and June 20, 2016 for jails is appropriate because it will provide significant relief to many ICS end users, while still giving providers ample time to adjust their systems and procedures.

259. As explained above, our goal is to ensure a reasonable transition and minimize disruption, while providing relief to end users as quickly as possible. We have the benefit of understanding how the transition to implement the interim interstate rate caps occurred. Evidence in the record about actual transition periods calls into question protestations in the record about the excessive time it will take to renegotiate contracts, particularly for prisons. We adopt here a 90-day transition from publication in the **Federal Register** for prisons and six months from publication in the **Federal Register** for jails for the adopted rate caps. We find that this length of time adequately balances the pressing need for reform, affords ICS providers enough time to prepare for the new rates, and is amply supported by the record.

260. Evidence in the record indicates that some ICS providers and their customers have been acting to modify contracts in an attempt to lock in attractive terms at the expense of the ratepayers, the end users, in anticipation of this Order. We are concerned that such activity may also occur in between the adoption and effective dates of this Order. We will be vigilant in monitoring the industry during the transition period. If we observe or are made aware of evidence of price gouging or other harmful behavior through, but not limited to, increased rates, ancillary service charges, and/or site commissions, we will not hesitate to take appropriate remedial action up to and including enforcement action pursuant to our legal authority under sections 201 and 276 or referral to another appropriate agency.

J. Anti-Gaming Provisions

261. We are concerned that parties may seek to negotiate agreements aimed at circumventing the rules we adopt in this Order, and we are particularly concerned that parties will have an incentive to do so before our new rules take effect. To minimize this type of ''gaming,'' we prohibit ICS providers from entering into new contracts (including contract renewals)—or negotiating amendments to existing contracts—that would require or permit providers to charge rates in excess of our adopted rate caps, impose ancillary service charges that are prohibited by this Order, or charge ancillary service charges that exceed the caps adopted in this Order. These prohibitions will take effect immediately upon publication of the Order in the **Federal Register**.

262. We find that there is good cause to make this requirement effective upon publication. There is evidence in the record that this type of gaming has already occurred in anticipation of the changes we enact in this Order. For example, a recent Securus contract requires the payment of a $4 million minimum annual guarantee (MAG), which advocates have called a ''signing bonus,'' and subsequent MAG payments equal to the greater of $3.5 million or 81 percent of commissionable revenues per year. In determining whether good cause exists, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' In this case, the rule must take effect as soon as possible in order to minimize gaming of the sort already noted in the record, and the attendant harm to prisoners and their families in the form of unjust, unreasonable, and unfair rates and fees. In these circumstances, we find that the need for immediate implementation outweighs any concerns that parties may not be afforded sufficient time to prepare for the effective date of this prohibition, particularly given that parties have long been on notice that the Commission might impose new regulations governing ICS rates and ancillary fees. We are not requiring providers to take any action; instead we are merely requiring that they refrain from taking certain steps that would effectively undermine our regulations governing rates and ancillary service charges. Accordingly, providers do not need time to prepare to meet this prohibition. Therefore, on balance, we find good cause to make this requirement effective upon publication in the **Federal Register**.

K. Annual Reporting and Certification Requirement

263. In the *2013 Order,* the Commission adopted an Annual Reporting and Certification Requirement that included the submission of interstate and intrastate ICS rate and demand data, as an additional means of ensuring that each and every ICS provider's rates and practices were just, reasonable, and fair, and remain in compliance with the *2013 Order,* as well as to facilitate any future enforcement that may be needed regarding the adopted rules. Additionally, the Commission adopted a requirement that an officer or director from each ICS provider file an annual certification with the Commission as to the accuracy of the data filed and as to the provider's compliance with all portions of the adopted *Order.* These requirements were later stayed by court order.

264. *Recordkeeping and Reporting.* The Joint Provider Proposal suggests that ICS providers ''should be required to provide certain information to the Commission annually for three (3) years to ensure the caps on per-minute rates and any admin-support payments are implemented as required.'' Specifically, the Proposal suggests that such information should include four things: ''a list of the ICS provider's current interstate and intrastate per-minute ICS rates, the ICS provider's current fee amounts, the locations where the ICS provider makes admin-support payments, and the amount of those admin-support payments.'' The Commission sought comment on this proposal in the *Second FNPRM.*

265. In its comments, CPC recommends that the Commission look to the ''Alabama model,'' including the ''specific reporting requirements that will serve to monitor compliance with those [adopted] restrictions.'' In its 2014 Further Order Adopting Revised Inmate Phone Service Rules Order, the Alabama PSC adopted a number of recordkeeping and reporting requirements. Items to be recorded and reported annually include, but are not limited, to, monthly number of local, intrastate, and interstate calls; monthly local, intrastate, and interstate minutes of use; monthly local, intrastate, and interstate call revenue, divided into collect, prepaid collect, prepaid debit, prepaid inmate calling card, and direct-billed service, divided by facility; ancillary call charges;

unused prepaid collect, prepaid debit, and prepaid inmate phone card account balances; and total number of calls disconnected for suspected three-way call violations. That order was temporarily stayed by court order which expired on July 1, 2015.

266. We find that a recordkeeping and reporting requirement will best serve the Commission's stated goals of ensuring that each and every ICS provider's rates and practices are just, reasonable, and fair, and that they remain in compliance with this Order. We also believe that an annual recordkeeping and reporting requirement will help the Commission capture any trends or changes in calling patterns, will facilitate any future enforcement action, and allow other interested parties the ability to monitor ICS providers' compliance with the Order. We also believe that such a requirement is necessary because the ICS industry is modernizing and will continue to change. Consistent with the Commission's approach in the *2013 Order,* if after an investigation it is determined that ICS providers rates and/or ancillary service charges are unjust, unreasonable or unfair under sections 201 and 276 of the Act, lower rates will be prescribed and ICS providers may be ordered to pay refunds. Providers also may be found in violation of our rules and face additional forfeitures.

267. We thus require all ICS providers to provide, on an annual basis, categorized by facility and size of facility, the following information: First, we require all ICS providers to file their current interstate, international and intrastate ICS rates. Second, we require all ICS providers to file their current ancillary service charge amounts and the instances of use of each. Third, where an ICS provider makes site commission payments, we require the ICS provider to file the monthly amount of such payment. Fourth, for ICS providers that provided video visitation services, either as a form of ICS or not, during the reporting period, we require that they file the minutes of use and per-minute rates and ancillary service charges for those services. Fifth, as discussed in greater detail in the Disability Access section above, we also require that ICS providers report: (1) The number of disability-related calls they provided; (2) the number of problems they experienced with such calls, *e.g.,* dropped calls, poor call quality and the number of incidences of each; and (3) the number of complaints they received related to access to ICS by TTY and TRS users.

268. In order to facilitate compliance with this requirement, we direct the Wireline Competition Bureau to develop a template for such annual reports and provide for confidential treatment of any particular information warranting it, consistent with our rules. We believe this will help ensure that the incoming information is provided in the most straight-forward and consistent manner. The use of such a template will also be beneficial to any interested parties that want to view the information thus encouraging increased public participation in this proceeding. Each annual report shall be submitted to the Commission by April 1st of each year, regarding the providers' interstate, international and intrastate ICS. The first annual report will be due after the Commission publishes Office of Management and Budget (OMB) approval pursuant to the Ordering Clauses below. If for example, OMB approval is granted in 2016 then the first annual report and certification (as discussed below) will be due on April 1, 2017 and cover the time period from January 1, 2016 to December 31, 2016.

269. *Cost-Benefit Analysis.* We find that a recordkeeping and reporting requirement serves the Commission's goal of ensuring that ICS rates and practices are just, reasonable, and fair, and that they remain in compliance with this Order. We find, on balance, that the benefits of such recordkeeping and reporting outweigh any potential burden that may be imposed.

270. We find that such recordkeeping and reporting requirements will help monitor ICS providers' compliance with the Order, capture any trends or changes in calling patterns, and will facilitate any future enforcement action. Such a requirement is necessary because the ICS industry is modernizing and will continue to change.

271. We find very few objections raised to the reporting requirements, and none to be persuasive. Additionally, we also find no cost objections to these requirements. We have taken steps to minimize burdens on providers by adopting less burdensome recordkeeping requirements than some of those suggested by commenters. Moreover, any burdens associated with providing limited reporting on these calls are far outweighed by the benefits such reporting will offer in terms of greater transparency and heightened accountability on the part of ICS providers. Additionally, these data will guide the Commission as it evaluates next steps in the Further Notice.

272. *Annual Certification.* The participants in the Joint Provider Proposal suggest that all ICS providers should be required, in addition to their recordkeeping and reporting requirements, to submit an annual certification signed by the company Chief Executive Officer, Chief Financial Officer, and General Counsel, under penalty of perjury, certifying that the company is in compliance with the Commission's ICS rate rules and adopted payment rules. CenturyLink counters that ''there is no need for more than a single officer to certify that the company has complied with Commission rules.''

273. We agree with CenturyLink that ''there is no need for more than a single officer to certify that the company has complied with Commission rules.'' We find that, on balance, requiring more than one officer of an ICS provider to certify to compliance would be unnecessarily burdensome on some providers and is in fact, contrary to the manner in which the Commission conducts other annual certifications. Therefore we adopt CenturyLink's proposal and require one officer of each ICS provider to annually certify its companies' compliance with our adopted rules. The annual certification should be submitted at the same time as the annual report.

L. Consumer Disclosure Requirements

274. *Background.* In the *2013 Order,* the Commission reminded providers of their current and ongoing obligations to ''comply with existing Commission rules.'' Specifically, the Commission reminded providers of their obligations pursuant to section 64.710 of our rules, which requires providers of inmate operator services to disclose to the consumer the total cost of the call prior to connecting it, including any surcharges or premise-imposed fees that may apply to the call as well as methods by which to make complaints concerning the charges or collection practices. Additionally, ICS providers that are non-dominant interexchange carriers must make their current rates, terms, and conditions available to the public via their company Web sites. Any violation of such responsibilities, or failure to comply with existing rules, may subject ICS providers to enforcement action, including, among other penalties, the imposition of monetary forfeitures.

275. In the *Second FNPRM,* the Commission sought comment on ''how to ensure that rates and fees are more transparent to consumers'' and specifically on the requirement that ICS providers notify their customers regarding the ICS options available to them and the cost of those options. ICS providers that offer interstate toll

service are already required to post their rates on their Web sites, and, to the extent they offer inmate operator services, their live agents are already required to make certain notifications to customers. The Commission sought comment on whether providers' Web sites, automated IVRs, and live agents should be required to offer in a more prominent fashion no-cost or lower-cost options before offering other, higher-priced optional services. The Commission also sought comment on two reform proposals that offered suggestions for requiring the publication of ancillary service charges.

276. The Joint Provider Proposal, acknowledging existing requirements for providers to publish interstate rates, terms and conditions on their Web sites, offered a detailed proposal regarding notification requirements for so-called ''convenience or premium payment options,'' and suggested that all providers be required to ''clearly and conspicuously identify the required information . . . so that it is actually noticed and understood by the customer.'' Specifically, the Joint Provider Proposal suggests that an ICS provider ''may provide this information to consumers (1) on its Web site, (2) in its web-posted rates, terms, and conditions, (3) orally when provided in a slow and deliberate manner and in a reasonably understandable volume, or (4) in other printed materials provided to a customer.'' The providers that signed on to the Joint Provider Proposal suggest that ''clear and conspicuous'' means that ''notice would be apparent to the reasonable customer,'' and that to determine the effectiveness of the disclosure, the Commission should ''consider the prominence of the disclosure in comparison to other information, the proximity and placement of the information, the absence of distracting elements, and the clarity and understandability of the text of the disclosure.'' Pay Tel suggests that on a Web site, postings must list call rates and fees, as well as refund instructions. Pay Tel also suggests that the vendor Web site must provide a link to the FCC Enforcement Bureau Web site and the applicable state regulatory agency Web site. Pay Tel also suggests making facility-specific printed material available at each facility. The Commission explicitly sought comment on these proposals in the *Second FNPRM.*

277. In comments to the *Second FNPRM,* CenturyLink notes that especially in jails and short-term facilities, payment decisions are ''typically made in 'real-time,' as the call is received from the inmate'' and that ''there is no reasonable way for called parties to make informed decisions unless the ICS provider proactively informs them of options in clear, concise language prior to payment.'' CenturyLink further asserts that ''simple posting[s] on Web sites or reactive responses upon request are not sufficient'' when faced with time-sensitive situations such as initial incarceration. The record indicates that many consumers face the problem of uncertainty with respect to the cost of ICS. Praeses argues that in addition to disclosing their ancillary service charges in a prominent location on their Web sites, providers should be required to disclose all applicable fees at the time that a consumer seeks a service that is subject to an ancillary service charge from a provider, but prior to the inmate or call recipient incurring the fee. DC Prisoners' Project of the Washington Lawyers' Committee suggests that the Commission require all ICS providers to train their staff to disclose all rate and fee information to anyone who contacts the provider. In addition to the suggestions in the Joint Provider Proposal, GTL asserts that the Commission ''should enforce its existing requirements regarding oral disclosures and the posting of rates, terms, and conditions.'' GTL notes that ''ICS providers have 'ongoing responsibilities' to comply with these existing rules, and violations of those responsibilities or failure to comply with those existing rules could subject ICS providers to enforcement action.''

278. *Discussion.* We believe that transparency in rates, terms, and fees will facilitate compliance with the reforms and ensure that consumers are informed of their choices. We find persuasive arguments that ICS payment decisions are often made in ''real time,'' especially in short-term detention facilities, and ''there is no reasonable way for called parties to make informed decisions'' unless rates and terms are clearly available for consumers prior to the commencement of the call. For example, transparency about the rates charged for ICS will provide substantial consumer protection benefits by empowering consumers to make informed decisions about the ICS offerings they decide to use. We also applaud voluntary commitments that enhance transparency for consumers. Here, we supplement our existing rules to require ICS providers to clearly and accurately disclose their interstate, international and intrastate rates and ancillary service charges to consumers. The new rule we adopt will provide key consumer benefits with minimal burden on ICS providers. Ensuring that end users know the costs of the services they seek to use will help consumers make informed decisions about what types of services they can afford and for what amount of time.

279. We do not mandate a specific format for how consumer disclosures must be made. Rather, we find that suggestions for disclosure such as those in the Joint Provider Proposal offer a reasonable framework as to how to make these disclosures. However, we note that this would not necessarily be the only framework for compliance. We will formally evaluate the reasonableness of the Joint Provider Proposal and any other disclosure formats if and when complaints arise as to the adequacy of the disclosures. We note that each failure to disclose all charges to consumers is counted as an individual violation, which should create a significant incentive for compliance. In addition, the Commission shall evaluate disclosures of all consumer charges for reasonableness, in part, on the basis of the following factors:

- Disclosure of information regarding all material charges, such as the applicable rate, any and all ancillary service charges—whether one time or recurring—including those to initiate service, and the name, definition and cost of each rate or fee;
- Use of plain language accessible to current and prospective end users;
- Description of single call and related services and disclosures making clear that consumers have less-costly options rather than single call and related services;
- Ability of end users to easily understand the disclosure;
- Timeliness of any updates/changes to the rates and fees, prior to any updates/changes;
- Availability of the disclosure in a prominent location on the ICS provider's Web site;
- Listing of the name, address, and toll-free number of the ICS provider; and
- Listing of the toll-free number for the FCC Consumer Help Center (888–225–5322).

280. Providers should already be informing customers about the total amount on a per-call basis that they will be charged so the disclosure requirements should not be onerous or a significant new burden. Indeed, the addition to our rules with respect to ancillary service charges should in fact simplify transparency, as it greatly reduces the number and variable rates of allowable ancillary service charges, and thus charges ICS providers must disclose to consumers. This information

is relevant to consumer decision making, and the providers must also keep this information in order to comply with the Annual Reporting and Certification Requirements adopted herein.

281. The new disclosure rule discussed above falls well within the confines of the First Amendment. As explained, these disclosures serve important government purposes, ensuring that end users have accurate and accessible information about ICS providers' services. This information is central both to preventing consumer deception and to the overall deployment and operation of ICS.

282. The Supreme Court has made plain in *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio* that the government has broad discretion in requiring the disclosure of information to prevent consumer deception and ensure complete information in the marketplace. Under *Zauderer,* mandatory factual disclosures will be sustained ''as long as disclosure requirements are reasonably related to the State's interest in preventing deception to consumers.'' As the Court observed, ''the First Amendment interests implicated by disclosure requirements are substantially weaker than those at stake when speech is actually suppressed.'' The DC Circuit recently reaffirmed these principles in *American Meat Institute* v. *United States Department of Agriculture,* an en banc decision in which the Court joined the First and Second Circuit Courts of Appeals in recognizing that other government interests beyond preventing consumer deception may be invoked to sustain a disclosure mandate under *Zauderer.*

283. The new disclosure rule and disclosure language suggested in this Order clearly pass muster under these precedents. Preventing consumer deception in the ICS market lies at the heart of the disclosure rule we adopt today. The Commission has found that ICS providers have the incentive and ability to engage in harmful practices, as discussed above. Similarly, the suggested disclosure language is designed to prevent confusion to all consumers of the ICS providers' services, and serve to curb providers' incentives to engage in harmful practices by shedding light on the business practices of ICS providers. Accurate information about ICS provider offerings encourages consumer choice and the widespread deployment of ICS. In sum, the government interests supporting the disclosure rule (as well as the suggested disclosure language), in addition to the interest of preventing consumer deception, are substantial and justify our consumer disclosure suggestions.

284. In addition, the disclosure rule adopted in this Order meets the analysis the Supreme Court developed for commercial speech cases in *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n. Central Hudson's* test first asks whether the expression is protected by the First Amendment, which requires that the speech concern lawful activity and not be misleading. Next, the Court asks whether the asserted governmental interest is substantial. If the first two prongs of the analysis are met, the Court then determines whether the regulation directly advances the governmental interest asserted and whether it is not more extensive than necessary to serve that interest. Requiring ICS providers to disclose information about ICS rates meets this four-part test. First, ICS providers' rate information qualifies as an expression protected by the First Amendment, as it is speech concerning lawful activity that is not misleading. Second, as explained elsewhere in this Order, the Commission has a substantial interest in consumer protection and advancing the public interest, particularly where, as here, Congress has directed the Commission to ensure that ICS rates are just, reasonable and fair, pursuant to regulations that redound ''to the benefit of the general public.'' Third, as explained above, the regulation directly advances the public interest and consumer protection in requiring disclosure of this information, as transparency in rates and charges allows consumers to make more informed choices. Finally, this new consumer disclosure requirement is not more extensive than is necessary to protect consumers. Since ICS providers have already been operating under similar requirements, this information is readily available to them and, as explained above, we do not prescribe a particular format for how consumer disclosures must be made, thereby affording providers leeway to comply with the revised rule in a flexible, individualized manner that minimizes burden.

285. *Cost-Benefit Analysis.* We find that, on balance, requiring ICS providers to disclose information for their intrastate, interstate and international ICS rates, categorized by facility and size of facility, as well as ancillary service charges, is not overly burdensome. These requirements are necessary to ensuring that end users know the costs of the services they seek to use and helps consumers make informed decisions about what types of services they can afford and for what amount of time.

286. The Commission has found that ICS providers have the incentive and ability to engage in harmful practices, as discussed above. Commenters have asked the Commission to mandate additional disclosure and transparency regarding ICS rates and fees. Similarly, these disclosure requirements are designed to prevent confusion to all consumers of the ICS providers' services, and serve to curb providers' incentives by shedding light on the business practices of ICS providers. Numerous commenters support these reforms.

287. These requirements provide key consumer benefits with minimal burden on ICS providers. Providers currently are required to post their rates publicly on their Web sites. Additionally, providers must keep this information to comply with the Mandatory Data Collection and Annual Reporting and Certification Requirements adopted herein.

288. To minimize any potential burden on providers, the Commission does not prescribe a particular format for how consumer disclosures must be made, but suggests a framework for consideration and allows providers flexibility in adopting such disclosures, thus allowing providers with maximum flexibility and minimum burden.

M. Severability

289. All of the rules that are adopted in this Order are designed to ensure just, reasonable, and fair ICS rates. Each of the reforms we undertake in this Order serve a particular function toward this goal. Therefore, it is our intent that each of the rules and regulations adopted herein shall be severable. We believe that ICS end users will benefit from the rates caps adopted and will also benefit separately from the adopted ancillary service charge caps. If any of the rules or regulations, or portions thereof including, for example, any portion of our rate caps and ancillary service charge rules, are declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall be in full force and effect.

N. Outstanding Petitions

290. After the Commission released the *2013 Order,* numerous entities petitioned the Commission for a stay of the new rules and requirements. The requests for stay generally expressed concern about one or more of the following categories of issues: (1) That a ''one-size-fits-all'' approach for ICS rate reform will be ineffective, and ignores the fact that jails incur real costs

and will face budget shortfalls under the Commission's adopted approach; (2) the continued need for site commissions, or a concern about how to manage correctional budgets built on a reliance on those site commissions; (3) a concern about the Commission seeking comment on asserting jurisdiction over intrastate ICS calls or classifying all ICS calls as interstate; (4) a potentially harmful impact on the security at facilities and the safety of citizens stemming from the Commission's rules and requirements; and (5) general requests that the Commission stay its Order with no legal analysis or justifications for the request. We dismiss the first four categories on the basis that the present order adequately addresses and answers the arguments and concerns contained within them. We adopt tiered rate caps based on population size, address site commissions and security concerns, as well as assert jurisdiction over intrastate ICS, in this Order. We dismiss the fifth category of stay requests on the basis that they do not present any legal reasoning or analysis to justify a stay of our rules and have been rendered moot by this Order.

O. Ex Parte Requirements

291. This proceeding shall 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. Memoranda must contain a summary of the substance of the *ex parte* presentation ad not merely a list of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the oral 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.

P. Paperwork Reduction Act Analysis

292. This Report and Order contains new or 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 the 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(4), we previously sought comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Q. Congressional Review Act

293. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

R. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA). an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Notice of Proposed Rulemaking (Second FNPRM) in WC Docket 12–375. The Commission sought written public comment on the proposals in the Second FNPRM, including comment on the IRFA. The Commission did not receive comments directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

294. The Second Report and Order (Order) adopted rules to ensure that interstate, intrastate, and international inmate calling service (ICS) rates in correctional institutions are just, reasonable, and fair. In the initiating *Second FNPRM,* the Commission sought information on issues related to the ICS market, payments to correctional facilities, ICS interstate and intrastate rates, ancillary fees, additional ways to promote competition, harmonization of state regulations, existing contracts, transition periods, accessible ICS, advanced ICS, periodic review, enforcement, and a cost/benefit analysis of reform proposals.

295. In this Order, the Commission adopts comprehensive reform of all aspects of ICS to correct a market failure, foster market efficiencies, encourage ongoing state reforms and ensure that ICS rates and charges comply with the Communications Act. The Order does this by addressing interstate and intrastate ICS rates, payments to correctional facilities, ancillary service charges, connection and per-call charges, flat-rate charges, harmonization with state regulations, disability access, transition periods, periodic review, mandatory data collection, waivers, and consumer protection measures such as annual certification and reporting requirements. The reforms adopted in this Order apply to ICS offered in all correctional facility types and regardless of technology used to deliver the services.

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

296. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

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

297. *Small Businesses.* Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

298. *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.

299. *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 Commission's action.

300. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent 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 incumbent local exchange service are small businesses that may be affected by the Commission's action.

301. The Commission has 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. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

302. *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, 70 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 the Commission's action.

303. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange 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, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, 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 interexchange service providers are small entities that may be affected by the Commission's action.

304. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the Commission's action.

305. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the Commission's action.

306. *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 Commission's action.

307. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services 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, 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the Commission's action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

308. *Recordkeeping, Reporting, and Certification.* The Order requires that all ICS providers file annually data, categorized by facility and size of facility, on their current intrastate, interstate, and international ICS rates. The Commission also requires ICS providers to file their current ancillary service charge amounts and the instances of use of each. ICS providers that make site commission payments must file the monthly amount of any such payment. The Commission requires ICS providers that provided video visitation services, either as a form of ICS or not, during the reporting period, to file the minutes of use and per-minute rates for those services. As discussed in greater detail in the Disability Access section above, the Commission also requires that ICS providers report: (1) The number of disability-related calls they provided; (2) the number of problems they experienced with such calls; and (3) the number of complaints they received related to access to ICS by TTY and TRS users *e.g.,* dropped calls, poor call quality and the number of incidences of each. The adopted reporting requirements will facilitate enforcement and act as an additional means of ensuring that ICS providers' rates and practices are just, reasonable, fair and in compliance with the Order.

309. The Commission delegates to the Wireline Competition Bureau (Bureau) the authority to adopt a template for submitting the required data, information, and certifications.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

310. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance 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.''

311. The Commission needs access to data that are comprehensive, reliable, sufficiently disaggregated, and reported in a standardized manner. The Order recognizes, however, that reporting obligations impose burdens on the reporting providers. Consequently, the Commission limits its collection to information that is narrowly tailored to meet its needs.

312. *Monitoring and Certification.* The Commission requires ICS providers to submit annually their data on their intrastate, interstate and international ICS rates, categorized by facility and size of facility. The Commission requires ICS providers to file their charges to consumers that are ancillary to providing the telecommunications piece of ICS. Providers are currently required to post their rates publicly on their Web sites. Thus, this additional filing requirement should entail minimal additional compliance burden, even for the largest ICS providers.

313. The information on providers' Web sites is not certified and is generally not available in a format that will provide the per-call details that the Commission requires to meet its statutory obligations. Thus, the Commission further requires each provider to annually certify its compliance with other portions of the Order. The Commission finds that without a uniform, comprehensive dataset with which to evaluate ICS providers' rates, the Commission's analyses will be incomplete. The Commission recognizes that any information collection imposes burdens, which may be most keenly felt by smaller providers, but concludes that the benefits of having comprehensive data substantially outweigh the burdens. Additionally, some of these potential burdens, such as the filing of rates currently required to be posted on an ICS provider's Web site, are minimally burdensome.

314. *Data Collection.* The Commission is cognizant of the burdens of data collections, and has therefore taken steps to minimize burdens, including directing the Bureau to adopt a template for filing the data that minimizes burdens on providers by maximizing uniformity and ease of filing, while still allowing the Commission to gather the necessary data. The Commission also finds that without a uniform, comprehensive dataset with which to evaluate ICS providers' costs, its analyses will be incomplete, and its ability to establish ICS rate caps will be severely impaired. The Commission thus concludes that requiring ICS providers to report this cost data appropriately balances any burdens of reporting with the Commission's need for the data required to carry out its statutory duties.

6. Report to Congress

315. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including this 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

316. *Accordingly, it is ordered* that, pursuant to sections 1, 2, 4(i)–(j), 201(b), 215, 218, 220, 276, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 215, 218, 220, 276, 303(r), and 403 this Second Report and Order *is adopted.*

317. *It is further ordered* that Part 64 of the Commission's Rules, 47 CFR part 64, is *amended* as set forth in Appendix A of the Second Report and Order. These rules shall become effective March 17, 2016.

318. *It is further ordered,* that the prohibition against entering into new contracts,—or negotiating amendments to existing contracts, as discussed in paragraphs 261 and 262, herein, shall take effect immediately upon publication in the **Federal Register**.

319. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

320. *It is further ordered,* that pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1) and 1.103(a), that the Compliance date for this Second Report and Order shall be January 19, 2016.

List of Subjects in 47 CFR Part 64

Claims, Communications common carriers, Computer technology, Credit, Foreign relations, Individuals with disabilities, Political candidates, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, Telephone.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Section 64.6000 is revised to read as follows:

§ 64.6000 Definitions.

As used in this subpart:

(a) *Ancillary Service Charge* means any charge Consumers may be assess for the use of Inmate Calling services that are not included in the per-minute charges assessed for individual calls. Ancillary Service Charges that may be charged include the following. All other Ancillary Service Charges are prohibited.

(1) *Automated Payment Fees* means credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response (IVR), web, or kiosk;

(2) *Fees for Single-Call and Related Services* means billing arrangements whereby an Inmate's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services or does not want to establish an account;

(3) *Live Agent Fee* means a fee associated with the optional use of a live operator to complete Inmate Calling Services transactions;

(4) *Paper Bill/Statement Fees* means fees associated with providing customers of Inmate Calling Services an optional paper billing statement;

(5) *Third-Party Financial Transaction Fees* means the exact fees, with no markup, that Providers of Inmate Calling Services are charged by third parties to transfer money or process financial transactions to facilitate a Consumer's ability to make account payments via a third party.

(b) *Authorized Fee* means a government authorized, but discretionary, fee which a Provider must remit to a federal, state, or local government, and which a Provider is permitted, but not required, to pass through to Consumers. An Authorized Fee may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation.

(c) *Average Daily Population (ADP)* means the sum of all inmates in a facility for each day of the preceding calendar year, divided by the number of days in the year. ADP shall be calculated in accordance with § 64.6010(e) and (f);

(d) *Collect Calling* means an arrangement whereby the called party takes affirmative action clearly indicating that it will pay the charges associated with a call originating from an Inmate Telephone;

(e) *Consumer* means the party paying a Provider of Inmate Calling Services;

(f) *Correctional Facility or Correctional Institution* means a Jail or a Prison;

(g) *Debit Calling* means a presubscription or comparable service which allows an Inmate, or someone acting on an Inmate's behalf, to fund an account set up though a Provider that can be used to pay for Inmate Calling Services calls originated by the Inmate;

(h) *Flat Rate Calling* means a calling plan under which a Provider charges a single fee for an Inmate Calling Services call, regardless of the duration of the call;

(i) *Inmate* means a person detained at a Jail or Prison, regardless of the duration of the detention;

(j) *Inmate Calling Service* means a service that allows Inmates to make calls to individuals outside the Correctional Facility where the Inmate is being held, regardless of the technology used to deliver the service;

(k) *Inmate Telephone* means a telephone instrument, or other device capable of initiating calls, set aside by authorities of a Correctional Facility for use by Inmates;

(l) *International Calls* means calls that originate in the United States and terminate outside the United States;

(m) *Jail* means a facility of a local, state, or federal law enforcement agency that is used primarily to hold individuals who are;

(1) Awaiting adjudication of criminal charges;

(2) Post-conviction and committed to confinement for sentences of one year or less; or

(3) Post-conviction and awaiting transfer to another facility. The term also includes city, county or regional facilities that have contracted with a private company to manage day-to-day operations; privately-owned and operated facilities primarily engaged in housing city, county or regional inmates; and facilities used to detain individuals pursuant to a contract with U.S. Immigration and Customs Enforcement;

(n) *Mandatory Tax or Mandatory Fee* means a fee that a Provider is required to collect directly from Consumers, and remit to federal, state, or local governments;

(o) *Per-Call, or Per-Connection Charge* means a one-time fee charged to a Consumer at call initiation;

(p) *Prepaid Calling* means a presubscription or comparable service in which a Consumer, other than an Inmate, funds an account set up through a Provider of Inmate Calling Services. Funds from the account can then be used to pay for Inmate Calling Services, including calls that originate with an Inmate;

(q) *Prepaid Collect Calling* means a calling arrangement that allows an Inmate to initiate an Inmate Calling Services call without having a pre-established billing arrangement and also provides a means, within that call, for the called party to establish an arrangement to be billed directly by the Provider of Inmate Calling Services for future calls from the same Inmate;

(r) *Prison* means a facility operated by a territorial, state, or federal agency that is used primarily to confine individuals convicted of felonies and sentenced to terms in excess of one year. The term also includes public and private facilities that provide outsource housing to other agencies such as the State Departments of Correction and the Federal Bureau of Prisons; and facilities that would otherwise fall under the definition of a Jail but in which the majority of inmates are post-conviction or are committed to confinement for sentences of longer than one year;

(s) *Provider of Inmate Calling Services, or Provider* means any communications service provider that provides Inmate Calling Services, regardless of the technology used;

(t) *Site Commission* means any form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or affiliate of an Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide ICS, a governmental agency that oversees a correctional facility, the city, county, or

state where a facility is located, or an agent of any such facility.

■ 3. Section 64.6010 is revised to read as follows:

§ 64.6010 Inmate Calling Services rate caps.

(a) No Provider shall charge, in the Jails it serves, a per-minute rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of:

(1) $0.22 in Jails with an ADP of 0–349;

(2) $0.16 in Jails with an ADP of 350–999; or

(3) $0.14 in Jails with an ADP of 1,000 or greater.

(b) No Provider shall charge, in any Prison it serves, a per-minute rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of:

(1) $0.11;

(2) [Reserved]

(c) No Provider shall charge, in the Jails it serves, a per-minute rate for Collect Calling in excess of:

Size and type of facility	Debit/prepaid rate cap per MOU	Collect rate cap per MOU as of June 20, 2016	Collect rate cap per MOU as of July 1, 2017	Collect rate cap per MOU as of July 1, 2018
0–349 Jail ADP	$0.22	$0.49	$0.36	$0.22
350–999 Jail ADP	0.16	0.49	0.33	0.16
1,000+ Jail ADP	0.14	0.49	0.32	0.14

(d) No Provider shall charge, in the Prisons it serves, a per-minute rate for Collect Calling in excess of:

(1) $0.14 after March 17, 2016;

(2) $0.13 after July 1, 2017; and

(3) $0.11 after July 1, 2018, and going forward.

(e) For purposes of this section, the initial ADP shall be calculated, for all of the Correctional Facilities covered by an Inmate Calling Services contract, by summing the total number of inmates from January 1, 2015, through January 19, 2016, divided by the number of days in that time period;

(f) In subsequent years, for all of the correctional facilities covered by an Inmate Calling Services contract, the ADP will be the sum of the total number of inmates from January 1st through December 31st divided by the number of days in the year and will become effective on January 31st of the following year.

■ 4. Section 64.6020 is revised to read as follows:

§ 64.6020 Ancillary Service Charge.

(a) No Provider shall charge an Ancillary Service Charge other than those permitted charges listed in § 64.6000.

(b) No Provider shall charge a rate for a permitted Ancillary Service Charge in excess of:

(1) For Automated Payment Fees—$3.00 per use;

(2) For Single-Call and Related Services—the exact transaction fee charged by the third-party provider, with no markup, plus the adopted, per-minute rate;

(3) For Live Agent Fee—$5.95 per use;

(4) For Paper Bill/Statement Fee—$2.00 per use;

(5) For Third-Party Financial Transaction Fees—the exact fees, with no markup that result from the transaction.

■ 5. Section 64.6030 is revised to read as follows:

§ 64.6030 Inmate Calling Services interim rate cap.

No Provider shall charge a rate for Collect Calling in excess of $0.25 per minute, or a rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.21 per minute. These interim rate caps shall sunset upon the effectiveness of the rates established in § 64.6010.

■ 6. Section 64.6040 is revised to read as follows:

§ 64.6040 Rates for calls involving a TTY device.

(a) No Provider shall levy or collect any charge in excess of 25 percent of the applicable per-minute rate for TTY-to-TTY calls when such calls are associated with Inmate Calling Services.

(b) No Provider shall levy or collect any charge or fee for TRS-to-voice or voice-to-TTY calls.

■ 7. Section 64.6060 is revised to read as follows:

§ 64.6060 Annual reporting and certification requirement.

(a) Providers must submit a report to the Commission, by April 1st of each year, regarding interstate, intrastate, and international Inmate Calling Services for the prior calendar year. The report shall be categorized both by facility type and size and shall contain:

(1) Current interstate, intrastate, and international rates for Inmate Calling Services;

(2) Current Ancillary Service Charge amounts and the instances of use of each;

(3) The Monthly amount of each Site Commission paid;

(4) Minutes of use, per-minute rates and ancillary service charges for video visitation services;

(5) The number of TTY-based Inmate Calling Services calls provided per facility during the reporting period;

(6) The number of dropped calls the reporting Provider experienced with TTY-based calls; and

(7) The number of complaints that the reporting Provider received related to *e.g.,* dropped calls, poor call quality and the number of incidences of each by TTY and TRS users.

(b) An officer or director of the reporting Provider must certify that the reported information and data are accurate and complete to the best of his or her knowledge, information, and belief.

■ 8. Section 64.6070 is added to subpart FF to read as follows:

§ 64.6070 Taxes and fees.

(a) No Provider shall charge any taxes or fees to users of Inmate Calling Services, other than those permitted under § 64.6020, Mandatory Taxes, Mandatory Fees, or Authorized Fees.

■ 9. Section 64.6080 is added to subpart FF to read as follows:

§ 64.6080 Per-Call, or Per-Connection Charges.

No Provider shall impose a Per-Call or Per-Connection Charge on a Consumer.

■ 10. Section 64.6090 is added to subpart FF to read as follows:

§ 64.6090 Flat-Rate Calling.

No Provider shall offer Flat-Rate Calling for Inmate Calling Services.

■ 11. Section 64.6100 is added to subpart FF to read as follows:

§ 64.6100 Minimum and maximum Prepaid Calling account balances.

(a) No Provider shall institute a minimum balance requirement for a Consumer to use Debit or Prepaid Calling.

(b) No Provider shall prohibit a consumer from depositing at least $50

per transaction to fund a Debit or Prepaid Calling account.

■ 12. Section 64.6110 is added to subpart FF to read as follows:

§ 64.6110 Consumer disclosure of Inmate Calling Services rates.

Providers must clearly, accurately, and conspicuously disclose their interstate, intrastate, and international rates and Ancillary Service Charges to consumers on their Web sites or in another reasonable manner readily available to consumers.

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Part III

Federal Housing Finance Agency

12 CFR Part 1282
Enterprise Duty To Serve Underserved Markets; Proposed Rule

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590–AA27

Enterprise Duty To Serve Underserved Markets

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to establish a duty for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) to serve three specified underserved markets—manufactured housing, affordable housing preservation, and rural markets—to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for very low-, low-, and moderate-income families in those markets. The Federal Housing Finance Agency (FHFA) is issuing and seeking comments on a proposed rule that would provide Duty to Serve credit for eligible Enterprise activities that facilitate a secondary market for mortgages related to: Manufactured homes titled as real property; blanket loans for certain categories of manufactured housing communities; preserving the affordability of housing for renters and homebuyers; and housing in rural markets. The proposed rule would establish a method for evaluating and rating the Enterprises' compliance with the Duty to Serve each underserved market.

DATES: Written comments must be received on or before March 17, 2016.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA27, by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include ''Comments/RIN 2590–AA27'' in the subject line of the submission.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA27, Federal Housing Finance Agency, Eighth Floor, 400 7th Street SW., Washington, DC 20219. The package should be delivered at the 7th Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA27, Federal Housing Finance Agency, Eighth Floor, 400 7th Street SW., Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

FOR FURTHER INFORMATION CONTACT: Jim Gray, Manager, Office of Housing and Regulatory Policy, (202) 649–3124, or Mike Price, Senior Policy Analyst, Office of Housing and Regulatory Policy, (202) 649–3134. These are not toll-free numbers. The mailing address for each contact is: Federal Housing Finance Agency, 400 7th Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of this proposed rule, in addition to specific questions provided throughout, and will take all comments into consideration before issuing the final rule. Commenters do not need to answer each question. While FHFA has considered the views commenters submitted on the Duty to Serve proposed rule issued in 2010 in preparing this proposed rule, in view of the significant differences between this proposed rule and the 2010 Duty to Serve proposed rule, commenters on the previous proposed rule must submit a new comment letter on this new proposed rule for their comments to be further considered. Copies of all comments received will be posted without change, including any personal information you provide, such as your name, address, email address and telephone number, on FHFA's Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 7th Street, SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

II. Background

A. Statutory Background

The Safety and Soundness Act provides that the Enterprises ''have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families.'' [1] Section 1129 of HERA amended section 1335 of the Safety and Soundness Act to establish a duty for the Enterprises to serve three specified underserved markets, to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for certain categories of borrowers in those markets.[2] Specifically, the Enterprises are required to provide leadership in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families for manufactured housing, affordable housing preservation, and rural markets.[3] In addition, section 1335(d)(1) requires FHFA to establish, by regulation, a method for evaluating and rating the Enterprises' compliance with the Duty to Serve underserved markets.[4] FHFA is required to separately evaluate each Enterprise's compliance with respect to each underserved market, taking into consideration the following:

(i) The Enterprise's development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each of the underserved markets (hereafter, the ''loan product assessment factor'');

(ii) The extent of the Enterprise's outreach to qualified loan sellers and other market participants in each of the underserved markets (hereafter, the ''outreach assessment factor'');

(iii) The volume of loans purchased by the Enterprise in each underserved market relative to the market opportunities available to the Enterprise, except that the Director shall not establish specific quantitative targets or evaluate the Enterprise based solely on the volume of loans purchased (hereafter, the ''loan purchase assessment factor''); and

(iv) The amount of investments and grants by the Enterprise in projects

[1] 12 U.S.C. 4501(7).

[2] 12 U.S.C. 4565.

[3] 12 U.S.C. 4565(a). The terms ''very low-income,'' ''low-income,'' and ''moderate-income'' are defined in 12 U.S.C. 4502.

[4] 12 U.S.C. 4565(d)(1).

which assist in meeting the needs of the underserved markets (hereafter, the ''investments and grants assessment factor'').[5]

The Duty to Serve provisions and issues for consideration are discussed further below.

B. Conservatorship

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises in accordance with the Safety and Soundness Act to maintain the Enterprises in a safe and sound financial condition and to help assure performance of their public mission. Since the establishment of FHFA as conservator, the Enterprises have returned to profitability. Through December 31, 2014, the Enterprises have paid a total of $225 billion in dividends payments to the U.S. Department of the Treasury on the senior preferred stock.[6]

While the Enterprises are in conservatorships, the law requires and FHFA expects them to continue to fulfill their core statutory purposes, which include their support for affordable housing. The Enterprise affordable housing goals have continued throughout the conservatorships, with modifications to the levels of the goals. FHFA now proposes a rule to implement the Enterprises' Duty to Serve underserved markets. Consistent with the conservatorships, Enterprise support for affordable housing must be accomplished within the confines of safety and soundness and the goals of conservatorship. The Enterprises' 2015 Conservatorship Scorecard requires the Enterprises to make progress in preparing to implement the Duty to Serve, prior to this rulemaking.

C. Regulatory History

1. Advance Notice of Proposed Rulemaking

The rulemaking for the Duty to Serve commenced in August 2009 with FHFA's publication in the **Federal Register** of an Advance Notice of Proposed Rulemaking (ANPR) on the Enterprise Duty to Serve underserved markets.[7] FHFA received 100 comment letters in response to the ANPR.

2. 2010 Duty To Serve Proposed Rule

After reviewing the comment letters on the ANPR, FHFA published in the **Federal Register** on June 7, 2010, a proposed rule on the Duty to Serve.[8] The 45-day comment period for the proposed rule closed on July 22, 2010.

FHFA received 4,019 comments on the proposed rule. Commenters included: Individuals, including owners of manufactured homes; trade associations, including manufactured housing trade groups and lender trade groups; policy and housing advocacy groups, including rural housing advocacy groups, organizations representing manufactured home residents, and national and state consumer law organizations; nonprofit organizations; corporations, including manufactured housing construction companies; federal, state, and local government entities, including state and local housing finance agencies; property services groups, including property management companies; manufactured home community homeowners' associations; affordable housing developers and preservation lenders; a legal services group; Members of Congress; and both Enterprises.

FHFA has taken a new look at the issues for this new proposed rule, with the benefit of the comments received on the 2010 Duty to Serve proposed rule and subsequent input from diverse stakeholder groups. The comments and input received and the agency's intervening years of experience with the Enterprises and their operations in the underserved markets have suggested a different approach, sufficiently so that further notice and comment is necessary through this new proposed rule.

As before, the new proposed rule would not itself authorize or prohibit the Enterprises from engaging in any activity. Instead, it would authorize Duty to Serve credit for certain Enterprise activities in furtherance of their Duty to Serve obligations and would propose a framework for evaluating the Enterprises' performance.

III. Duty To Serve Underserved Markets

A. Implementing the Duty To Serve

The Enterprises' public purposes include a broad obligation to serve lower- and moderate-income borrowers. The Safety and Soundness Act establishes a duty for the Enterprises to serve very low-, low-, and moderate-income families in three specific underserved markets. All activities an Enterprise undertakes in furtherance of its Duty to Serve must be consistent with its Charter Act. Nothing in this rulemaking would permit or require an Enterprise to engage in any activity that would be otherwise inconsistent with its Charter Act or the Safety and Soundness Act.

Although the Enterprises are in conservatorships, FHFA expects them to show tangible results in each underserved market and to be a catalyst for mortgage lending to very low-, low-, and moderate-income families in each underserved market consistent with their obligations for safety and soundness. The Enterprises should expect mortgage purchases and activities pursuant to the Duty to Serve to earn a reasonable economic return, which may be less than the return earned on activities that do not serve these underserved markets.[9]

B. Underserved Markets Plans

1. Requirement for Underserved Markets Plans—Proposed § 1282.32

Section 1282.32 of the proposed rule would require each Enterprise to prepare an Underserved Markets Plan identifying the activities and related objectives in each underserved market that it will pursue to serve that market.[10] Each Plan would be mandatory and have a three-year term. The extent to which the Enterprises comply with their Plan obligations would form the basis for FHFA's evaluation of each Enterprise's Duty to Serve performance.

2. Eligible Activities for Underserved Markets—Proposed §§ 1282.33(b), 1282.34(b), 1282.35(b), 1282.37

Sections 1282.33(b), 1282.34(b), 1282.35(b), and 1282.37 of the proposed rule would specifically define the scope of the activities that could be included in an Underserved Markets Plan for an underserved market and, thus, be eligible for Duty to Serve credit as follows:

Manufactured housing market—Activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, and moderate-income families consisting of: (1) Manufactured homes titled as real estate; and (2) manufactured housing communities;

Affordable housing preservation market—Activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, and moderate-income families consisting of affordable rental housing preservation and affordable homeownership preservation; and

[5] 12 U.S.C. 4565(d)(2).

[6] *See* White House, ''Fiscal Year 2016 of the U.S. Government Analytical Perspectives,'' at 307 (2015), *available at https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/ap_20_credit.pdf.*

[7] *See* 74 FR 38572 (Aug. 4, 2009).

[8] *See* 75 FR 32099 (June 7, 2010).

[9] *See* 12 U.S.C. 4513(a)(1)(B)(ii).

[10] The 2010 Duty to Serve proposed rule also would have required that the Enterprises identify their Duty to Serve activities in Underserved Markets Plans.

Rural market—Activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, and moderate-income families in a ''rural area,'' which would be defined to mean: (1) A census tract outside of a metropolitan statistical area (MSA), as designated by the Office of Management and Budget (OMB); or (2) a census tract that is in an MSA but outside of the MSA's Urbanized Areas and Urban Clusters, as designated by the U.S. Department of Agriculture's (USDA's) Rural Urban Commuting Area (RUCA) codes.

Activities eligible for Duty to Serve credit that also promote residential economic diversity would be eligible for extra credit under § 1282.37 of the proposed rule.

Each of these activities must be in full compliance with applicable federal and state law. The underserved markets and related definitions are further discussed below.

3. Underserved Markets Plan Activities—Proposed § 1282.32(c)(1)

Under § 1282.32(c)(1) of the proposed rule, each Underserved Markets Plan would include activities delineated under one of the following categories:

- Statutory Activities—Activities that assist affordable housing projects under the eight affordable housing programs specifically enumerated in the Safety and Soundness Act, and any comparable state and local affordable housing programs (a category that is also specified in the Safety and Soundness Act);
- Regulatory Activities—Activities in the underserved markets that are designated as Regulatory Activities in the proposed rule; and
- Additional Activities—Other activities identified by the Enterprises in their Plans that are determined by FHFA, in reviewing the proposed Plans, to be eligible for that underserved market.

Proposed Additional Activities may include activities that support other federal, state and local programs not specifically enumerated in the proposed rule that would benefit from such support. Any such program must be eligible under one of the three specified underserved markets. If an Enterprise proposes activities to support other federal, state or local programs in its Underserved Markets Plan, the Enterprise must provide FHFA with clear information that defines the program and its eligibility under one of the three underserved markets consistent with the purpose and scope of this proposed rule. Such programs include, for example, state housing finance agency projects and local government initiatives that seek to provide affordable housing and for which Duty to Serve credit could be available.

- While overall the Enterprises must serve very low-, low-, and moderate-income families in each underserved market, any one activity may, but need not, serve more than one of the qualifying income categories. The Underserved Markets Plans must include a mix of activities serving all three income categories.

Statutory Activities and Regulatory Activities are collectively referred to as ''Core Activities'' in this **SUPPLEMENTARY INFORMATION**.

The proposed rule would not require an Enterprise to include every Core Activity in its Underserved Markets Plan, but the Plan must describe how the Enterprise considered each Core Activity. If an Enterprise elects not to include a Core Activity in its Plan, it must provide a detailed explanation for its decision in the Plan. There would be no restriction on the number of Additional Activities that an Enterprise may include in its Plan.

FHFA believes that specifying Core Activities for the Enterprises to consider in developing their Underserved Markets Plans, as well as providing the Enterprises the option to designate Additional Activities, will provide the most efficient ways to increase the Enterprises' presence in the three underserved markets and encourage healthy competition between the Enterprises. When one Enterprise is able to marshal its resources to better serve an underserved market, this may encourage the other Enterprise and other institutions to also consider how they could assist that market, and would demonstrate that certain products and services can be reasonably provided in the market.

Additionally, as described in this **SUPPLEMENTARY INFORMATION** and in proposed § 1282.37, the proposed rule would include an opportunity for the Enterprises to earn extra Duty to Serve credit when a qualifying activity in an underserved market also serves to reduce the economic isolation of very low-, low-, and moderate-income households by promoting residential economic diversity.[11] These activities would not be mandatory, but in order to qualify for the extra credit, the Enterprises would need to describe in their Plans the activities in the underserved markets they intend to undertake to promote residential economic diversity.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

1. How much discretion should the Enterprises have in selecting activities—Core Activities and Additional Activities—to serve the underserved markets?

2. Should FHFA establish specific Regulatory Activities for the underserved markets, or should the Enterprises have broad discretion to decide how to serve these markets?

3. Are the proposed Regulatory Activities, as identified in the proposed rule for each of the underserved markets and described further below, appropriate for accomplishing the Duty to Serve objectives?

4. Objectives for Each Activity—Proposed § 1282.32(c)(2)

Under § 1282.32(c)(2) of the proposed rule, for each activity set forth in the Underserved Markets Plan, the Plan would be required to describe one or more ''Objectives''—specific, measureable tasks to be accomplished by the Enterprise. Objectives would be central to FHFA's Duty to Serve evaluation and rating process.

Examples of Objectives might include an Enterprise's plans and timetable for achieving certain goals for one of its existing activities in an underserved market, or an Enterprise's specific outreach plans for working with lenders to develop innovative programs under a particular activity. Objectives would largely take narrative form but, where appropriate, could include quantitative benchmarks. If quantitative benchmarks form part of an Objective, FHFA's evaluation criteria may include comparing the Objective's quantitative benchmark at the beginning of the evaluation period with a new quantitative benchmark for the

[11] In a separate context, the Federal Home Loan Banks' Affordable Housing Program has long recognized the role of reducing economic isolation in housing affordability and provides incentives for the development of projects that promote economic diversity in the housing market. Under the applicable regulation, a Federal Home Loan Bank may award scoring points for projects that promote ''economic diversity,'' defined as ''[t]he financing of housing that is part of a strategy to end isolation of very low-income households by providing economic diversity though mixed-income housing in low- or moderate-income neighborhoods, or providing very low- or low- or moderate-income households with housing opportunities in neighborhoods or cities where the median income equals or exceeds the median income for the larger surrounding area, such as the city, county, or Primary Metropolitan Statistical Area, in which the neighborhood or city is located.'' *See* 12 CFR 1291.5(d)(5)(vi)(H).

Objective calculated at the end of the evaluation period. This comparison would not create specific quantitative targets or evaluate an Enterprise based solely on the volume of loans purchased, which are prohibited by the Safety and Soundness Act.[12] Rather, quantitative benchmarks would be a measurement component of the evaluation process, authorized by the Safety and Soundness Act's establishment of the loan purchase assessment factor. Objectives may cover a single year or multiple years and must meet all of the following requirements:

- *Strategic.* Directly or indirectly maintain or increase liquidity to an underserved market;
- *Measurable.* Provide measureable benchmarks, which may include numerical targets, that enable FHFA to determine whether the Enterprise has achieved the Objective;
- *Realistic.* Calibrated so that the Enterprise has a reasonable chance of meeting the Objective with appropriate effort;
- *Time-bound.* Subject to a specific timeframe for completion by being tied to Plan calendar year evaluation periods; and
- *Tied to analysis of market opportunities.* Based on assessments and analyses of market opportunities in each underserved market, taking into account safety and soundness considerations.

5. Assessment Factors Incorporated Into Objectives—Proposed § 1282.32(c)(3)

Under § 1282.32(c)(3) of the proposed rule, each Underserved Markets Plan Objective would be required to incorporate one or more of the following four statutory assessment factors:

- *Outreach Assessment Factor.* The outreach assessment factor requires evaluation of ''the extent of outreach [by the Enterprises] to qualified loan sellers and other market participants'' in each of the three underserved markets.[13] A Plan Objective could describe how an Enterprise would engage market participants, such as through conducting meetings and conferences with current and prospective seller/servicers and providing technical support to seller/servicers, in order to accomplish a Plan activity. Market participants could include traditional participants in Enterprise programs, as well as non-traditional participants such as consortia sponsored by banks, and local and state governments.
- *Loan Product Assessment Factor.* The loan product assessment factor requires evaluation of an Enterprise's ''development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each'' underserved market.[14] A Plan Objective could describe, for example, how the Enterprise would reevaluate its underwriting guidelines, which could include empirical testing of different parameters and modification of loan products in an effort to increase the availability of loans to families targeted by the Duty to Serve, consistent with prudent lending practices. FHFA expects the Enterprise to identify underwriting obstacles that could prevent service to very low-, low-, and moderate-income families.
- *Loan Purchase Assessment Factor.* The loan purchase assessment factor requires FHFA to consider ''the volume of loans purchased in each of such underserved markets relative to the market opportunities available to the [E]nterprise.'' [15] The Safety and Soundness Act further states that FHFA ''shall not establish specific quantitative targets nor evaluate the [E]nterprises based solely on the volume of loans purchased.'' [16] A Plan Objective could include the Enterprise's plans for purchasing loans in particular underserved markets, including its assessments and analyses of the market opportunities available for each underserved market and its expected volume of loan purchases for a given year.

Although the proposed rule would not establish quantitative targets, FHFA would consider the Enterprise's past performance on the volume of loans purchased in a particular underserved market relative to the volume of loans the Enterprise actually purchases in that underserved market in a given year pursuant to its Plan. In reviewing the Plan and the loan purchase assessment factor, FHFA would take into account difficulties in forecasting future performance and the need for flexibility in dealing with unexpected market changes.

- *Investments and Grants Assessment Factor.* The investments and grants assessment factor requires evaluation of ''the amount of investments and grants in projects which assist in meeting the needs of such underserved markets.'' [17] A Plan Objective could include investments. As with all activities, the investments must comply with the Enterprise's Charter Act.[18] FHFA has directed the Enterprises to refrain from making grants because they are in conservatorship. Accordingly, during the period of conservatorship, FHFA does not intend to provide credit to the Enterprises for making grants.

In addition to the four statutory assessment factors, the proposed rule includes a non-mandatory criterion for evaluating the Enterprises' performance on qualifying activities (described in this **SUPPLEMENTARY INFORMATION** and in § 1282.37 of the proposed rule), for which the Enterprises could earn additional Duty to Serve credit when they include qualifying activities that promote residential economic diversity in their Underserved Markets Plans. Under this criterion, FHFA would evaluate the Enterprises on the extent to which their qualifying activities promote residential economic diversity in an underserved market in connection with mortgages on: (1) Affordable housing in high opportunity areas; or (2) mixed-income housing in areas of concentrated poverty. This would be a criterion for which extra credit may be given for planned activities, but the activities associated with the criterion would not be mandatory activities for the Plans. FHFA specifically requests comments on all aspects of the proposed criterion, including how the residential economic diversity activities for extra credit should be defined and assessed.

Activities in each of the underserved markets would be eligible for extra credit for residential economic diversity (''qualifying activities'') except for manufactured housing communities activities, energy efficiency improvement activities, and any Additional Activities determined by FHFA as ineligible. FHFA proposes excluding manufactured housing community activities because of the lack of information on tenants' total monthly housing costs, which would be necessary for FHFA to assess the affordability of the units. Nor is the proposed proxy for determining manufactured housing community affordability, which relies on the income level of the census tract instead of on monthly housing costs, useful for estimating whether a manufactured housing community contributes to residential economic diversity. FHFA also proposes to exclude activities related to energy efficiency improvements as they typically do not relate to the siting of housing and, thus, do not appear to further residential economic diversity.

[12] 12 U.S.C. 4565(d)(2)(C).

[13] *Id.* at (d)(2)(B).

[14] *Id.* at (d)(2)(A).

[15] *Id.* at (d)(2)(C).

[16] *Id.*

[17] *Id.* at (d)(2)(D).

[18] 12 U.S.C. 1451 *et seq.* and 12 U.S.C. 1716 *et seq.*

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

4. Are the requirements for Objectives discussed above appropriate, and should there be any additional requirements?

5. Should Duty to Serve credit be given under the loan products assessment factor for an Enterprise's research and development activities that may not show results in their initial phase, but which may be necessary for long-term product planning and development for underserved markets?

6. Has FHFA adequately defined the scope of extra credit for the proposed residential economic diversity activities? Has FHFA chosen the correct activities that should be excluded from qualifying for extra credit for residential economic diversity activities? Also, see description of proposed § 1282.37 and Requests for Comments.

6. Underserved Markets Plan Submission and FHFA Review—Proposed § 1282.32(d)(1)

Section 1282.32(d)(1) of the proposed rule would require the Enterprises to submit their proposed Underserved Markets Plans to FHFA at least 180 days before the termination date of the Enterprise's existing Plan, except that the Enterprise's first proposed Plan after the effective date of this regulation must be submitted to FHFA pursuant to FHFA-established timeframes and procedures.

a. Posting of Proposed Underserved Markets Plans, Public Input and Enterprise Review—Proposed § 1282.32(d)(2), 1282.32(d)(3)

Section 1282.32(d)(2) of the proposed rule would provide a process for public input on the Enterprises' proposed Underserved Markets Plans. A number of commenters on the 2010 Duty to Serve proposed rule suggested that the Enterprises' proposed Plans be published for comment because doing so could improve the Enterprises' and FHFA's assessment of the adequacy of the Plans. Commenters stated that public comment could add to the innovation and impact of the Duty to Serve obligations on the underserved markets. Both Enterprises opposed publishing the proposed Plans for public comment on the basis that the Plans would contain proprietary and confidential data and other information. After taking into account the commenters' opposing views, FHFA has concluded that a public input process can be implemented that would promote transparency and increase the opportunity for productive stakeholder input in the Underserved Markets Plan process, while preserving the proprietary and confidential nature of Enterprise data and information. Soliciting public input could help the Enterprises to develop information about underserved market needs and how they might be met so that the Enterprises can make better judgments in formulating their Underserved Markets Plan Activities and Objectives.

Accordingly, the proposed rule would provide that as soon as practical after an Enterprise submits its proposed Plan to FHFA for review, FHFA will post on FHFA's Web site a public version of the proposed Plan that omits proprietary and confidential data and information. The public would have 45 days to provide input on the public version of the proposed Plan. Seeking public input on the proposed Plans would encourage participation by stakeholders, including lenders, industry participants, local government, community groups, and the broader public. In its discretion, each Enterprise would make revisions to its proposed Plan based on the public input.

b. FHFA Plan Review Process—Proposed §§ 1282.32(d)(4), 1282.32(d)(5), 1282.32(e), 1282.32(f)

The proposed rule would provide that within 60 days after the end of the public input period, FHFA will inform each Enterprise of any FHFA comments on its proposed Plan. The Enterprise would be required to address those comments, as appropriate, through revisions to its proposed Plan pursuant to timeframes and procedures established by FHFA.

After FHFA is satisfied that all of its comments have been addressed, FHFA would issue a ''non-objection'' to the Plan. The effective date of the Plan would be January 1st of the first evaluation year for which the Plan is applicable, except for the Enterprise's first Plan after the effective date of the final rule, whose term and effective date would be determined by FHFA.

After receiving FHFA's non-objection to its Plan, an Enterprise would post the final Plan on the Enterprise's Web site with confidential and proprietary information omitted. FHFA would also post the final Plan with confidential and proprietary information omitted on FHFA's Web site.

7. Modifying Final Underserved Markets Plans—Proposed § 1282.32(g)

Section 1282.32(g) of the proposed rule would permit modifications of final Underserved Markets Plans during the period of the Plans. The 2010 Duty to Serve proposed rule would not have permitted modifications. In their comments on the 2010 proposed rule, both Enterprises stated that they should be able to modify their Plans, citing the uncertainty and volatility in the mortgage markets, and the Enterprises' need to determine whether their market estimates are accurate, assess performance against goals, and update business forecasting. FHFA finds these comments persuasive.

Accordingly, the proposed rule would permit an Enterprise to modify its final Plan during its three-year term, subject to FHFA non-objection. It would also permit FHFA, in its sole discretion, to require an Enterprise to modify a final Plan. Instances in which FHFA might permit or require an Enterprise to modify its Plan include changes in market conditions (including obstacles and opportunities) or significant safety and soundness concerns that arise after an Enterprise implements its Plan. FHFA and the Enterprises may seek public input on any proposed modifications to a final Plan if FHFA determines that public input would assist its consideration of the proposed modifications. Should a final Plan be modified, the modified Plan with confidential and proprietary information omitted would be posted on the Enterprise's and FHFA's Web sites.

8. Enterprise New Products and New Activities

Enterprise new products and new activities are subject to the prior approval and prior notice requirements, respectively, that FHFA established by regulation pursuant to the Safety and Soundness Act.[19] FHFA expects the Enterprises to meet the loan product assessment factor through activities that do not rise to the level of new products. For example, an Enterprise could modify its underwriting guidelines for existing loan products and develop innovative approaches to financing that do not constitute new products, consistent with safety and soundness and the requirements of conservatorship. However, if an Enterprise determines that a new product or activity would facilitate its duty to serve obligations and would be consistent with safety and soundness, it may propose such product or activity for FHFA consideration.

Requests for Comments

FHFA specifically requests comments on the following questions (please

[19] *See* 12 U.S.C. 4541; 12 CFR part 1253.

identify the question answered by the numbers assigned below):

7. Is there an alternative mechanism to an Underserved Markets Plan that would better enable FHFA to evaluate the Enterprises' Duty to Serve obligations?

8. Should the Enterprises be required to prepare Underserved Markets Plans for terms with a period other than three years?

9. Should public input be sought on the Enterprises' proposed Underserved Markets Plans and, if so, is there a more effective approach than the proposed approach?

C. Underserved Markets

1. Manufactured Housing Market—Proposed § 1282.33

a. Background

Very low-, low-, and moderate-income households have significant housing needs in the current environment. Manufactured housing is widely recognized as a significant source of housing for such households. In the United States, as of 2013, 6.7 million households resided in manufactured housing, or 5.8 percent of all households, according to the 2013 American Community Survey.[20] In many cases, manufactured housing may offer the only affordable homeownership opportunity for lower-income households.[21] In 2013, the average sales price of a manufactured home was $64,000, while the average sales price of a site-built home, less the cost of the land, was $249,429.[22] Adjusted for size, manufactured homes still have significantly lower average costs per square foot than site-built homes: $43.54 as compared with $93.70.[23]

In developing specific proposals for Enterprise support of activities for the manufactured housing market that would receive Duty to Serve credit, FHFA took into account the needs of very low-, low-, and moderate-income families, the particular importance of manufactured housing, and the availability of its financing for these households. In determining eligible activities for the manufactured housing market, FHFA considered the safety and soundness implications for the Enterprises.

b. Regulatory and Additional Activities—Proposed §§ 1282.33(c), 1282.33(d)

The Safety and Soundness Act provides that the Enterprises ''shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low-, and moderate-income families.'' [24] The statute does not enumerate specific activities or programs that the Enterprises must undertake in support of the manufactured housing market. Section 1282.33(b) of the proposed rule would specify eligible activities for the underserved manufactured housing market as activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, and moderate-income families consisting of: i. Manufactured homes titled as real property; and ii. manufactured housing communities. Manufactured homes titled as personal property are excluded from eligibility.

Section 1282.33(c) of the proposed rule would provide Duty to Serve credit for four specific types of activities, which would constitute Regulatory Activities that the Enterprises must address in their Underserved Markets Plans by either indicating how they choose to undertake the Regulatory Activity or the reasons why they will not undertake the Regulatory Activity. The proposed Regulatory Activities are:

1. Mortgages on manufactured homes titled as real property under the laws of the state where the home is located; and

2. Mortgages on manufactured housing communities provided that:

i. The community has 150 pads or less;

ii. The community is government-, nonprofit-, or resident-owned; or

iii. The community has certain minimum specified pad lease protections for tenants.

The Enterprises' Underserved Markets Plans may also include Additional Activities that facilitate a secondary market for mortgages on residential properties for very low-, low- and moderate-income families consisting of manufactured homes titled as real property and manufactured communities, subject to FHFA determination of whether such activities are eligible for Duty to Serve credit.

i. Manufactured Homes—Proposed § 1282.33(c)(1)

Under proposed § 1282.1, ''manufactured home'' would mean a manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, and implementing regulations. Manufactured homes are built entirely in the factory, transported to the site, and installed under a federal building code administered by the U.S. Department of Housing and Urban Development (HUD).[25] Activities related to homes manufactured before June 15, 1976, generally referred to as ''mobile homes,'' [26] would not receive Duty to Serve credit.

Different ownership, titling, and financing structures are available for manufactured housing, and this has a major impact on loan origination, servicing, and securitization requirements and practices. The unit may be titled and owned as personal property (chattel) or as real estate, depending on factors such as the property characteristics and state law. The borrower may or may not own the land underlying the unit. About three-fifths of manufactured housing residents who own their home also own the land on which it is sited.[27] For example,

[20] Freddie Mac, ''2015 Multifamily Outlook—Executive Summary, Multifamily Research Perspectives,'' at 16 (Feb. 2015), *available at http://www.freddiemac.com/multifamily/pdf/2015_outlook.pdf.*

[21] Both Delaware and North Carolina have statutes that cite the importance of manufactured housing as the only affordable option for many low- and moderate-income households and the impetus for requiring various protections for owners of manufactured housing units. *See* 25 Del. C. § 7040; N.C. Gen. Stat. 160A–383.1 (2001). *See also,* R.I. Gen. Laws 31–44.1–1. Congress has also found that manufactured homes provide a significant resource for affordable homeownership. *See* 42 U.S.C. 5401(a)(2).

[22] *See* U.S. Commerce Department, Census Bureau, ''Cost & Size Comparisons For New Manufactured Homes and New Single-Family Site-Built Homes'' (2007–2013) [hereinafter ''Census Table''], *available at http://www.census.gov/construction/mhs/pdf/sitebuiltvsmh.pdf.* The figure for site-built homes was arrived at by subtracting the ''Derived Average Land Price'' ($75,071) from the average sales price for a new single-family site built home ($324,500). *See id.*

[23] *Id.*

[24] 12 U.S.C. 4565(a)(1)(A).

[25] *See* 42 U.S.C. 5402(6), and implementing regulations.

[26] *See* Manufactured Housing Institute, ''Frequently Asked Questions'' (Web site), *available at http://www.manufacturedhousing.org/lib/showtemp_detail.asp?id=208&cat.*

[27] *See* CFPB, ''Manufactured-housing consumer finance in the United States,'' at 6 (Sept. 2014) [hereinafter ''CFPB White Paper''], *available at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf. See* Foremost Insurance Group, ''2012 Mobile Home Market Facts'' at 8 (2012), *available at http://www.foremost.com/mobile-home-market-facts/2012-Market-Facts.pdf. But see* L.A. Kovach, ''CFPB Report alleges Manufactured Housing Lending is Expensive, sparks controversial comments from CFED, MHI and other MH industry professionals,'' *available at http://www.mhmarketingsales management.com/home/industry-news/industry-in-focus/8460-cfpb-report-alleges-manufactured-housing-lending-is-expensive-sparks-controversial-comments-from-cfed-mhi-and-other-mh-industry-professionals.* According to this article, the President of 21st Mortgage Corporation disputes CFPB's figure for land ownership by manufactured housing borrowers, stating instead that about 26 percent of its chattel loan borrowers reported owning their land. *Id.* Further, he states that some

Continued

most new manufactured homes are sited on private land and not in manufactured housing communities.[28] Loans financing manufactured homes may be secured by a lien solely on the unit, separate liens on the unit and the underlying land, or a single lien covering both the unit and the underlying land. The units themselves tend to depreciate in value.[29] After about three years, the typical manufactured home has a wholesale value of about half its original price.[30]

The Safety and Soundness Act provides that in determining whether an Enterprise has complied with the Duty to Serve the manufactured housing market, FHFA may consider loans secured by both real and personal property.[31] As with the 2010 Duty to Serve proposed rule, § 1282.33(c)(1) of this proposed rule would provide credit for Enterprise activities that facilitate a secondary market for manufactured homes titled as real property but not as chattel.

FHFA received comments on the 2010 Duty to Serve proposed rule favoring Enterprise support for chattel financing from the manufactured housing industry, Members of Congress, and some consumer advocates. Many of these commenters noted that chattel is the far greater part of the manufactured housing market and that most manufactured housing borrowers would not have received any assistance under the 2010 Duty to Serve proposed rule. In addition, more than 3,700 individuals commented in support of chattel financing by the Enterprises, generally via form letters. Many emphasized their inability to sell their homes due to a scarcity of chattel financing for potential buyers.

The **SUPPLEMENTARY INFORMATION** for the 2010 Duty to Serve proposed rule highlighted performance concerns about chattel lending and also discussed their high interest rates, disadvantageous loan features, and relative paucity of borrower protections.[32] These concerns remain, and some bear reiteration.

There is no current secondary market for recent-vintage, conventional chattel loans[33] and the Enterprises do not buy them.[34] Thus, analyzing performance data for conventional chattel loans is challenging. However, in Fannie Mae's limited experience with chattel loans, the loans performed poorly.[35] Despite Fannie Mae's efforts, the chattel transactions revealed high levels of inconsistency in the quality and standardization of loan documentation. For example, something as basic as the value used in the loan-to-value calculation varied dramatically from dealer to dealer and made analysis and statistical modeling extremely challenging. In addition, the transactions also had much higher default rates and loss severities, which may be aggravated because the units depreciate substantially, and channels for reselling repossessed units can be limited.[36] Moreover, chattel-titled units sited in manufactured housing communities may further lose value if they are subject to continuously increasing rents for the land on which the units are located.[37]

A 2014 white paper by the Consumer Financial Protection Bureau (CFPB) found that chattel loans have had higher interest rates (range from 50 to 500 basis points higher) and ''APRs on chattel loans are about 150 basis points higher on average than for mortgages on manufactured homes,'' despite the lack of economically substantial differences in income, debt-to-income ratios, credit scores, and loan-to-value ratios with real estate-titled borrowers.[38] These disparities in rates might result in large measure from the significant depreciation in the value of chattel collateral, but the question remains whether this fully accounts for the differential in loan pricing. Chattel loans also lack the benefit of many federal laws and programs that assist real estate-titled borrowers, including in part or in whole, the Making Home Affordable Program of 2009, the Helping Families Save Their Homes Act of 2009, the Fraud Enforcement and Recovery Act of 2009, and the Real Estate Settlement Procedures Act (RESPA).[39]

people report owning their land when the land is actually owned by a family member. *Id.*

[28] In 2013, 70 percent of new manufactured homes for residential use were placed on private land but only 30 percent were placed in manufactured housing communities. *See* Census Table, *supra* note 22.

[29] *See* Martin V. Lavin, Prologue to Saving Chattel Lending, Industry Voices—Letters to the Editor and OpEd by & for MH Industry Pros (June 23, 2011), *available at http://www.mhmarketingsales management.com/blogs/industryvoices/tag/saving-chattel-lending/;* Asset-Backed Certificates, Series 2006–OPT2, Registration Statement No. 333–127352 (Mar. 13, 2006) (Prospectus) (''Because manufactured homes generally depreciate in value, it is unlikely that repossession and resale of a manufactured home will result in the full recovery of the outstanding principal and unpaid interest on the related defaulted Manufactured Housing Contract.''), *available at http://www.sec.gov/Archives/edgar/data/1356081/000088237706000772/d454063_fwp.htm.*

[30] *See* Katherine MacTavish, Michelle Eley & Sonya Salamon, ''Policy and Practitioner Perspective: Housing Vulnerability Among Rural Trailer-Park Households,'' 13 Georgetown J. Poverty Law & Policy at 95, 99 (Spring 2006) [hereinafter ''Rural Trailer-Park Households'']. *See generally* Ohio Department of Taxation, Property Taxation of Manufactured and Mobile Homes (Bulletin 11, Rev. Dec. 2002), *available at http://www.tax.ohio.gov/portals/0/government/dte_bulletin11rev.pdf.*

[31] *See* 12 U.S.C. 4565(d)(3).

[32] *See* 75 FR 32099, 32103–32104 (June 7, 2010). For a discussion of borrower protections inapplicable to chattel borrowers, *see generally* CFPB, ''Manufactured-housing consumer finance in the United States,'' at 6 (Sept. 2014), *available at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf;* Ann M. Burkhart, Bringing Manufactured Housing into the Real Estate Finance System, 37 Pepp. L. Rev. 427 (Mar. 2010). For a discussion of the benefits of chattel financing, *see generally* Letter from Manufactured Housing Association for Regulatory Reform to Cong. Johnson & Cong. Crapo (Oct. 28, 2013), *available at http://www.mhmarketingsalesmanagement.com/blogs/daily-business-news/wp-content/uploads/2014/03/MHARRO1-sent-to-Ohio-Association-member-addressed-to-Senate-Banking-Committee-1.pdf.*

[33] *See generally* CFPB White Paper, *supra* note 27, at 38 (''It is likely that most of the loans held in portfolio are chattel loans, for which secondary market demand has been depressed over the last decade.''). *But see* Bloomberg, ''Manufactured Housing May Be a Key to Unraveling Affordability Puzzle,'' BloombergBrief/Real Estate (Mar. 6, 2015), *available at http://newsletters.briefs.bloomberg.com/document/2lz149ood4qz14ihabp/qampa-stephen-wheeler-of-has-capital-?hootPostID=fcb6a370a97507fc986a2e855f0ecf76.* A new market entrant, HAS Capital, has a goal of bringing new asset-backed securities collateralized by chattel-financed units to the capital markets within the next 12 to 18 months. *See id.*

[34] *See* Fannie Mae, ''Manufactured Housing Requirements, Clarifications, and New Forms,'' at 6 (June 15, 2007), *available at https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2007/0706.pdf;* Freddie Mac, ''Manufactured Homes Underwriting Reminders,'' at 1 (Dec. 2008), *available at http://www.FreddieMac.com/learn/pdfs/uw/manuf_home.pdf.*

[35] *See* Fannie Mae, ''Manufactured Housing Securities Status Report'' (Apr. 15, 2003) (This document is a part of the ''Resource Library'' of the Financial Crisis Inquiry Commission), *available at http://fcic-static.law.stanford.edu/cdn_media/fcic-docs/2003-04-15%20Fannie%20Mae%20Manufactured%20Housing%20Securities%20Status%20Report.pdf.*

[36] *See* Martin V. Lavin, ''Guerrilla Servicing, Manufactured Home Merchandiser,'' at 31–32 (Apr. 2001), *available at http://www.martylavin.com/writings/4.01%20lavin%20guerilla.pdf.* By contrast, the mortgages purchased by Freddie Mac on real estate-financed manufactured housing units have performed within Freddie Mac's expectations. Fannie Mae reports that its mortgages on real estate-financed manufactured housing units, which meet different eligibility requirements than Fannie Mae's standard products, are performing similarly to single-family mortgages overall, although in the event of default, manufactured housing generally results in higher loss severity than other single-family property types.

[37] *See* Martin V. Lavin, ''Saving Chattel Lending, Manufactured Home Merchandiser,'' at 22 (Dec. 2007), *available at http://www.martylavin.com/writings/saving-chattel-lending.pdf;* Kevin Jewell, Consumers Union Southwest Regional Office, ''Manufactured Housing Appreciation: Stereotypes and Data'' (Apr. 2003), *available at http://consumersunion.org/pdf/mh/Appreciation.pdf.*

[38] *See* CFPB White Paper, *supra* note 27, at 6, 36.

[39] *See* Ann M. Burkhart, Bringing Manufactured Housing into the Real Estate Finance System, 37 Pepp. L. Rev. 427, 429–430 (Mar. 1, 2010); CFPB White Paper, *supra* note 27, at 24. CFPB's revised borrower disclosures under the Truth in Lending Act and RESPA will not cover ''chattel-dwelling loans.'' *See* CFPB, TILA–RESPA Integrated

Also, except in those states where the debtor must receive notice of the right to cure a default, a lender can repossess a chattel-titled unit immediately upon default, without prior notice.[40] These repossessions have included circumstances in which units were towed with the residents still in them[41] and of significant damage to the unit's porch, deck, air conditioner, plumbing and septic system.[42]

There are also additional concerns about chattel loans from a secondary market perspective. The risks posed to secondary market investors by bankrupt chattel borrowers are greater than the risks posed by bankrupt real property borrowers. As discussed in a Fannie Mae prospectus:

> Under certain circumstances, the security interest assigned to the trust [for the chattel loan] may become subordinate to the interests of other parties or may be vulnerable to the creditors of [the loan seller] in a bankruptcy situation. Further, even if steps are taken initially to perfect the security interests in certain of the manufactured homes, if borrowers relocate or sell their manufactured homes, the related security interests could cease to be perfected. Certain other laws, including federal and state bankruptcy and insolvency laws and general equity principles may limit or delay a lender's ability to repossess and resell the collateral.[43]

Moreover, insurance comparable to private mortgage insurance protecting the lender, and therefore Freddie Mac and Fannie Mae, is generally unavailable for chattel loans.

FHFA has considered the relative opportunities, needs, and risks in addressing affordable housing needs through the chattel and real estate financing channels and has concluded that, under the proposed rule, the Enterprises may only receive Duty to Serve credit for activities related to facilitating a secondary market for mortgages on individual manufactured homes titled as real estate. While chattel loans may have some benefits for a borrower, such as being easier for the borrower to qualify for financing and having lower closing costs[44] than real estate loans, FHFA believes that the disadvantages to the borrower and the safety and soundness considerations for the Enterprises of currently available chattel loan programs outweigh benefits to the borrower in many instances.

The Enterprises may be able to use their market presence to expand the use of real estate financing for manufactured homes. CFPB estimates that 65 percent of borrowers who own their land financed their units as chattel rather than as real estate,[45] and the Manufactured Housing Institute states that growing numbers of buyers are opting to place their homes on land they are purchasing or already own.[46] Currently, about three-quarters of the states have statutorily-defined processes for converting a manufactured home's title from chattel to real property.[47] Improvements and changes in titling practices and laws could result in more manufactured homes financed as real estate and, therefore, being eligible for Duty to Serve credit under the rule as proposed. The National Conference of Commissioners on Uniform State Laws has adopted a model law for enactment by the states that would allow a purchaser to elect to title the manufactured home as real property and benefit from many of the same legal protections as owners of site-built homes.[48] Providing secondary market support to the real estate-financed manufactured home market raises the potential for very low-, low-, and moderate-income families to benefit from the associated lower rates, APRs, federal loan modification and refinancing programs, and enhanced consumer protections.

Despite these possibilities for real estate-financing of manufactured homes, FHFA is mindful that some chattel borrowers have significant financing needs now. Many current owners of chattel-financed homes are in distress because of their inability to sell their homes or refinance into more affordable loans because chattel financing is unavailable.[49] Moreover, the majority of the manufactured housing market is chattel-financed, with 78 percent of new manufactured housing units placed in 2013 titled as chattel.[50] In view of the significant financing needs of chattel borrowers, the safety and soundness and borrower protection concerns discussed above, FHFA specifically requests comments on what improvements could be made in originating and servicing that would make chattel loans safer for purchase by the Enterprises.

The Enterprises could pilot an initiative to purchase chattel loans, which could familiarize them with the risk and rewards of chattel financing and familiarize their counterparties with the types of origination, servicing, and consumer protection standards that would be required for any permanent

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Disclosure rule—Small entity compliance guide, at 19 (Sept. 2014), *available at http://files.consumerfinance.gov/f/201409_cfpb_tila-respa-integrated-disclosure-rule_compliance-guide.pdf.*

[40] *See* Asset-Backed Certificates, Series 2006–OPT2, Registration Statement No. 333–127352 (Mar. 13, 2006) (Prospectus), *available at http://www.sec.gov/Archives/edgar/data/1356081/000088237706000772/d454063_fwp.htm;* Ann M. Burkhart, ''Bringing Manufactured Housing into the Real Estate Finance System,'' 37 Pepp. L. Rev. 427, 449–450 (Mar. 1, 2010). *See also,* Amy J. Schmitz, ''Promoting the Promise Manufactured Homes Provide for Affordable Housing,'' at 393, 13 Journal of Affordable Housing 449 (No. 3) (Spring 2004), *available at http://lawweb.colorado.edu/profiles/pubpdfs/schmitz/SchmitzAHCDL.pdf* (''MH lenders may be especially eager to grab an MH as quickly after default as possible, in light of the perceived high risks of MH lending and fear that MHs decline in value while the loans that they secure go 'underwater' '').

[41] *In re Smith,* 296 B.R. 46 (Bnkr. M.D. Ala. 2003); Consumers Union, ''Manufactured Housing: A Home That the Law Still Treats Like a Car,'' at 2–3 (2005). *See also In re Daniel,* 137 B.R. 884 (Mar. 10, 1992).

[42] *See Giese* v. *NCNB Tex. Forney Banking Ctr.,* 881 SW.2d 776, 1994 Tex. App. LEXIS 2084 (Tex. App. Dallas 1994).

[43] Fannie Mae, Prospectus Supplement, ''Guaranteed REMIC Pass-Through Certificates Fannie Mae REMIC Trust 2000–14,'' at S–10 (Apr. 10, 2000), *available at http://www.fanniemae.com/syndicated/documents/mbs/remicsupp/2000-014.pdf.*

[44] *See* CFPB White Paper, *supra* note 27, at 36.

[45] CFPB White Paper, *supra* note 27, at 6. The Foremost Insurance Group estimates that 46 percent of manufactured homes that they insure are titled and financed as chattel even though the borrower owns the underlying land. *See* Foremost Insurance Group, ''2012 Mobile Home Market Facts'' 8 (2012), *available at http://www.foremost.com/mobile-home-market-facts/2012-Market-Facts.pdf. But see* L.A. Kovach, ''CFPB Report alleges Manufactured Housing Lending is Expensive, sparks controversial comments from CFED, MHI and other MH industry professionals,'' *available at http://www.mhmarketingsalesmanagement.com/home/industry-news/industry-in-focus/8460-cfpb-report-alleges-manufactured-housing-lending-is-expensive-sparks-controversial-comments-from-cfed-mhi-and-other-mh-industry-professionals.* According to this article, the President of 21st Mortgage Corporation disputes CFPB's figure for land ownership by manufactured housing borrowers, stating instead that about 26 percent of its chattel loan borrowers reported owning their land. *Id.* Further, he states that some people report owning their land when it is actually owned by a family member. *Id.*

[46] *See* Manufactured Housing Institute, ''2014 Quick Facts—Trends and Information About the Manufactured Housing Industry'' (2014).

[47] CFPB White Paper, *supra* note 27, at 10. Generally, manufactured homes are treated as chattel by default. *Id.*

[48] *See* National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), ''Uniform Manufactured Housing Act'' (Oct. 1, 2012), *available at http://www.uniformlaws.org/shared/docs/manufactured_housing/2012_mha_final.pdf.* The model act contains an anti-steering provision designed to prevent retailers from steering borrowers towards chattel or real estate titling. *See id.* at section 3(b). For a critique of the model act, *see* Marc J. Lifset, ''Proposed ULC Manufactured Home Titling Act'' (rev. Oct. 31, 2011), *available at https://www.aba.com/aba/documents/GeneralCounsel/UniformLaws/LifsetReport.pdf.*

[49] The unavailability of financing for chattel-titled units can, in turn, cause deterioration of manufactured housing communities and hinder their ability to obtain financing. *See* Tony Petosa, Nick Bertino & Creighton Weber, ''Wells Fargo Multifamily Capital, Manufactured Home Community Financing Handbook,'' at 5, 17 (9th ed. Spring 2015).

[50] *See* Census Table, *supra* note 22.

chattel financing initiative. However, there may be substantial difficulties with establishing the protections and disclosures necessary to make chattel loans appropriate for Enterprise support. For example, there may be substantial difficulties in developing disclosures for borrowers analogous to those required under RESPA, particularly the prohibition on unearned referral fees and the requirements for disclosures to borrowers of closing costs,[51] and in institutionalizing these disclosures among market participants. Beyond these operational concerns, developing RESPA-like protections may require legislative and regulatory changes. The same may be true for mandating that chattel borrowers have protections and remedies analogous to those that state law affords real estate borrowers in foreclosure. Given the considerable challenges and considerable investment an Enterprise chattel pilot would entail, the overall benefits of a pilot may be uncertain.

Under § 1282.38(b)(2) of the proposed rule, Duty to Serve credit would not be provided under any of the three underserved markets for Enterprise purchases of Home Ownership and Equity Protection Act (HOEPA) loans, which are not currently eligible for sale to the Enterprises in any event.[52]

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

10. What existing Enterprise criteria (contained in Freddie Mac's Manufactured Homes, Publication Number 387B and Fannie Mae's Selling Guide, B5–2 [53]) for support of manufactured home loans titled as real property could be modified to expand support for very low-, low-, and moderate-income families, consistent with Enterprise safety and soundness?

11. Should Enterprise support for manufactured home loans titled as real property be a Regulatory Activity?

12. Should the Duty to Serve rule only give credit for support to manufactured home borrowers with specific needs, such as current borrowers with real estate mortgages with excessive coupon rates (and what should be considered ''excessive''), or current borrowers with chattel loans who could benefit from conversion to real estate financing? If so, what kinds of needs would be appropriate?

13. Should the Enterprises receive credit for purchasing chattel loans, on an ongoing or pilot basis? If so what improvements should be made in the process for originating and servicing that would make chattel loans safer for purchase by the Enterprises and safer for borrowers?

14. Should Duty to Serve credit be available for Enterprise support of chattel-titled manufactured homes where the units are sited in manufactured housing communities for which an Enterprise has purchased the blanket loan and the blanket loan purchase qualifies for Duty to Serve credit?

15. If FHFA allows Duty to Serve credit for Enterprise support of chattel lending, should the tenant protections as described in ''Manufactured Housing Communities with Tenant Protections—Proposed § 1282.33(c)(2)(iii)'' below also be required? How could compliance with borrower and tenant protections be implemented and monitored within the operational systems and capacities of the Enterprises and those of their seller/servicers and other counterparties?

ii. Manufactured Housing Communities—Proposed § 1282.33(c)(2)

Section 1282.33(c)(2) of the proposed rule would provide Duty to Serve credit for Enterprise activities related to facilitating a secondary market for mortgages on certain categories of manufactured housing communities. Under the proposed rule, three specific types of activities would constitute Regulatory Activities that the Enterprises would have to address in their Underserved Markets Plans by indicating how they will undertake one or more of the activities or the reasons why they will not undertake each of the activities. These three Regulatory Activities are:

a. Support for blanket mortgages on manufactured housing communities with 150 pads or less;

b. Support for blanket mortgages on government-, nonprofit-, or resident-owned manufactured housing communities; and

c. Support for blanket mortgages on manufactured housing communities that have certain specified minimum protections for tenants in the pad leases.

A single manufactured housing community that fits more than one of these categories would be eligible for additional Duty to Serve credit.

Proposed § 1282.1 would define ''manufactured housing community'' as a tract of land under unified ownership and developed for the purpose of providing individual rental spaces for the placement of manufactured homes within its boundaries. The homes, which may be owner-occupied, *i.e.,* chattel-owned, or leased from the community owner, are sited on pads. A unit owner leases the pad on which the owner-occupied unit is located, adding this cost to monthly payments on the chattel loan for the unit. Leased units may include the pad in the rent, or may require a separate rent for the pad. The total housing costs for any manufactured housing community resident typically include monthly utility payments, which can be significant.[54]

There are an estimated 50,000 to 60,000 manufactured home communities nationwide, and they typically have fewer than 200 pads.[55] Manufactured housing communities tend to be in rural and lower-income areas.[56] More than 50 percent of rental manufactured homes are concentrated in eight states.[57]

The development of new affordable manufactured housing communities faces challenges, and the continued existence of many communities that are located closer to urban areas is threatened. Zoning constraints, permit requirements, and rising land values deter the development of new affordable communities, while providing

[51] For an overview of RESPA and its protections and requirements, *see generally* CFPB Consumer Laws and Regulations—RESPA (Aug. 2013), *available at http://files.consumerfinance.gov/f/201308_cfpb_respa_narrative-exam-procedures.pdf.* For information on payments that may be improper under RESPA, *see generally* ''Resolving RESPA's § 8(b) Circuit Split,'' 73 U. Chi. L. Rev. 1487 (Fall 2006). For information on required disclosures, *see* 12 U.S.C. 2603; Bureau of Consumer Financial Protection—Real Estate Settlement Procedures Act (Regulation X), 12 CFR 1024.1 *et seq.*

[52] *See* FHFA, 2014 Annual Housing Report, at 15, Fn. 22 (Oct. 30, 2014), *available at http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual_Housing_Report_2014.pdf.*

[53] *See generally* Freddie Mac, 1 Single-Family Seller/Servicer Guide H33 (Sept. 1, 2015); Fannie Mae, Selling Guide, B5–2 (Aug. 25, 2015), *available at https://www.fanniemae.com/content/guide/selling/b/index.html.*

[54] Rural Trailer-Park Households, *supra* note 30, at 95, 101.

[55] Rural Trailer-Park Households, *supra* note 30, at 95, 97. *See also* Manufactured Housing Association for Regulatory Reform, Letter to FHFA, 6–7 (Sept. 2, 2009) (comment letter on FHFA's Duty to Serve Advance Notice of Proposed Rulemaking). This trade association advised that 85 percent of manufactured housing communities have fewer than 100 units. *Id.*

[56] *See* Rural Trailer-Park Households, *supra* note 30, at 95; Housing Assistance Council, Rural Housing Research Note, Preserving Affordable Manufactured Home Communities in Rural America: A Case Study at 3 (Mar. 2011), *available at http://www.ruralhome.org/storage/documents/rcbi_manufactured.pdf.*

[57] Freddie Mac, ''2015 Multifamily Outlook—Executive Summary,'' Multifamily Research Perspectives, at 16–17 (Feb. 2015), *available at http://www.freddiemac.com/multifamily/pdf/2015_outlook.pdf.* The states, in order of highest number of rental manufactured housing units, are North Carolina, Texas, Florida, California, Georgia, South Carolina, Tennessee and Alabama. *Id.*

incentives for owners to convert existing communities to uses other than affordable housing.[58] Rent controls on communities in some jurisdictions benefit households, but may also contribute to a community owner's decision to sell or convert affordable communities.[59] At the same time, high-end communities are becoming more popular with investors,[60] and the demand for the limited supply of high-end communities for sale has driven up community prices.[61] Some types of manufactured housing communities have become highly desirable investments and have abundant financing options [62] that may not be available to communities in secondary and tertiary markets, or those that use septic systems and wells.[63]

Fannie Mae has been purchasing blanket loans on manufactured housing communities for more than 15 years. The blanket mortgages purchased by Fannie Mae on manufactured housing communities have performed as well as other multifamily loans in its portfolio.

Freddie Mac only recently entered the manufactured housing community market, but its blanket loan program is now fully operational. To date, the blanket mortgages purchased by Freddie Mac on manufactured housing communities have performed consistently with Freddie Mac's multifamily portfolio as a whole.

Commenters on the 2010 Duty to Serve proposed rule were divided as to whether the Enterprises should receive Duty to Serve credit for supporting manufactured housing communities. Some commenters favored giving credit only for support of resident-owned manufactured housing communities, other commenters recommended giving credit for not-for-profit-owned communities, while other commenters favored giving credit for both types of communities. FHFA has considered these comments, market changes since 2010, and the housing needs of very low-, low-, and moderate-income households in developing the proposed requirements for the Duty to Serve the manufactured housing market, as further discussed below.

(1) Small Manufactured Housing Communities—Proposed § 1282.33(c)(2)(i)

Section 1282.33(c)(2)(i) of the proposed rule would provide Duty to Serve credit for Enterprise activities related to facilitating a secondary market for mortgages on blanket loans on small manufactured housing communities, defined as communities with 150 pads or less, which would constitute a Regulatory Activity. Duty to Serve credit would be available for these communities regardless of the type of ownership—for-profit, government, nonprofit or resident.

Small manufactured housing communities compose the great bulk of the manufactured housing market, and are likely to be located in lower-income or rural areas.[64] Experience suggests that, much like small multifamily rental properties, small manufactured housing communities are more likely to have lower pad or unit rents and, therefore, may be more affordable to very low-, low-, and moderate-income families. Small manufactured housing communities often have fewer, if any, amenities, have less developed site infrastructure, and tend to have long-term residents.[65] While these factors make smaller manufactured housing communities an important source of affordable housing, they can also make financing more difficult to obtain.

Industry observation also indicates that local banks or credit unions frequently originate the loans obtained by smaller manufactured housing communities and hold the loans in portfolio. Although permanent financing may be available on relatively favorable terms in the current market, including less expensive loans with fixed interest rates for 5-year terms,[66] this has not been the case in all market conditions and for all community owners. Similar to the financing options available to small multifamily property owners, the financing more commonly available to owners of small manufactured housing communities has not been fully amortizing and loan terms have often been short, at the end of which time a balloon payment is due. The interest rates for loans on small manufactured housing communities were more likely to be adjustable and may likely have been higher than the rates available to owners of larger communities.

The manufactured housing community blanket loans that the Enterprises have purchased to date have tended to be loans on larger manufactured housing communities. Many of the blanket loans purchased are for age-restricted communities, and are for properties located in only a few states. Duty to Serve credit is not needed to provide an incentive for Enterprise support for blanket loans for well-served manufactured housing communities that are less likely to have very low-, low-, or moderate-income

[58] *See generally* Casey J. Dawkins, C. Theodore Koebel, Marilyn Cavell, Steve Hullibarger, David B. Hattis & Howard Weissman, ''Regulatory Barriers to Manufactured Housing Placement in Urban Communities,'' at 107 (Jan. 2011) (Report to HUD), *available at http://www.huduser.org/Publications/pdf/mfghsg_HUD_2011.pdf* (''Manufactured housing placements, on the other hand, are influenced by a variety of regulatory barriers, including the lack of by-right zoning, burdensome fees, permits, snow load standards, fire codes, zoning codes, subdivision regulations, architectural design standards, and environmental regulations.''). *See also* Larry Harwood, ''Manufactured Success Today's land-lease communities provide an alternative niche for investment dollars,'' CIRE Magazine (Mar.–Apr. 2008), *available at http://www.ccim.com/cire-magazine/articles/manufactured-success.* This article describes incentives for investors to convert manufactured housing communities as follows:

The other advantage of owning the land rather than the homes is that land potentially can be sold or developed for another, more profitable, purpose. If located in a developing area, an older mobile home community can become a very valuable infill location sought after by home builders or commercial property developers and easily can be repurposed with minimum demolition expense. An institutional owner may have the wherewithal to undertake a redevelopment of the land when the time is right. In fact, today's stable cash flows coupled with the possibility of a long-term land play is what motivates some institutional investors to acquire manufactured-home communities. *Id.*

[59] *See* Sandy Mazza, ''State Supreme Court rejects Carson mobile home park owner's rent-control challenge,'' Daily Breeze (Feb. 3, 2014), *available at http://www.dailybreeze.com/general-news/20140202/state-supreme-court-rejects-carson-mobile-home-park-owners-rent-control-challenge;* Matt Kettmann, ''California's Trailer-Parks War: Owners vs. Renters'' (Jan. 15, 2011), *available at http://content.time.com/time/nation/article/0,8599,2042710,00.html.*

[60] *See* Nancy Olmsted, Marcus & Millichap, ''Investor Demand Strong for Manufactured Housing Near Urban Areas,'' Second Half 2015, Manufactured Housing Research Report, at 1 (2015).

[61] *See* Nancy Olmsted, Marcus & Millichap, ''Investors Competing for Limited Supply of Manufactured Home Communities,'' First Half 2015, Manufactured Housing Research Report, at 1 (2015).

[62] *See* Tony Petosa, Nick Bertino & Creighton Weber, ''Wells Fargo Multifamily Capital, Manufactured Home Community Financing Handbook,'' at 7 (9th ed. Spring 2015). For a discussion of the high desirability of manufactured housing communities as an investment, *see generally,* Nancy Olmsted, Marcus & Millichap, ''Investors Competing for Limited Supply of Manufactured Home Communities,'' First Half 2015, Manufactured Housing Research Report (2015). *See also,* Larry Harwood, ''Manufactured Success Today's land-lease communities provide an alternative niche for investment dollars,'' CIRE Magazine (Mar–Apr. 2008), *available at http://www.ccim.com/cire-magazine/articles/manufactured-success.*

[63] *See* Nancy Olmsted, Marcus & Millichap, ''Investor Demand Strong for Manufactured Housing Near Urban Areas,'' Second Half 2015, Manufactured Housing Research Report, at 1 (2015).

[64] *See generally* Rural Trailer-Park Households, *supra* note 30, at 95–97.

[65] *See generally* Larry Harwood, ''Manufactured Success Today's land-lease communities provide an alternative niche for investment dollars,'' CIRE Magazine (Mar.-Apr. 2008), *available at http://www.ccim.com/cire-magazine/articles/manufactured-success.*

[66] In steep yield curve environments, such as the current market, interest rates are higher for longer-term loans. Some buyers opt for shorter-term loans to take advantage of the lower interest rate.

families. Although the Enterprises' underwriting guides do not exclude small manufactured housing communities, the Enterprises have not been significantly active in this market segment.

FHFA understands that extra efforts by the Enterprises may be necessary to support small manufactured housing communities due to economies of scale and operational considerations.[67] Nevertheless, the Enterprises could play a role in supporting fixed rate, longer-term, fully amortizing financing than is currently available for some small manufactured housing communities.

(2) Manufactured Housing Communities Owned by Governmental Units or Instrumentalities, Nonprofits, or Residents—Proposed § 1282.33(c)(2)(ii)

Section 1282.33(c)(2)(ii) of the proposed rule would provide Duty to Serve credit for Enterprise activities related to facilitating a secondary market for mortgages on manufactured housing communities owned by governmental units or instrumentalities, nonprofits, or residents, which would constitute a Regulatory Activity.

The purpose of these types of manufactured housing communities is usually to serve lower-income residents. These communities tend to preserve the continued existence of the community, promote fair treatment of tenants, and help preserve permanent affordability.[68] However, these communities often have difficulty obtaining financing due to typically lower profitability relative to communities with higher-income residents.[69] One study found that residents of resident-owned communities ''have consistent economic advantages over their counterparts in investor-owned communities, as evidenced by lower lot fees, higher average home sales prices, faster home sales, and access to fixed rate home financing.'' [70] Although government-, nonprofit-, and resident-owned communities currently make up a very small portion of the overall manufactured housing community market, more active support by the Enterprises for these types of ownership may encourage more manufactured housing communities to convert to this form of ownership, with the attendant benefits for the residents.

(3) Manufactured Housing Communities With Tenant Pad Lease Protections—Proposed § 1282.33(c)(2)(iii)

Section 1282.33(c)(2)(iii) of the proposed rule would provide Duty to Serve credit for Enterprise activities related to facilitating a secondary market for blanket loans on manufactured housing communities that have certain specified minimum pad lease protections for tenants, which would constitute a Regulatory Activity.

Business practices of manufactured housing rental community owners with their tenants vary widely, as with all forms of rental housing. For example, some manufactured housing community owners have sharply raised pad rents or unexpectedly canceled leases, particularly where the land has appreciated in value due to urban sprawl.[71] Some community owners have reportedly suppressed tenant complaints and organizing efforts for tenant associations. Tenants have been displaced as a result of sales of their communities or conversions of their communities to other uses.[72] A nationwide scarcity of available sites for relocation of existing manufactured housing units has also allowed some manufactured housing community owners or managers to enforce restrictive community regulations.[73] The Rhode Island Supreme Court has noted that ''special circumstances'' exist with manufactured housing communities, and unequal bargaining power may lead to ''abuses'' by the manufactured housing community owner.[74]

Manufactured housing community tenants face significant costs and difficulties in relocating their units.[75] Relocation costs can total between $3,000[76] and $5,000.[77] Tenants are usually responsible for removing their own skirting, deck, steps, and landscaping prior to moving their units.[78] The tenant may not be able to find a new manufactured housing community in which to live because many communities are full or will not accept used units.[79] Zoning regulations in some counties and municipalities prevent the placement of older units.[80] Currently, neither Enterprise will purchase a mortgage secured by a manufactured home that has been moved.[81]

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[67] *See* George Allen, ''Manufactured-Home Communities Come of Age,'' CCIM Institute (Oct. 1996), *available at http://www.ccim.com/cire-magazine/articles/manufactured-home-communities-come-age* (''It takes 50 to 75—or even 100—rental home sites to generate an economy of scale that adequately rewards a passive investor, funds a centralized property management operation for a syndicator or real estate investment trust (REIT), and provides a satisfactory comfort factor for most lenders.'').

[68] *See generally* Millennium Housing—Mission Statement, *available at http://www.millenniumhousing.net/asp/Site/About/Mission/index.asp.*

[69] *See generally* Millennium Housing—Our History, *available at http://www.millenniumhousing.net/asp/Site/About/History/index.asp.*

[70] Sally K. Ward, Charlie French & Kelly Giraud, ''Resident Ownership in New Hampshire's 'Mobile Home Parks:' A Report on Economic Outcomes'' (rev. 2010), *available at http://scholars.unh.edu/cgi/viewcontent.cgi?article=1009&context=carsey.*

[71] Rural Trailer-Park Households, s*upra* note 30, at 95, 100. *See generally* Laura Flanders, ''Affordable Housing for Seniors in the Cross Hairs in Chicago,'' The Nation (May 15, 2012), *available at http://www.thenation.com/article/affordable-housing-seniors-cross-hairs-chicago/.*

[72] Regarding displacement of residents, *see* Shannon Sims, ''The odd legal limbo for mobile home owners,'' USA Today (May 4, 2015), *available at http://www.usatoday.com/story/money/2015/05/04/ozy-odd-limbo-mobile-home-owners/26866693/.* For a discussion of unequal bargaining power between manufactured community owners and tenants, and related legislative responses, *see* ''Validity, construction, and application of mobile home eviction statutes,'' 43 A.L.R.5th 705 (1996); Bailey H. Kuklin, ''Housing and Technology: The Mobile Home Experience,'' 44 Tenn. L. Rev. 765 (Spring 1977).

[73] Rural Trailer-Park Households, s*upra* note 30, at 95, 99–100.

[74] *See Kingston Mobile Home Park* v. *Strashnick,* 774 A.2d 847, 853 (R.I. 2001), noted in *Brown* v. *Shumpert,* 2003 R.I. Super. LEXIS 125, Superior Court of Rhode Island, Providence (Oct. 2, 2003, Filed C.A. NO.: PC99–5926, C.A. NO.: PC02–2594).

[75] Frank Rolfe, ''Why Mobile Home Parks Have Such An Unfair Advantage in Commercial Real Estate,'' *available at http://www.mobilehomeuniversity.com/articles/why-mobile-home-parks-have-an-unfair-advantage-in-commercial-real-restate.php. See also* Drew Harwell, ''Mobile home park investors bet on older, poorer America,'' Tampa Bay Times (May 17, 2014), *available at http://www.tampabay.com/news/business/realestate/mobile-home-park-investors-bet-on-older-poorer-america/2180277.*

[76] William Apgar, Allegra Calder, Michael Collins & Mark Duda, Neighborhood Reinvestment Corporation, ''An Examination of Manufactured Housing as a Community—and Asset—Building Strategy,'' at 5 (Sept. 2002), *available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w02-11_apgar_et_al.pdf.*

[77] *See* Jessica Nicklos, ''Frank & Dave—Their Life in the Affordable Housing Industry and Predictions for the Future,'' at 9.

[78] *See* Tony Guerra, ''The Average Cost to Deliver and Set Up a Mobile Home,'' *available at http://homeguides.sfgate.com/average-cost-deliver-set-up-mobile-home-96554.html.*

[79] *See* Consumers Union, ''Manufactured Homeowners Who Rent Lots Lack Security of Basic Tenants Rights'' (Feb. 21, 2001), *available at http://consumersunion.org/pdf/manhome.pdf. But see* Harold D. Hunt, ''Keys to Successful Manufactured Housing Communities,'' Publication 2101, at 4 (June 4, 2015), *available at http://recenter.tamu.edu/pdf/2101.pdf.*

[80] *See Schanzenbach* v. *Town of La Barge,* 706 F.3d 1277 (10th Cir. 2013); *Five C's, Inc.* v. *County of Pasquotank,* 195 N.C. App. 410, 672 SE.2d 737 (2009). *See generally* David W. Owens, ''Manufactured Housing, Modular Housing, and Zoning'' (May 2014) (School of Government, The University of North Carolina at Chapel Hill), *available at https://www.sog.unc.edu/resources/legal-summaries/manufactured-housing-modular-housing-and-zoning.*

[81] *See* Fannie Mae, Selling Guide, ''B2–3–02: Special Property Eligibility and Underwriting Considerations: Factory-Built Housing (04/15/2014)'' (Apr. 15, 2014) (''The unit must not have been previously installed or occupied at any other site or location.''), *available at https://www.fanniemae.com/content/guide/selling/b2/3/02.html;* Freddie Mac, 1 Single-Family Seller/Servicer Guide H33.3(b) (Sept.1, 2015).

Pad lease protections in manufactured housing communities are generally a matter of state or local law and, thus, these protections can vary widely.[82] In light of concerns raised about the treatment of tenants in some manufactured housing communities,[83] the proposed rule would include a list of pad lease protections that FHFA believes would be appropriate for Duty to Serve credit. Specifically, the proposed rule would provide that Enterprise support for a manufactured housing community that has, at a minimum, all of the following pad lease protections would receive Duty to Serve credit:

a. The lease term must be for a minimum of one year and renewable absent good cause; [84]

b. There must be at least 30 days advance written notice of a rent increase;

c. There must be at least a five-day grace period for rent payments, and tenants must have a right to cure defaults on rent payments;

d. If the tenant defaults on rent payments, the tenant must have the right to:

i. Sell the tenant's unit without having to first relocate it out of the community;

ii. Sublease or assign the lease for the unexpired term to the new buyer of the tenant's unit without any unreasonable restraint;

iii. Post ''For Sale'' signs; and

iv. Have a reasonable period of time after an eviction to sell the unit; and,

e. Tenants must receive at least 120 days advance notice of a planned sale or closure of the community within which time the tenants, or an organization acting on behalf of a group of tenants, may match any bona fide offer for sale. The community owner shall consider the tenants' offer and negotiate with them in good faith.

FHFA recognizes that an individual tenant is unlikely to be able to purchase a community by himself or herself. For this reason, the pad lease protections would allow tenants 120 days to match any bona fide offer for sale, giving tenants time to form a homeowners' association or tenants' association to purchase the community.

FHFA believes that the Enterprises can use their market influence in support of the pad lease protection standards described here becoming more of a norm in the industry. An Enterprise may verify that the pad leases in a manufactured housing community being served by the Enterprise contain, at a minimum, the specified tenant protections at the time the Enterprise purchases the blanket loan by obtaining a certification to this effect from the seller/servicer. Sellers and servicers would not be expected to oversee compliance by the manufactured housing community borrowers with these pad lease provisions. Likewise, FHFA would not require that the covenants in the blanket loan provide for default in the event of non-compliance with the tenant protections by the manufactured housing community borrower. The tenants, in their discretion, would be responsible for pursuing any private relief in those instances that may be available under state law.

Some commenters on the 2010 Duty to Serve proposed rule favored tenant protections for any loan that receives Duty to Serve credit. Although the Enterprises are major participants in the manufactured housing community market and have some degree of influence, this is currently a highly competitive market. Requiring the tenant protections for the Duty to Serve eligibility of every manufactured housing community loan may simply incentivize community owners to seek funding elsewhere.

Manufactured housing communities subject to federal, state or local laws providing pad lease protections equal to or greater than those listed above would meet the requirements of the proposed rule. As an alternative to obtaining a seller/servicer certification of the pad lease protections for a community securing a loan purchased by an Enterprise, the Enterprise may verify that such laws apply to the community.

c. Evaluating Affordability for Manufactured Housing Communities—Proposed § 1282.39(g)

The Safety and Soundness Act provides that the Enterprises' Duty to Serve manufactured housing activities must be for very low-, low-, and moderate-income families.[85] Under the statute, ''very low-income'' is defined as having an income of 50 percent or less of the area median income, adjusted for household size; ''low-income'' is defined as having an income of 80 percent or less of the area median income, adjusted for household size; and ''moderate-income'' is defined as having an income of 100 percent or less of the area median income, adjusted for household size.[86]

Owners of manufactured housing communities are unlikely to know the incomes of all of their residents at the time a blanket loan for the community is originated or sold to an Enterprise. In order for an Enterprise's purchase of a blanket loan on a manufactured housing community to receive credit under the loan purchase assessment factor, an alternative to requiring the Enterprises to obtain the income of the tenants in the community is needed. FHFA has previously established a proxy methodology for determining affordability for the Enterprises' housing goals that uses total monthly housing costs (rents plus utility costs) instead of incomes.[87] That methodology would be used for determining affordability of multifamily properties under this proposed rule. However, total monthly housing costs (unit owners' total monthly note payments plus pad rent payments adjusted for bedroom size) in manufactured housing communities are generally not known to the owners of the communities. Accordingly, to determine affordability for manufactured housing communities, § 1282.39(g) of the proposed rule would set forth a methodology that would apply to manufactured housing communities, regardless of the type of ownership or size of the community. The methodology would compare the median income for the census tract in which the community is located with the median income for the entire metropolitan area in which the census tract is located.

For example, for a community located in a census tract where the median

[82] *See* United States Government Accountability Office, Report to Congressional Requesters, ''Federal Housing Administration—Agency Should Assess the Effects of Proposed Changes to the Manufactured Home Loan Program,'' GAO–07–879, at 5 (Aug. 2007), *available at http://www.gao.gov/new.items/d07879.pdf.* The National Consumer Law Center reports, for example, that only 16 states require that manufactured housing community pad leases have some minimum lease term, and only 33 states require grounds for evicting residents from a community. *See* National Consumer Law Center, ''Manufactured Housing Resource Guide—Protecting Fundamental Freedoms in Communities,'' at 4–5 (Oct. 2010), *available at http://cfed.org/assets/pdfs/groundwork.pdf.*

[83] *See* United States Government Accountability Office, Report to Congressional Requesters, ''Federal Housing Administration—Agency Should Assess the Effects of Proposed Changes to the Manufactured Home Loan Program,'' GAO–07–879, at 5 (Aug. 2007), *available at http://www.gao.gov/new.items/d07879.pdf;* National Consumer Law Center, ''Manufactured Housing Resource Guide—Protecting Fundamental Freedoms in Communities,'' at 4–5 (Oct. 2010), *available at http://cfed.org/assets/pdfs/groundwork.pdf.*

[84] For a discussion of the effects of month-to-month and annual leases, *see* Rupert Neate, ''Trailer park king sued by residents in Texas for raising rents,'' theguardian (May 11, 2015), *available at http://www.theguardian.com/us-news/2015/may/11/trailer-park-king-sued-by-residents-in-texas-for-raising-rents.*

[85] 12 U.S.C. 4565(a)(1)(A).

[86] 12 U.S.C. 4502.

[87] *See* 80 FR 53392, 53432 (Sept. 3, 2015), *to be codified at* 12 CFR 1282.15(d)(1).

income does not exceed 100 percent of the median income of the area in which the census tract is located, all residents of the community would be deemed to have incomes not exceeding 100 percent of the area median income and, thus, would meet the definition of ''moderate-income'' in the Safety and Soundness Act. In this case, the entire unpaid principal balance of the loan on such a community would receive credit, provided the loan meets all other requirements of the regulation.

For a manufactured housing community located in a census tract where the median income exceeds the median income of the area in which the census tract is located, the area median income would be divided by the median income of the census tract to generate a percentage, which would then be multiplied by the unpaid principal balance of the blanket loan. For example, if the census tract's median income is $125,000, the area median income is $100,000, and the unpaid principal balance of the loan is $1,000,000, the Enterprise would receive partial Duty to Serve credit of $800,000, as calculated in the following manner:

Step 1: $100,000 ÷ $125,000 = 80%
Step 2: 80% × $1,000,000 = $800,000

FHFA recognizes that under this proposed methodology, the Enterprises could receive Duty to Serve credit for purchases of mortgages on manufactured housing communities that may have some residents with incomes exceeding the area median income. The proposed methodology takes this into account through the partial credit component of the methodology. FHFA believes that the proposed methodology is a reasonable approach that will result in Duty to Serve credit being provided for manufactured housing communities that largely serve income-eligible households.

Home Mortgage Disclosure Act (HMDA) data for 2013 show that 64 percent of originations of loans on manufactured housing units were for borrowers with incomes at or below 100 percent of area median income. Forty-eight percent of these borrowers were very low- or low-income.[88] Another data series, the American Housing Survey, shows that, as of 2013, the median income for ''manufactured housing/mobile home'' households was $28,400,[89] while the estimated median income nationwide of all homeowners was $64,400.[90] In 2009, 22 percent of manufactured housing residents had incomes at or below the federal poverty level.[91] While the data do not indicate whether these borrowers reside in manufactured housing communities, they are indicative generally of the lower incomes of manufactured housing residents and suggest a higher likelihood that residents of manufactured housing communities have lower incomes.[92] At the same time, giving Duty to Serve credit for a manufactured housing community that serves both lower-income and higher-income households may be desirable because it may contribute significant benefits to the low- and moderate-income households in the community and to the success and sustainability of the community. There is substantial research on the benefits of mixed-income housing.[93]

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

16. Are there other segments of the manufactured housing market besides those discussed above that warrant Enterprise support under the Duty to Serve, such as communities located in lower-income or economically distressed areas?

17. Is the proposed limit of 150 pads for an eligible small manufactured housing community appropriate? Is there a different threshold that could better achieve the purposes of the Duty to Serve?

18. Are the proposed pad lease protections appropriate? Should any additional pad lease protections be required for an Enterprise to receive Duty to Serve credit?

19. Should the proposed pad lease protections be required for any manufactured housing community, regardless of its ownership or size, to be eligible for Duty to Serve credit?

20. Would the proposed methodology for determining affordability effectively approximate the incomes of the community's tenants? Are there other approaches that could effectively approximate the incomes of manufactured housing community tenants to comply with the Duty to Serve family income requirements, *e.g.,* the size of the blanket loan on the community or the size of the community?

21. Could governing or financing documents for the community provide a proxy for resident incomes? For communities owned by governmental units or instrumentalities, would regulations, handbooks or financing documents specifying income criteria for the residents be an appropriate indicator of tenant incomes? For nonprofit-owned and resident-owned communities, would the founding documents for the community, which describe its mission as serving lower-income families, or financing agreements or other documents from funding sources specifying the required income levels of intended beneficiaries, be appropriate indicators of tenant incomes? Is there any comparable documentation that could be applicable to communities with for-profit owners, *e.g.,* where they have accepted income restrictions in order to accept Section 8 vouchers?

22. Where the loan seller knows the incomes of the tenants of a manufactured housing community at the time an Enterprise purchases the

[88] These percentages come from 2013 HMDA data on manufactured housing unit loan originations, including borrowers residing in manufactured housing communities as well as borrowers who owned the land on which their units were located. Borrower income was not reported in HMDA on 14 percent of originations. To arrive at the figures presented (64 percent at or below area median income and 36 percent above area median income), this 14 percent figure was subtracted from the total and the remainder adjusted proportionately as between originations above and below the median. FHFA is unaware of any reason the 14 percent of borrowers would disproportionately have incomes over 100 percent of area median income. The figures presented include home purchase and refinance loans, but not rehabilitation loans.

[89] U.S. Census Bureau, American Housing Survey (2013, Last Revised: May 14, 2015), Table C–09A–AO, *available at http://www.census.gov/programs-surveys/ahs/data/2013/national-summary-report-and-tables_mdash;ahs-2013.html.*

[90] *See* U.S. Department of Housing and Urban Development, Notice PDR 2013–01, at 1 (Dec. 11, 2012), *available at http://www.huduser.org/portal/datasets/il/il13/Medians2013.pdf.*

[91] *See* Howard Banker & Robin LeBaron, Fair Mortgage Collaborative, ''Toward a Sustainable and Responsible Expansion of Affordable Mortgages for Manufactured Homes,'' at 9 (Mar. 2013), *available at http://cfed.org/assets/pdfs/IM_HOME_Loan_Data_Collection_Project_Report.pdf.*

[92] Some states have made legislative determinations finding that manufactured housing serves lower- and moderate-income households that might otherwise go without housing. *See generally* N.C. Gen. Stat. 160A–383.1 (2001). *See also* R.I. Gen. Laws section 31–44.1–1; 25 Del. C. section 7040.

[93] *See* HUD Community Planning and Development, ''Mixed-Income Housing and the HOME Program'' (2003), *available at http://portal.hud.gov/hudportal/documents/huddoc?id=19790_200315.pdf. See generally* Diane K. Levy, Zach McDade & Kassie Dumlao, ''Effects from Living in Mixed-Income Communities for Low-Income Families—A Review of the Literature'' (Nov. 2010) (Urban Institute), *available at http://www.urban.org/research/publication/effects-living-mixed-income-communities-low-income-families/view/full_report;* Robert Chaskin & Mark Joseph, The University of Chicago School of Social Service Administration, ''Mixed-Income Development Study'' (Spring 2009), *available at https://ssascholars.uchicago.edu/mixed-income-development-study/content/overview-0. But see* Robert C. Ellickson, ''The False Promise of the Mixed-Income Housing Project,'' 57 UCLA L. Rev. 983 (2010) (concluding that many recent social-scientific studies weaken the case for government support of mixed-income projects).

blanket loan on the community, should the incomes be used to determine affordability, and what operational concerns might be associated with transferring the income data to the Enterprises?

23. Are there other loan programs, terms or lending criteria that, if adopted, could increase Enterprise purchases of blanket loans on manufactured housing communities?

24. Should FHFA address geographic diversity of the Enterprises' assistance for manufactured housing as part of the Duty to Serve manufactured housing community financing needs, and if so, how?

25. Since manufactured housing community acquisition loans may support large sales prices on existing communities which, in turn, may drive increases in pad rents and render the communities unaffordable to lower-income households, should acquisition loans be ineligible for Duty to Serve credit? Are there particular instances where acquisition loans benefit very low-, low-, and moderate-income households?

26. Would Enterprise refinance loans be particularly helpful to residents because they are long-term, fixed rate and relatively low-cost, which reduces the pressure on community owners to increase pad rents?

2. Affordable Housing Preservation Market—Proposed § 1282.34

a. Background

The Safety and Soundness Act provides that the Enterprises ''shall develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families,'' including housing projects subsidized under certain specified federal grant, subsidy and mortgage insurance programs enumerated in the Act.[94] Section 1282.34(c) of the proposed rule would provide Duty to Serve credit for Enterprise activities related to facilitating a secondary market for mortgages on housing under any of these statutorily-enumerated programs.

In addition, § 1282.34(d) of the proposed rule would provide Duty to Serve credit for Enterprise activities related to facilitating a secondary market for mortgages for: Existing small multifamily properties; energy efficiency improvements on existing multifamily rental properties; energy efficiency improvements on existing owner-occupied single-family properties; affordable homeownership preservation through shared equity homeownership programs; HUD's Choice Neighborhoods Initiative; and HUD's Rental Assistance Demonstration program. Under the proposed rule, each of these activities would constitute a Regulatory Activity that the Enterprises must address in their Underserved Markets Plans by describing how they will undertake the activity or explaining the reasons why they will not undertake the activity. The Plans may also include Additional Activities that support housing for very low-, low-, or moderate-income families consisting of affordable rental housing preservation and affordable homeownership preservation, subject to FHFA determination of whether such activities are eligible for Duty to Serve credit.

b. Interpreting ''Preservation''

The Safety and Soundness Act does not define the term ''preservation'' for the affordable housing preservation market. Preservation strategies for affordable rental housing and homeownership differ.

i. Affordable Rental Housing

For affordable rental housing, preservation is generally understood among affordable housing practitioners to mean preserving the affordability of the rents to tenants in existing properties, including preventing conversion of the properties to market rents at the end of the required long-term affordability retention periods, typically 15 years, which is also the time at which major rehabilitation of the properties is usually needed.[95] This is consistent with the plain meaning of the term ''preservation,'' which is maintaining something in its existing state.[96] The concept of ''preservation'' in the rental housing context is not generally understood to include new construction of rental properties.

However, the population has been expanding while the stock of affordable rental housing has been shrinking.[97] The rate of new construction of affordable rental housing has not kept pace with the demand.[98] Further, more desirable markets face particular upward rent pressure.[99] One way to preserve affordability is to give credit for newly constructed rental units where long-term affordability is required by regulatory agreements, such as for at least 15 years, the standard affordability retention period for rental housing. In addition, some of the specifically enumerated programs under the affordable housing preservation market in the Safety and Soundness Act involve new construction, arguably indicating congressional intent that support for new construction be included under this market, although Congress may have intended only that support for existing properties under these programs at the point of their expiring regulatory agreements be included in this market.

FHFA specifically requests comments on whether the term ''preservation'' should be interpreted to allow Duty to Serve credit for Enterprise support for both the purchase of permanent construction take-out loans[100] on rental properties with long-term affordability regulatory agreements and the purchase of refinanced mortgages on existing rental properties with long-term affordability regulatory agreements.

ii. Energy Efficiency Improvements on Existing Multifamily Rental Properties

Lowering energy and water use in multifamily buildings will reduce the total amount that tenants spend for the energy and water that they do use, thus reducing their utility consumption. This can be considered ''preservation'' under the affordable housing preservation market because housing costs are typically defined as rent plus utility costs. Thus, savings in utility consumption that reduce utility expenses may help maintain the overall affordability of rental housing for tenants. Accordingly, under the proposed rule, Enterprise support for energy and water efficiency improvements on existing multifamily properties affordable to very low-, low-, and moderate-income families would be a Regulatory Activity, provided there are verifiable, reliable projections or expectations that the improvements financed by the loan will reduce energy and water consumption by the tenant by at least 15 percent. The reduced utility costs derived from the reduced consumption must not be offset by higher rents or other charges imposed by the property owner, and the reduced

[94] 12 U.S.C. 4565(a)(1)(B).

[95] This is the focus of HUD's Office of Affordable Housing Preservation (recently renamed the Office of Recapitalization).

[96] *See* Cambridge Dictionaries Online, definition of ''preserve.''

[97] *See* Evidence Matters, Policy Development and Research, Department of Housing and Urban Development, ''Preserving Affordable Rental Housing: A Snapshot of Growing Need, Current Threats, and Innovative Solutions,'' Summer 2013, *available athttp://www.huduser.gov/portal/periodicals/em/em_newsletter_summer_2013_fnl.pdf.*

[98] *Id.*

[99] *Id.*

[100] The Enterprises purchase permanent construction take-out loans but not acquisition/development/construction loans.

utility costs must offset the upfront costs of the improvements within a reasonable time period.

iii. Energy Efficiency Improvements on Single-Family, First-Lien Properties

As with multifamily rental properties, preservation of affordable single-family properties (homeownership or rental) may also encompass lowering home energy costs. Lowering energy costs can help a homeowner to continue to afford mortgage payments and other housing costs and remain in the home or help a tenant afford rent. Under the proposed rule, Enterprise support for energy efficiency improvements on existing single-family, first-lien properties would be a Regulatory Activity provided there are verifiable, reliable projections or expectations that the improvements financed by the loan will reduce utility consumption by the homeowner or tenant by at least 15 percent. The reduced utility costs derived from the reduced consumption must offset the upfront costs of the improvements within a reasonable time period, and in the case of a single-family rental property, the reduced utility costs must not be offset by higher rents or other charges imposed by the property owner.

iv. Shared Equity Programs

For affordable homeownership, there are no regulatory agreements similar to those with affordable rental properties that expire at the 15-year point, when preservation of the units as affordable units to lower-income tenants is in jeopardy and rehabilitation of the property is often needed. Rather, preservation for affordable homeownership entails ensuring that the price of the home is affordable over a long-term period to initial and subsequent purchasers, whether purchasing a newly constructed home or an existing home. Shared equity programs offer this type of sustainable affordable homeownership. Under the proposed rule, Enterprise support of financing under shared equity programs that involve the creation of long-term affordable homeownership would be a Regulatory Activity, as further discussed below.

v. Choice Neighborhoods Initiative

The proposed rule would establish as a Regulatory Activity Enterprise support for HUD's Choice Neighborhoods Initiative (CNI).[101] Created after the enactment of HERA, CNI seeks to preserve and transform distressed, HUD-supported affordable housing. CNI focuses on creating mixed-income housing and investing in neighborhood improvements and upgrades. The proposed rule would provide Duty to Serve credit for Enterprise activities supporting permanent financing under CNI.

vi. Rental Assistance Demonstration Program

The proposed rule would establish as a Regulatory Activity Enterprise support for HUD's Rental Assistance Demonstration (RAD) program.[102] Also created after the enactment of HERA, the RAD program seeks to improve and preserve distressed, HUD-supported affordable housing. The program enables public housing authorities to tap outside sources of capital to renovate and preserve housing affordable to very low-income households. The proposed rule would provide Duty to Serve credit for Enterprise activities supporting permanent financing under the RAD program.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

27. Are there other options on how to interpret preservation of multifamily or single-family affordable housing that FHFA should consider?

28. Should FHFA require that preservation activities extend the property's regulatory agreement that restricts household incomes and rents for some minimum number of years, such as 10 years, beyond the date of the Enterprises' loan purchase? If so, what would be an appropriate minimum period of long-term affordability for the extended use regulatory agreement?

29. Should Enterprise purchases of permanent construction takeout loans on new affordable multifamily rental properties with extended-use regulatory agreements that will keep rents affordable for a specified long-term period, such as 15 years or more, receive credit under the affordable housing preservation market? What would be an appropriate period of long-term affordability for the extended-use regulatory agreements?

c. Statutory Activities—Proposed § 1282.34(c)

The Safety and Soundness Act provides that the Enterprises ''shall develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families, including housing subsidized under'' the following government programs:

- The project-based and tenant-based rental assistance programs under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);
- The program under Section 236 of the National Housing Act (rental and cooperative housing for lower-income families) (12 U.S.C. 1715z–1);
- The program under Section 221(d)(4) of the National Housing Act (housing for moderate-income and displaced families) (12 U.S.C. 1715l);
- The supportive housing for the elderly program under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);
- The supportive housing program for persons with disabilities under Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);
- The programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 *et seq.*), but only permanent supportive housing projects subsidized under such programs;
- The rural rental housing program under Section 515 of the Housing Act of 1949 (42 U.S.C. 1485);
- The low-income housing tax credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42); and
- Comparable state and local affordable housing programs.[103]

Under § 1282.34(c) of the proposed rule, Duty to Serve credit would be provided for Enterprise activities related to facilitating a secondary market for mortgages on housing under these statutorily-enumerated programs. The Enterprises would be required to address all of the statutory programs in their Underserved Markets Plans by either indicating how they choose to undertake activities under these programs or the reasons why they will not undertake activities under the programs.

Almost all the subsidized rental units covered by the statutorily-enumerated programs are targeted to very low- or low-income families. Across the country, thousands of multifamily properties with federal, state or local subsidies that serve very low- and low-income families are at risk of conversion to market rate rents.[104] Properties

[101] 42 U.S.C. 1437v; *see also http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn.*

[102] Consolidated and Further Continuing Appropriations Act of 2012 (PL 112–55), as amended, 42 U.S.C. 1437f note; *see also http://portal.hud.gov/hudportal/HUD?src=/RAD.*

[103] 12 U.S.C. 4565(a)(1)(B).

[104] *See* Joint Center for Housing Studies of Harvard University, ''The State of the Nation's

become at risk when rent affordability restrictions in the regulatory agreements or subsidies expire upon loan maturity or contract expiration, or upon early sale or refinancing of the property, or when properties have deteriorated and become unsafe or uninhabitable.[105] The Enterprises play an important role in helping to preserve subsidized rental housing by purchasing first lien mortgages that combine refinancing of existing debt with additional financing for rehabilitation, which enables the subsidies and the regulatory agreements to be extended. FHFA will pay particular attention to the number of rental properties nationwide that are at risk of losing their subsidies and the extent of the Enterprises' support for helping to preserve this housing resource.

The Enterprises currently offer specialized loan purchase programs that are designed to provide permanent financing for several of the statutorily-enumerated programs and, in particular, the Section 8 rental assistance and LIHTC programs, and they actively participate in the preservation of this housing stock. However, some of the other statutorily-enumerated programs are either grant programs or FHA full insurance programs for which there is no known role for the Enterprises' loan purchase programs and no history of their participation. The status of each program and the role that the Enterprises could play in assisting each is discussed below.

i. HUD Section 8 Rental Assistance Program

Under HUD's Section 8 rental assistance program, property owners receive rent payment subsidies from HUD covering the difference between the market rent for a unit and the tenant's rent contribution. This program has a rent affordability requirement, which is that 30 percent of the tenant's adjusted gross income contribute to rent and utilities. HUD provides rental assistance in the form of vouchers or certificates that move with the individual household, or through contractual obligations with the property owner, known as Housing Assistance Payment (HAP) contracts.

Both Enterprises purchase loans on properties with Section 8 HAP contracts or with units supported by Section 8 vouchers or certificates. Properties supported by Section 8 rental assistance represent a significant portion of the Enterprises' existing affordable housing loan purchases.

Several commenters on the 2010 Duty to Serve proposed rule stated that the Enterprises' underwriting guidelines were unnecessarily strict and limit their ability to provide adequate support for financing of Section 8-assisted properties. That is because the Enterprises do not recognize all of the Section 8 rental income in their loan underwriting and also require high reserves to protect against annual appropriations risk on HAP contracts.[106] In the commenters' view, the Enterprises' requirements make refinancing more difficult or infeasible, or result in smaller loan amounts with fewer funds available for property rehabilitation. Under the Request for Comments section below, FHFA specifically requests comments on whether there are ways the Enterprises can extend their support for Section 8-assisted properties, including potential changes to their underwriting and reserve requirements that are consistent with safety and soundness.

ii. HUD Section 236 Interest Rate Subsidy Program

Under the Section 236 program, HUD subsidizes the interest rate down to one percent on mortgages on multifamily properties, known as Interest Reduction Payments (IRP), in exchange for restrictions on the rents to affordable levels for the term of the mortgage, but no fewer than 20 years. HUD data indicate that approximately 110 properties have subsidized interest rate loans that will mature in 2015, 2016 and 2017.[107] HUD permits the optional continuation of IRP assistance when projects assisted under Section 236 are refinanced. Both Enterprises currently have specialized programs to purchase refinanced mortgages on Section 236 subsidized loans that maintain the interest rate subsidy in accordance with HUD requirements. Under the Request for Comments section below, FHFA specifically requests comments on whether there are ways the Enterprises can extend their support for the Section 236 program.

iii. HUD Section 221(d)(4) FHA Insurance Programs

HUD's Section 221(d)(4) FHA insurance program provides financing for the new construction or substantial rehabilitation of multifamily properties, and for permanent financing when construction is completed. The program does not require affordability restrictions on the rents and there are no income limits for tenants, thus properties financed under this program may, and often do, provide market-rate housing.

There is no obvious role for the Enterprises to support projects funded under the Section 221(d)(4) program other than to refinance the original loans and remove the properties from the FHA insurance program. In their comments on the 2010 Duty to Serve proposed rule, both Enterprises stated that activities related to refinancing Section 221(d)(4) loans on affordable housing properties should count towards the Duty to Serve as preservation activities if the properties are affordable and if the use agreement is extended.

Under the Requests for Comments section below, FHFA specifically requests comments on whether there are other ways the Enterprises can support properties currently funded under the Section 221(d)(4) program.

iv. HUD Section 202 Housing Program for Elderly Households

HUD's Section 202 program for low-income elderly households is a capital advance program under which HUD provides construction or rehabilitation funds and rental subsidies. Properties financed under this program have long-term use agreements for the term of the loan, which can expire upon early sale or refinancing or at loan maturity and put the properties at risk of conversion to market-rate rents. Refinancing Section 202 properties allows the owners to obtain additional funds for rehabilitation and to extend the rental subsidies and use agreements.[108]

Most Section 202 properties are refinanced through FHA insurance programs, which offer favorable financing terms, including lower debt service coverage ratios, more favorable underwriting treatment of the rental subsidy income, higher loan-to-value ratios, and longer loan terms than are offered by conventional mortgage lenders. Thus, refinancing under the FHA insurance programs usually results in a larger loan amount and more funds available to the owner for rehabilitation and reserves.

By actively pursuing Section 202 refinancing opportunities, the

Housing 2015,'' at 33–34 (2015), *available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-sonhr-2015-full.pdf.*

[105] Stewards of Affordable Housing for the Future, ''Housing 'at risk,'" *available at http://www.poah.org/about/at-risk.htm.*

[106] ''Appropriations risk'' is the possibility that Congress will appropriate no or less funds for a program than requested by the executive branch.

[107] HUD Insured Multifamily Mortgages Database, *available at http://www.hud.gov/offices/hsg/comp/rpts/mfh/mf_f47.cfm.*

[108] *See* Vincent F. O'Donnell, ''Prepayment and Refinancing of Section 202 Direct Loans—A Summary of HUD Notices H 2002–16 and H 2004–21'' (Feb. 25, 2005).

Enterprises would provide owners with more refinancing options and give owners access to adjustable-rate mortgages with lower interest rates and shorter maturities. In 2011, legislative changes to further facilitate refinancing of Section 202 properties were enacted into law. These changes could further increase Enterprise opportunities to support the recapitalization and preservation of Section 202 housing. Under the Requests for Comments section below, FHFA specifically requests comments on whether there are other ways the Enterprises can support properties currently funded under the Section 202 program.

v. HUD Section 811 Housing Program for Disabled Households

HUD's Section 811 program is a capital advance and rental assistance program for low-income disabled persons. Section 811 properties carry no debt, and HUD rental subsidies cover the difference between operating expenses and rental income; [109] excess cash flow produced by the properties is minimal. There is no obvious role for the Enterprises to support projects funded under this program and the Enterprises have never supported mortgage financing under this program. However, under the Request for Comments section below, FHFA specifically requests comments on whether there are ways the Enterprises could support the Section 811 program.

vi. McKinney-Vento Homeless Assistance Act Programs

Programs under title IV of the McKinney-Vento Homeless Assistance Act provide supportive housing grants to help homeless persons, especially homeless families with children, transition to independent living. Not-for-profit organizations that develop this supportive housing use a combination of grant and financing sources, and the projects typically do not involve debt financing. There is no obvious role for the Enterprises to support projects funded under this program and the Enterprises have never supported mortgage financing under this program. However, under the Request for Comments section below, FHFA specifically requests comments on whether there are ways the Enterprises can support this program.

vii. USDA Sections 515 Rural Housing Programs

Under USDA's Section 515 program, USDA provides direct loans and rental assistance to develop rental housing for low-income households in rural locations. Both Enterprises currently purchase loans originated under the Section 515 program. Under the Request for Comments section below, FHFA specifically requests comments on whether there are ways the Enterprises can extend their support for the Section 515 program.

viii. Federal Low-Income Housing Tax Credits (LIHTC)

Under the LIHTC program, investors purchase tax credits to provide equity to off-set the development costs of rental housing properties with long-term regulatory agreements that require the housing to remain affordable for very low- or low-income households. The Enterprises offer specialized loan purchase programs to refinance and rehabilitate existing LIHTC properties in conjunction with extension of their regulatory use agreements, and are an important source of financing for preservation of older LIHTC projects.

The Enterprises were significant LIHTC equity investors from the inception of the LIHTC program until the mid-2000s, but ceased investing before entering conservatorship in 2008. To date, FHFA has not approved Enterprise resumption of this activity. The LIHTC equity investment market has also changed and is now highly liquid and dominated by bank and insurance company investors. The Safety and Soundness Act provides for an investment and grants assessment factor when evaluating compliance with the Duty to Serve, and permitting the Enterprises to resume equity investments in LIHTCs would be one way to meet that assessment factor. Under the Requests for Comments section below, FHFA specifically requests comments on whether the Enterprises should resume equity investments in LIHTC projects.

ix. Comparable State and Local Affordable Housing Programs

In addition to the specifically enumerated programs in the Safety and Soundness Act, the Act provides that the Enterprises shall facilitate a secondary market for ''comparable state and local affordable housing programs.'' [110] Under the proposed rule, an Enterprise may include such programs in its Underserved Markets Plan subject to FHFA determination of whether such programs are eligible for Duty to Serve credit. Examples of such comparable programs for multifamily housing that could receive Duty to Serve credit include support for properties that restrict all or a portion of their units for very low-, low-, or moderate-income families due to participation in density bonuses or property tax abatements, state or local affordable housing programs, state LIHTC programs, programs for redevelopment of government-owned land or buildings as affordable housing, and inclusionary zoning requirements.[111]

Examples of comparable state and local programs for single-family affordable housing that could receive Duty to Serve credit include local neighborhood stabilization programs (NSP) that enable communities to address problems related to mortgage foreclosure and abandonment through the purchase and redevelopment of foreclosed or abandoned homes for very low-, low-, or moderate-income households. After the financial crisis, state and local government NSPs were partially funded by HUD. Most commenters on the 2010 Duty to Serve proposed rule that addressed the issue supported giving credit for Enterprise assistance to the HUD-funded NSP, as well as for other state and local foreclosure and abandonment prevention programs. FHFA believes that any NSP or other state or local foreclosure and abandonment prevention programs that benefit very low-, low-, or moderate-income families could receive Duty to Serve credit.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

30. Are there other ways the Enterprises can support the statutorily-enumerated programs in addition to those discussed above?

31. In what ways, including potential responsible changes to their underwriting and reserve requirements, could the Enterprises prudently extend their support for Section 8-assisted properties?

32. Are there ways in which the Enterprises could extend their support for the HUD Section 236 Interest Rate Subsidy Program?

33. Are there additional ways in which the Enterprises could support properties currently funded under HUD

[109] *See* HUD, ''Section 811 Supportive Housing for Persons with Disabilities'' (HUD Web site), *available at http://www.hud.gov/offices/hsg/mfh/progdesc/disab811.cfm.*

[110] *See* 12 U.S.C. 4565(a)(1)(B)(ix).

[111] Inclusionary zoning refers to local government planning ordinances that require a specified portion of the units in newly constructed housing to be reserved for and affordable to very low- to moderate-income households.

Section 221(d)(4) FHA Insurance Program?

34. Are there other ways in which the Enterprises could support properties currently funded the HUD Section 202 Housing Program for Elderly Households?

35. Are there ways in which the Enterprises could support the HUD Section 811 Housing Program for Disabled Households?

36. Are there ways in which the Enterprises could support McKinney-Vento Homeless Assistance Act programs?

37. Are there other ways in which the Enterprises could extend their support for the USDA Section 515 Rural Housing Program?

38. Are there other federal affordable housing programs that the Enterprises could support that should receive Duty to Serve credit but that are not enumerated in § 1282.34(c) of the proposed rule?

39. What safety and soundness concerns should be considered in determining Enterprise participation in any of the programs discussed above?

40. Are there other state or local affordable housing programs for multifamily or single-family housing that the Enterprises could support that should be eligible to receive Duty to Serve credit in addition to those discussed above?

41. Should FHFA allow the Enterprises to resume LIHTC equity investments? Would the resumption of LIHTC equity investments by the Enterprises benefit the financial feasibility of certain LIHTC projects or would it substitute Enterprise equity funding for private investment capital without materially benefiting the projects?

42. If FHFA allows the Enterprises to resume LIHTC investments, should FHFA limit investments to support for difficult to develop projects in segments of the market with less investor demand, such as projects in markets outside of the assessment areas of large banks or in rural markets or for preservation of projects with expiring subsidies? Are there other issues that FHFA should consider if limiting the types of LIHTC projects appropriate for equity investment by the Enterprises?

43. If FHFA permits the resumption of LIHTC equity investments, should Duty to Serve credit be provided only for LIHTC equity investments in projects with expiring subsidies or projects in need of refinancing, or should Duty to Serve credit also be given for LIHTC equity investments in new construction projects with regulatory agreements that assure long-term rental affordability?

44. If FHFA allows the Enterprises to resume LIHTC investments, should FHFA limit such investments to those that promote residential economic diversity, for example, by investing in LIHTC properties located in high opportunity areas, as proposed to be defined in § 1282.1, to address concerns raised about the disproportionate siting of LIHTC housing (non-senior) in low-income areas and the effect on residential segregation?

45. Should FHFA consider permitting the Enterprises to act as the guarantor of equity investments in projects by third-party investors provided any such guarantee is safe and sound and consistent with the Enterprise's Charter Act? If so, what types of guarantees should the Enterprises offer?

d. Regulatory and Additional Activities

Section 1282.34(d) of the proposed rule identifies four additional affordable housing preservation activities that would receive Duty to Serve credit. Under the proposed rule, these activities would constitute Regulatory Activities which the Enterprises must address in their Underserved Markets Plans by indicating how they plan to undertake the activity or stating the reasons why they will not. Each proposed Regulatory Activity addresses market segments for which the Enterprises already provide some level of support. Proposed § 1282.34(e) would provide that the Enterprises may also propose Additional Activities that support the financing of mortgages on residential properties for very low-, low-, or moderate-income families consisting of affordable rental housing preservation or affordable homeownership, subject to FHFA determination of whether such activities are eligible for Duty to Serve credit.

i. Small Multifamily Rental Properties—Proposed § 1282.34(d)(1)

Section 1282.34(d)(1) of the proposed rule would provide Duty to Serve credit for Enterprise purchase and securitization of loan pools from smaller banks and community-based lenders, specifically, non-depository community development financial institutions, community financial institutions, and federally insured credit unions meeting an asset cap applicable to community financial institutions, where the loan pools are backed by existing small multifamily rental properties consisting of five to not more than fifty units. This activity would constitute a Regulatory Activity that the Enterprises would have to address in their Underserved Markets Plans by indicating how they choose to undertake the activity or the reasons why they will not undertake the activity.

Both Enterprises support financing for small multifamily properties through specialized retail loan programs offered through their lenders. The housing goals regulation publicly released in August 2015 established, for the first time, a subgoal for Enterprise purchases of loans on small multifamily properties that are affordable to low-income households. FHFA expects the subgoal to be met through the Enterprises' retail loan purchase activities. However, several commenters on the 2010 Duty to Serve proposed rule stated that the Enterprises should do more to support the financing needs of small multifamily properties.

Small multifamily properties are often older than larger properties, have fewer, if any, amenities, and tend to have more affordable rents. These factors make small multifamily properties an important source of affordable rental housing and they can also make financing more difficult to obtain. As discussed in the Notice accompanying the final housing goals rule, much of the financing needs of small multifamily property owners are met through loans provided by smaller local and regional banks, and by community-based lenders. Most of these loans are originated for the lenders' own portfolios and the lenders may cease making small multifamily property loans when their portfolio capacity has been reached.

To encourage the Enterprises to expand their support for this market segment, the proposed rule would provide Duty to Serve credit for Enterprise purchases and securitization of loan pools from non-depository community development financial institutions, community financial institutions, and federally insured credit unions meeting an asset cap applicable to community financial institutions, where the loan pools are backed by existing small multifamily rental properties consisting of five to not more than fifty units.

Section 1282.1 of the proposed rule would define ''community development financial institution'' and ''community financial institution'' in accordance with the definitions in FHFA's regulation on Federal Home Loan Bank membership. The membership regulation defines a ''community development financial institution'' as an institution that is certified as a community development financial institution by the Community Development Financial Institutions Fund under the Community Development Banking and Financial

Institutions Act of 1994, other than a bank or savings association insured under the Federal Deposit Insurance Act, a holding company for such a bank or savings association, or a credit union insured under the Federal Credit Union Act.[112] The membership regulation defines a ''community financial institution'' generally as an institution whose deposits are insured under the Federal Deposit Insurance Act,[113] and whose total assets are less than $1 billion, as adjusted annually by FHFA for inflation, beginning in 2009, with total assets being calculated as an average over the previous three years.[114] Based on FHFA's most recent inflation adjustment, the asset cap is now $1,123,000,000.[115]

Section 1282.1 of the proposed rule would define a ''federally insured credit union'' in accordance with the definition of ''insured credit union'' in the Federal Credit Union Act.[116] The Federal Credit Union Act defines an ''insured credit union'' as a credit union the member accounts of which are insured under the Federal Credit Union Act.[117]

Over time, a reliable secondary market for loans on small multifamily properties could develop to provide these originating lenders with additional liquidity. Thus, the Duty to Serve regulation could complement the housing goals regulation by encouraging greater and more comprehensive Enterprise support for the liquidity needs of small multifamily properties.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

46. Are there other affordable housing preservation activities for small multifamily properties beyond those discussed above that should receive Duty to Serve credit?

47. Should an Enterprise's purchase and securitization of loan pools from non-depository community development financial institutions, community financial institutions, and federally insured credit unions subject to the asset cap, where the loan pools are backed by existing small multifamily properties, be a Regulatory Activity?

48. How could the Enterprises provide further support for the financing or liquidity needs of small multifamily properties? Should another type of support for small multifamily properties be a specific Regulatory Activity?

49. How could the Enterprises provide support for the liquidity needs of smaller banks and community-based lenders that finance small multifamily properties, for example by buying and securitizing loan pools these lenders have originated? What kind of Enterprise support would encourage these types of lenders to increase their financing of these properties?

50. Do the proposed definitions of ''community development financial institution,'' ''community financial institution,'' and ''federally insured credit union'' subject to the asset cap sufficiently capture smaller banks and community-based lenders for Duty to Serve purposes?

ii. Energy Efficiency Improvements on Multifamily Properties—Proposed § 1282.34(d)(2)

Section 1282.34(d)(2) of the proposed rule would provide Duty to Serve credit for Enterprise support for energy and water efficiency improvements on existing multifamily properties affordable to very low-, low-, and moderate-income families, provided there are verifiable, reliable projections or expectations that the improvements financed by the loan will reduce energy and water consumption by the tenant by at least 15 percent, the reduced utility costs derived from reduced consumption must not be offset by higher rents or other charges imposed by the property owner, and the reduced utility costs will offset the upfront costs of the improvements within a reasonable time period. This activity would constitute a Regulatory Activity that the Enterprises would have to address in their Underserved Markets Plans by indicating how they choose to undertake the activity or the reasons why they will not undertake the activity.

Improved energy efficiency and reduced energy consumption in multifamily housing is a broadly acknowledged public policy goal. Energy expenses, principally in the form of heating, cooling, water consumption and electricity use (collectively, utilities) consume a growing part of the incomes of very low-, low-, and moderate-income households. When these high utility costs are added to the cost of rent, multifamily housing becomes increasingly unaffordable. In recent years, energy cost increases in multifamily housing have outpaced rent increases (which have significantly exceeded the rate of inflation). A 2011 HUD study found that while average rents increased by 7.6 percent from 2001 to 2009, energy costs to renters increased by almost 23 percent during this same period.[118]

Lowering energy and water use in multifamily buildings will reduce the total amount that tenants spend for the energy and water that they do use, thus reducing their utility consumption. This can be considered ''preservation'' under the affordable housing preservation market because housing costs are typically defined as rent plus utility costs. Thus, savings in utility consumption that reduce utility expenses may help maintain the overall affordability of rental housing for tenants. Owners of multifamily properties also benefit from energy efficiency improvements through reduced common area utility expenses, which could relieve pressure on owners to raise rents to cover increased utility costs. Owners also derive indirect benefits from unit-based energy efficiency improvements, including rendering a property more marketable to potential tenants.

Enterprise support for energy efficiency improvements could include specialized loan programs or efforts to educate lenders about the benefits of energy improvements and conservation. Given the Enterprises' market reach, they could have a significant impact on promoting energy efficiency improvements and conservation in a broad range of multifamily properties if lenders were properly educated and incented.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

51. Should Enterprise support for multifamily properties that include energy improvements resulting in a reduction in the tenant's energy and water consumption and utility costs be a Regulatory Activity?

52. How can the Enterprises provide more outreach to lenders regarding the Enterprises' energy improvement products?

53. Should the Enterprises require the lender to verify before the closing of an energy improvement loan that there are reliable and verifiable projections or expectations that the proposed energy

[112] *See* 12 CFR 1263.1.

[113] *Id.;* 12 U.S.C. 1811 *et seq.*

[114] *See* 12 CFR 1263.1.

[115] *See* 80 FR 6712 (Feb 6, 2015).

[116] 12 U.S.C. 1752(7).

[117] *Id.*

[118] *See* Evidence Matters, Policy Development and Research, Department of Housing and Urban Development, ''Quantifying Energy Efficiency in Multifamily Rental Housing,'' Summer 2011, *available at http://www.huduser.gov/portal/periodicals/em/EM_Newsletter_Summer_2011_FNL.pdf.*

improvements will likely reduce the tenant's energy and water consumption and utility costs and, if so, what standards of reliability, verifiability and likelihood of reduced consumption and costs should be required?

54. Should the Enterprises be required to verify, after the closing of an energy improvement loan, that the energy improvements financed actually reduced the tenant's energy and water consumption and utility costs and, if so, how can they verify this?

55. What if any ongoing monitoring should be required to measure the effectiveness of financed energy improvements in reducing tenants' energy and water consumption and utility costs?

56. For the proposed requirement that the reduced utility costs will offset the upfront costs of the improvements within a reasonable time period, should a reasonable time period be defined and, if so, how?

iii. Energy Efficiency Improvements on Single-Family, First-Lien Properties—Proposed § 1282.34(d)(3)

Section 1282.34(d)(3) of the proposed rule would provide Duty to Serve credit for Enterprise support of energy efficiency improvement loans on single-family (homeownership or rental), first-lien properties affordable to very low-, low-, or moderate-income households, provided that there are verifiable, reliable projections or expectations that the improvements financed by the loans will reduce energy and water consumption by the homeowner or tenant by at least 15 percent, the reduced utility costs derived from the reduced consumption will offset the upfront costs of the improvements within a reasonable time period, and in the case of a single-family rental property, the reduced utility costs must not be offset by higher rents or other charges imposed by the property owner. This activity would constitute a Regulatory Activity that the Enterprises would have to address in their Underserved Markets Plans by indicating how they choose to undertake the activity or the reasons why they will not undertake the activity.

Studies have found that consumers earning below $20,000 a year spend 10 percent of their income on utilities compared to 6 percent spent by consumers with incomes above $70,000.[119] The experience of homeowners at these income levels likely parallels those of the broader consumer category.

Enterprise support for single-family energy efficiency loans with resulting savings accruing to the homeowners or tenants may help lower their total housing costs and thereby help preserve affordable housing. In addition, savings from energy efficiency upgrades may be correlated with better borrower loan performance. A 2013 study found that, controlling for other loan determinants, default risks are on average 32 percent lower in energy efficient homes; some of these lower default risks may benefit very low-, low-, and moderate-income borrowers. The study also found that borrowers in energy efficient homes are 25 percent less likely to prepay their mortgages,[120] a loan characteristic that investors generally find appealing.[121]

However, as comprehensive home energy improvements cost between $5,000 and $15,000, the upfront costs of energy efficiency improvements constitute a significant barrier to very low-, low-, and moderate-income homeowners, who generally lack significant financial resources to pay for such improvements.[122] Financing for single-family energy efficiency loans can be further hampered by lender reluctance to consider energy savings in their loan underwriting procedures.[123] Finally, because identifying energy efficiency as the loan purpose can complicate automated underwriting, borrowers may choose not to specify that the home improvements are intended for energy efficiency purposes.

Fannie Mae currently supports the financing of single-family energy efficiency improvements through its ''Energy Improvement Feature'' (EI Feature) and HomeStyle Renovation mortgage.[124] EI Feature loans cover both purchase money loans and refinances of preexisting loans. Borrowers can use purchase or refinance proceeds, of up to 10% of the ''as completed'' appraised value, to finance both the property and energy improvements, as long as certain conditions are met. In all cases, the EI Feature loan must be in first lien position. The EI Feature has seen limited borrower participation, which could be due to one or more of the factors described above or because financing for energy efficiency improvements is already occurring in Fannie Mae's standard business.

The HomeStyle Renovation mortgage enables a borrower to obtain a purchase transaction or cash-out refinance mortgage to cover the costs of energy improvements to the property. Borrowers can use purchase or refinance proceeds, of up to 50% of the ''as completed'' appraised value, to finance both the property and the energy improvements, as long as certain conditions are met. In all cases, the HomeStyle Renovation mortgage must be in first lien position.

Freddie Mac does not currently offer loan products specifically for single-family energy efficiency loans, but like Fannie Mae, likely purchases loans with energy efficiency components as part of its standard business.

Given the difficulty of developing functional single-family energy efficiency mortgage products, possible Objectives that could be included in an Underserved Markets Plan might focus initially on developmental actions such as: (i) Working with lenders to develop education programs to encourage energy efficiency improvement loans, including conservation programs, for very low-, low-, or moderate-income households in single-family properties; (ii) working with a wider range of locally-based lenders to encourage energy efficiency components in purchase money loans or limited cash-out refinances; and (iii) developing products that result in the

[119] *See* U.S. Bureau of Labor Statistics, ''Consumer Expenditure Survey,'' (July 2013–June 2014), *available at http://www.bls.gov/cex/#tables_long.* These percentages are for all consumers. Homeowners overall spend 7.5 percent of their income for utilities, fuels, and public services. *See* U.S. Bureau of Labor Statistics, ''Table 1202: Income before taxes: Annual expenditure means, shares, standard errors, and coefficients of variation, Consumer Expenditure Survey, 2014'' (Sept. 2015), *available at http://www.bls.gov/cex/2014/combined/income.pdf.*

[120] *See* Institute for Market Transformation, ''Research Report: Home Energy Efficiency and Mortgage Risks,'' University of North Carolina Center for Community Capital (March 2013), *available at http://www.imt.org/uploads/resources/files/IMT_UNC_HomeEEMortgageRisksfinal.pdf.*

[121] For a discussion of the risks that prepayment poses to investors, *see generally* The Bond Market Association, ''An Investor's guide to Pass-Through and Collateralized Mortgage Securities,'' at 4–6, 13–14, *available at http://www.freddiemac.com/mbs/docs/about_MBS.pdf.*

[122] *See* Mark Zimring, Ian Hoffman, Annika Todd, & Megan Billingsley, ''Delivering Energy Efficiency to Middle Income Single Family Households,'' Lawrence Berkeley National Laboratory (December 11, 2011), *available at http://emp.lbl.gov/publications/delivering-energy-efficiency-middle-income-single-family-households.*

[123] *See* Institute for Market Transformation, ''Research Report: Home Energy Efficiency and Mortgage Risks,'' University of North Carolina Center for Community Capital (March 2013), *available at http://www.imt.org/uploads/resources/files/IMT_UNC_HomeEEMortgageRisksfinal.pdf.* Lenders may not want to put the additional time needed in in order to adjust underwriting for energy savings. *See generally* ''Green Housing for the 21st Century: Retrofitting the Past and Building an Energy-Efficient Future,'' Hearings Before the Subcomm. On Housing Transportation, and Community Development of the Committee on Banking Housing and Urban Affairs, 111th Cong., 2d Sess., at 23 (2010) (S. HRG. 111–6,93), *available at http://www.gpo.gov/fdsys/pkg/CHRG-111shrg61989/pdf/CHRG-111shrg61989.pdf.*

[124] Fannie Mae also participated in the FHA PowerSaver pilot program, which ended in 2013.

introduction of energy efficiency components into loans that meet the proposed rule's requirements.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

57. How can the Enterprises work with potential lenders to facilitate financing for energy efficiency improvement loans on single-family properties?

58. What is a reasonable time period for the reduced utility costs from energy efficiency improvements to offset the upfront costs of the improvements?

59. Should Enterprise support for single-family properties that include energy improvements resulting in a reduction in the homeowner's or tenant's energy and water consumption and utility costs be a Regulatory Activity?

60. How can the Enterprises provide more outreach to lenders regarding the Enterprises' energy improvement loan products?

61. Should the Enterprises require the lender to verify before the closing of a single-family energy improvement loan that there are reliable and verifiable projections or expectations that the proposed energy improvements will likely reduce energy and water consumption and utility costs and, if so, what standards of reliability, verifiability and likelihood of reduced consumption and costs should be required?

62. Should the Enterprises be required to verify, after the closing of a single-family energy improvement loan, that the energy improvements financed actually reduced energy and water consumption and utility costs and, if so, how can they verify this?

63. For the proposed requirement that the reduced utility costs will offset the upfront costs of the improvements within a reasonable time period, should a reasonable time period be defined and, if so, how?

iv. Preservation of Long-Term Affordable Homeownership Through Shared Equity Programs—Proposed § 1282.34(d)(4)

Section 1282.34(d)(4) of the proposed rule would provide Duty to Serve credit for Enterprise activities related to affordable homeownership preservation through shared equity homeownership programs. Shared equity programs include programs administered by community land trusts, other nonprofit organizations, or State or local governments that:

(1) Ensure affordability for at least 30 years or as long as permitted under state law through a ground lease, deed restriction, subordinate loan or similar legal mechanism that makes residential real property affordable to very low-, low-, or moderate-income families. The legal instrument ensuring affordability must also stipulate a preemptive option to purchase the homeownership unit from the homeowner at resale to preserve the affordability of the unit for successive very low-, low-, or moderate-income families;

(2) Monitor the homeownership unit to ensure affordability is preserved over resales; and

(3) Support the homeowners to promote successful homeownership for very low-, low-, or moderate-income families.

Under the proposed rule, this activity would constitute a Regulatory Activity that the Enterprises would have to address in their Underserved Markets Plans by indicating how they choose to undertake the activity or the reasons why they will not undertake the activity.

Affordability of homeownership through shared equity programs is preserved either by:

(1) Resale restrictions through deed restrictions or ground leases administered by governmental units or instrumentalities, or nonprofit entities and designed to keep the home affordable over resales; or

(2) Subordinate loan programs, often called ''shared appreciation loan programs,'' that are administered by governmental units or instrumentalities, or nonprofit entities where second mortgage loans are due upon sale and typically structured with zero percent interest. Upon sale at market value, the homeowner repays the loan amount and a portion of the appreciation. The government or nonprofit entity uses its share of the appreciation to make the same home affordable to a subsequent income-eligible homebuyer. Shared equity programs utilize various legal mechanisms to preserve affordability, but all shared equity programs make home purchase affordable for a very low-, low-, or moderate-income buyer and limit the homeowner's proceeds upon resale to make the same home affordable to a subsequent income-eligible buyer.

While much of the affordable housing preservation emphasis is on rental housing, homeownership preservation is also important. Homeownership can offer advantages over renting, such as the opportunity to accumulate wealth from tenure, including repaying principal through forced savings, and greater residential control and stability,[125] although it also bears risks for lower-income households.[126] Homeownership continues to be the primary source of wealth among lower-income households.[127] A comprehensive approach to affordable housing preservation should include strategies that preserve not only

[125] *See* Eric S. Belsky, Christopher E. Herbert, and Jennifer H. Molinksy (Eds), ''Homeownership Built to Last'' (2014), Cambridge, MA: Joint Center for Housing Studies, Harvard University & Washington, DC: Brookings Institution Press, *available at http://www.brookings.edu/research/books/2014/homeownership-built-to-last. See also* Christopher E. Herbert & Eric S. Belsky, ''The Homeownership Experience of Low-Income and Minority Households: A Review and Synthesis of the Literature,'' Vol. 10, No. 2, Cityscape: A Journal of Policy Development and Research (2008), *available at http://www.huduser.org/periodicals/cityscpe/vol10num2/ch1.pdf.* Herbert and Belsky note that homeownership is a vehicle for wealth accumulation both through appreciation and the forced savings that come with paying down the principal on a loan. They note that homeownership is one of the few leveraged investments available to families with limited wealth. They list other financial advantages of ownership including: (1) Tax law provisions that shield most appreciation in home value from capital gains taxes; (2) insulating buyers from rapidly increasing housing costs; (3) deductibility of mortgage interest and property tax payments which lowers the after-tax cost of homeownership; and (4) permitting secured lending against home equity. Homeownership also arguably offers a range of non-financial benefits, at 7–8.

[126] *See, e.g.,* Carolina Katz Reid, Center for Studies in Demography and Ecology, University of Washington, ''Achieving the American Dream? A Longitudinal Analysis of the Homeownership Experiences of Low-Income Households,'' (CSDE Working Paper 04–04) (Apr. 2004), *available at https://csde.washington.edu/downloads/04-04.pdf.* Reid discusses the following risks of homeownership for low-income households: (1) The risk of leaving homeownership, usually due to divorce or unemployment; (2) high mortgage payments in relation to income; and (3) low-income and minority homeowners have not benefitted as much from homeownership as wealthier, Caucasian buyers. Reid concludes that more emphasis is needed on supporting low-income households after they become homeowners. While Reid did not consider the non-financial benefits of homeownership, Reid notes that almost every person she interviewed expressed satisfaction with having become a homeowner, citing various non-financial benefits. Reid concludes that the challenge in homeownership is developing policies that make homeownership achievable and sustainable. *See also* Christopher E. Herbert, Daniel T. McCue & Rocio Sanchez-Moyano, Joint Center for Housing Studies, Harvard University, ''Is Homeownership Still an Effective Means of Building Wealth for Low-income and Minority Households? (Was it Ever?),'' (Sept. 2013), *available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/hbtl-06.pdf.*

[127] ''. . . home equity contributes a disproportionate share (81 percent) of net wealth among the typical owner in the lowest income quartile, compared with just under a quarter (24 percent) among those in the highest income quartile.'' Joint Center for Housing Studies, Harvard University, ''State of the Nation's Housing Report 2015'' (2015), at 17, *available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-sonhr-2015-full.pdf.*

affordable rental housing, but also affordable homeownership.

The 2010 Duty to Serve proposed rule focused primarily on preserving affordable rental housing and not affordable homeownership. One commenter, a nonprofit engaged in homeownership work, recommended crediting shared equity homeownership activities under the Duty to Serve, citing the importance of broadening the availability of homeownership. Another commenter, a nonprofit focused on rental housing, opposed giving preservation credit to homeownership programs on the basis that it might divert attention from rental housing.

Without detracting from the importance of preserving affordable rental housing, FHFA seeks to encourage enhanced Enterprise support for a variety of shared equity options so that communities would have the flexibility to determine which, if any, shared equity approach best suits their needs and have that option eligible for Duty to Serve credit for the Enterprises. The Enterprises are uniquely positioned to help increase financing for the preservation of affordable homeownership units over the long-term by developing infrastructure that would make it easier for lenders to deliver mortgage loans on shared equity homes to the Enterprises for purchase.

Shared equity homes remain affordable for very low-, low-, or moderate-income households for at least 30 years or as long as permitted under state law, for the initial purchaser as well as for any successive income-eligible owners of the home during that period. Shared equity homeownership programs are administered by either government or nonprofit entities. These entities make home purchase affordable to the initial low- or moderate-income household, and ensure the home remains affordable to subsequent lower- or moderate-income purchasers, sale after sale.[128] In return for being able to purchase homes that are affordable, homeowners contractually agree to limit the proceeds they receive upon resale to keep their homes affordable for subsequent income-eligible purchasers.

The affordability of the home is maintained for subsequent purchasers in one of two ways. One way is to restrict the resale price of the home through a deed restriction or a ground lease designed to keep the resale price below market value so the home remains affordable over resales. A second way is to use a shared appreciation loan agreement, in which the resale price remains at the market value, but the amount of subsidy increases in a self-sustaining way to keep pace with the gap between the market value and the lower price at which the home is affordable to low- and moderate-income households. Each time the home is sold, at market rate, the program's share of equity, in the form of the shared appreciation, is retained as ''public investment'', *i.e.,* the subsidy, and passed along to the new buyer of the same home in the form of a second mortgage. This second mortgage is typically at zero percent interest and is fully due upon sale. While this subsidy retention vehicle is technically a second mortgage, it does not have many of the features commonly associated with mortgage debt.

Shared equity programs usually have requirements that the buyer use the home as a primary residence and qualify for financing, and many allow the administering government or nonprofit entity to charge modest fees that cover the cost of operating the program. The government or nonprofit entity is sometimes referred to as a ''sponsor.'' Under the proposed rule, the government or nonprofit sponsor would have the ongoing responsibility to monitor the home to ensure that affordability is preserved over resales, and support the homeowner where possible. Having a sponsor may also have the effect of minimizing/mitigating potential foreclosures. The proposed rule would require the sponsor to stipulate a preemptive right to purchase the unit from the homeowner at resale for a price determined by a contractual formula that would preserve affordability of the unit.

In contrast, downpayment or closing cost assistance programs, which represent another mechanism for making homeownership affordable to lower-income households, would not meet the purpose of long-term preservation of affordability under the Duty to Serve. In downpayment and closing cost assistance programs, the program sponsor provides a subsidy to the initial homebuyer as a grant, or sometimes as a forgivable loan that converts to a grant generally between five and 15 years after purchase. This assistance helps to make the purchase of a home affordable by lowering the buyer's downpayment or closing costs, usually by a smaller amount than is available through shared equity programs. While the initial homebuyer benefits from any appreciation in the value of the home, this type of assistance does not preserve long-term affordability of the home for subsequent purchasers, because these programs do not restrict the initial homebuyer's return from the sale of the property.[129] Hence, under the traditional downpayment/closing cost assistance model, additional public subsidy would often be required to help subsequent lower-income homebuyers purchase homes.

The three most common contractual arrangements for achieving shared equity homeownership preservation are deed restricted covenants, ground leases, and shared appreciation loans, which are described below.

- *Deed Restricted Covenants.* A restricted covenant that is appended to an owner-occupied property's deed when a home is purchased at below-market value. The covenant stipulates resale restrictions to ensure the home is sold at an affordable price, usually below-market value, to another eligible household in the future. Restricted covenants are in effect for 30 years or longer, depending upon state law. Restricted covenants are frequently used for single-family units (*e.g.,* condominium and cooperative units) in multifamily homeownership buildings,[130] which would also be eligible for Duty to Serve credit. Restricted covenants are also frequently used by inclusionary housing programs.[131]
- *Ground Leases.* Ground leases are most frequently used by community land trusts, which are nonprofit organizations that provide shared equity homes. Land trusts retain ownership of the land, so the homeowner only needs to purchase the home on that land at an affordable price. A resale formula in the ground lease preserves affordability by stipulating a below-market value price for which the current owner may sell the home to an income-eligible buyer in the future. Leases typically run for 50 to 99 years, depending upon state law.

[128] John Emmeus Davis, National Housing Institute, ''Shared Equity Homeownership—The Changing Landscape of Resale-Restricted, Owner-Occupied Housing'' (2006), *available at http://www.nhi.org/pdf/SharedEquityHome.pdf.*

[129] The initial homebuyer may be required to repay a portion of the subsidy under certain circumstances if the property is sold during a specified time period. The program may use that repaid subsidy to assist another eligible household with downpayment or closing cost assistance to purchase a home.

[130] While many consumers, developers, realtors and other market participants think of condominiums and cooperatives as multifamily homeownership, loans for individual units are treated as part of the single-family business by lenders and the Enterprises.

[131] Robert Hickey, Lisa Sturvent & Emily Thaden, ''Achieving Lasting Affordability through Inclusionary Housing'' (Working Paper WP14RH1) (July 2014), Cambridge, MA: Lincoln Institute of Land Policy, *available at https://www.lincolninst.edu/pubs/2428_Achieving-Lasting-Affordability-through-Inclusionary-Housing.*

• *Shared Appreciation Loans.* Shared appreciation loan programs sell homes at fair market value to income-eligible purchasers, but to make the purchase affordable, the program provides a no-payment second mortgage loan that is fully due upon sale and typically at zero percent interest. The loan documents or an accompanying deed-restricted covenant stipulate the homeowner's share of appreciation upon resale and ensure the home will be sold to another eligible household. The share of the appreciation that goes to the program sponsor is used to increase the shared appreciation loan amount to make the purchase of the home affordable for the subsequent buyer. The mortgages typically have terms of 30 years or longer, depending upon state law. Proprietary shared appreciation loans, where an investor receives part of the equity in exchange for making the home affordable for a single buyer only, do not preserve affordability of the unit for subsequent buyers. Section 1282.38(b)(6) of the proposed rule would specifically provide that shared appreciation loans that fail to meet the requirements discussed above would not receive credit under the Duty to Serve underserved markets.

Preserving homeownership through shared equity programs helps to address the growing gap between what people can afford to pay for housing given what they earn and what they must actually pay for housing given what it costs. A longitudinal study [132] of 53 shared equity programs representing 3,678 homes found in 2014 that the programs:

• Increased access to homeownership: The average household income at the time of purchase under the programs was 65 percent of the area median income and 82 percent were first-time homebuyers. On average, the homes sold for 25 percent below their fair market value to make the purchase affordable.

• Improved likelihood that homeownership would be sustained: Over 93 percent of households under the programs remained homeowners for at least five years. This contrasts with a more limited longitudinal study of households in non-shared equity purchases, which found that less than 50 percent of the first-time, low-income homebuyers in the study maintained ownership for five years.[133]

• Reduced likelihood of foreclosure: Shared equity homeowners, all of whom were lower-income, were one-tenth as likely to be in foreclosure as homeowners in the conventional market across all incomes.

• Built wealth for homeowners: The annual rate of return on the homeowners' downpayments was 7.97 percent. Approximately 62 percent of the households went on to buy a market-rate home in the conventional market.

• Preserved affordable homeownership: The programs retained the affordability of the homes to serve the same income levels, sale after sale.[134]

Shared equity transactions also help to stabilize property values and communities. They can provide housing at affordable prices for long-standing homeowners in the area that help to counter price escalation in gentrifying communities. In addition, shared equity transactions often provide a loss buffer in the form of the difference between the market value and the amount the buyer pays, which can reduce foreclosures, while reducing the relative amount of loss in the value of the home if foreclosure does occur. By reducing foreclosures, shared equity transactions not only improve the outcomes for homebuyers, but also help maintain values of other homes in the neighborhood, thereby enhancing outcomes for the entire community. Shared equity transactions may also permit a household to afford a home in a neighborhood with better schools or other amenities that would otherwise be unaffordable for the household. In particular, shared equity programs can make it possible for teachers, firefighters, police and other modest-income workers to buy homes in the community where they work.

One of the greatest challenges for expanding shared equity homeownership has been the difficulty of accessing conventional mortgage lending for first mortgages on homes purchased through shared equity mechanisms.[135] For example, a nonprofit community land trust with extensive experience developing and preserving homeownership preservation units has reported that it is having increasing difficulty finding lenders to originate loans with shared equity features. According to the land trust, lenders have advised that shared equity loans are too difficult and expensive to originate because the loans are ineligible for Enterprise automated underwriting and often require the lenders to provide the Enterprises with additional representations and warranties. Shared equity programs across the country report similar experiences.[136] Fannie Mae has recently made automated underwriting available for some shared equity loans.[137]

Both Enterprises have loan purchase products that can be used to varying degrees with shared equity mechanisms, including deed-restricted housing and community land trusts. However, the Enterprises could simplify their requirements for these products and make a greater effort to ensure that the requirements are widely understood. Encouraging Enterprise support for shared equity homeownership could help spur this important market.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question by the number assigned below):

64. Are there additional ways that the Enterprises could support long-term affordable homeownership preservation?

65. Should affordable homeownership be preserved for longer than 30 years to qualify for Duty to Serve credit and, if so, for how long?

66. Should Enterprise support for affordable homeownership preservation be a Regulatory Activity?

67. How can the Enterprises provide further support for affordable homeownership preservation beyond those specified above or in the proposed rule?

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[132] A ''longitudinal study'' is a research study that involves repeated observations of the same variables over long periods of time. In this study, the median age of the 53 programs was 15 years, and 15 of the 53 programs were at least 15 years old.

[133] Carolina Katz Reid, Center for Studies in Demography and Ecology, University of Washington, ''Achieving the American Dream?: A Longitudinal Analysis of the Homeownership Experiences of Low-Income Households,'' (CSDE Working Paper 04–04) (Apr. 2004), at 20, *available at https://csde.washington.edu/downloads/04-04.pdf.*

[134] Cornerstone Partnership, ''Social Impact Report'' (2014), *available at http://myhomekeeper.org/socialimpact.*

[135] Jeffrey Lubell, Bipartisan Policy Center, ''Housing More People More Effectively through a Dynamic Housing Policy'' (2015), at 10, *available at http://bipartisanpolicy.org/library/housing-more-people-more-effectively-through-a-dynamic-housing-policy/.*

[136] *See* Emily Thaden, ''Results of The 2011 Comprehensive CLT Survey'' (January, 2012). Portland, OR: National Community Land Trust Network, *available at http://cltnetwork.org/wp-content/uploads/2014/01/2011-Comprehensive-CLT-Survey.pdf;* Robert Hickey, Lisa Sturvent & Emily Thaden, ''Achieving Lasting Affordability through Inclusionary Housing'' (Working Paper WP14RH1) (July 2014), Cambridge, MA: Lincoln Institute of Land Policy, *available at https://www.lincolninst.edu/pubs/2428_Achieving-Lasting-Affordability-through-Inclusionary-Housing.*

[137] *See* Fannie Mae Desktop Underwriter Version 9.2 from Aug. 15, 2015, *available at https://www.fanniemae.com/content/release_notes/du-do-release-notes-08152015.pdf.*

v. Preservation of Affordable Housing Through the Choice Neighborhoods Initiative—Proposed § 1282.34(d)(5)

Section 1282.34(d)(5) of the proposed rule would provide Duty to Serve credit for Enterprise activities supporting financing for HUD's Choice Neighborhoods Initiative (CNI).[138] This program seeks to preserve and transform distressed affordable housing by creating mixed-income housing and investing in neighborhood improvements and upgrades, with the ultimate goal of deconcentrating poverty and creating higher-opportunity neighborhoods. The program allows for the location of replacement housing offsite in lower-poverty neighborhoods and assistance to tenants in moving to such neighborhoods to promote the deconcentration of poverty. The Enterprises can support the CNI by purchasing mortgages that provide permanent financing on housing preservation activities that support very low-, low-, and moderate-income households.

vi. Preservation of Affordable Housing Through the Rental Assistance Demonstration Program—Proposed § 1282.34(d)(6)

Section 1282.34(d)(6) of the proposed rule would provide Duty to Serve credit for Enterprise activities supporting financing for HUD's Rental Assistance Demonstration (RAD) program.[139] The program seeks to improve and preserve public housing and other affordable housing supported by older HUD programs by converting the properties' operating funds to project-based vouchers or Section 8 rental assistance contracts. By converting the funds, public housing authorities can access other sources of public and private capital for repair and preservation. While the RAD program is primarily a preservation program for housing affordable to very low-income tenants, the program can also support mixed-income housing as long as all affordable units are replaced. The program includes the use of tenant-based vouchers to support the deconcentration of poverty and movement of low-income tenants to high opportunity areas. The Enterprises can support the RAD program by supporting permanent financing on properties that take advantage of this program.

[138] 42 U.S.C. 1437v.

[139] 42 U.S.C. 1437f note.

3. Rural Markets—Proposed § 1282.35

a. Background

i. Overview of Rural Housing

According to the 2010 U.S. Census, 19.3 percent of the U.S. population lives in rural America.[140] Although urban housing needs tend to draw more attention, the housing needs in rural areas are also significant. High rural poverty rates and a declining employment base have led to rural unemployment and underemployment. While the average homeownership rate in rural areas (73 percent) is higher than the national average homeownership rate (64 percent),[141] housing in rural areas is more likely to be substandard. Rural housing stock, both owner-occupied and rental, exhibits two common characteristics: (1) It is comprised primarily of single-family homes (82 percent),[142] excluding manufactured housing; and (2) a higher percentage of the stock is in substandard condition (6.3 percent) compared to metropolitan areas (5.3 percent).[143] Substandard housing is likely due to aging homes, fewer housing code enforcement efforts, lower homeowner turnover rates, and less disposable income available for dwelling rehabilitation.

Rural communities have more limited access to mortgage credit than urban areas,[144] which severely limits options for decent, clean, and affordable rural housing. Interest rates on home mortgages tend to be higher in rural areas than in urban areas. Those differences may reflect varying expenses associated with mortgage lending and the competitiveness and efficiency of mortgage markets. The smaller population size and the remoteness of many rural areas can raise lender costs. Additionally, rural financial markets, including mortgage markets, generally have fewer competitors than urban markets, and rural communities may lack sufficient internet service that would allow households to access more competitive financing options online. Thus, lenders operating in rural markets may be apt to charge more, provide fewer products and services, or incur inefficiently high expenses.[145]

Another obstacle for rural communities is the lack of local capacity to build new homes and renovate existing housing stock. There may be few or no local organizations in rural areas, especially in areas with the greatest needs that have the resources and expertise to undertake rural housing projects. Low density and the lack of volume in rural communities make it difficult for organizations to develop housing, particularly more cost-effective multifamily housing.

Rural housing stock has unique features and challenges. Rural communities are widely scattered, as are individual housing units within those communities. Dwellings may be sited on large parcels and have unique construction and design characteristics. Rural housing markets also tend to have slower housing turnover, and many have seasonal housing needs. Because of the low density of rural markets, a general lack of homogeneity in housing quality and features, and slower or seasonal market turnover, appraisals can be difficult because suitable comparable sales may be few and far between.

Manufactured housing continues to grow in importance as a rural housing choice. Most rural manufactured homes are financed as personal property (chattel), which often features higher interest rates with shorter repayment terms. However, chattel-financed manufactured homes offer an affordable option for many people in rural markets because the cost of a manufactured unit is typically lower than that of a site-built unit and does not include the cost of the underlying land, which the household may rent or already own. A household may also save money because it does not pay real estate taxes on chattel property, although it may pay personal property taxes on the unit.

USDA mortgage programs help fill some housing needs in rural areas,[146]

[140] *See* U.S. Census Bureau, Frequently Asked Questions, ''What percentage of the U.S. population is rural?,'' *available at https://ask.census.gov/faq.php?id=5000&faqId=5971.*

[141] *See* U.S. Census Bureau, ''American Housing Survey for the United States: 2011,'' at 2, Issued September 2013, *available at https://www.census.gov/content/dam/Census/programs-surveys/ahs/data/2011/h150-1.pdf.*

[142] *Id.* at 3.

[143] *Id.* at 15.

[144] *See* Adam Wodka, ''Landscapes of Foreclosure: The Foreclosure Crisis in Rural America,'' NeighborWorks America and the Joint Center for Housing Studies of Harvard University, November 2009, *available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w10-2_wodka.pdf.*

[145] *See* U.S. Department of Agriculture Economic Research Service, ''Can Federal Policy Changes Improve the Performance of Rural Mortgage Markets?,'' Agriculture Information Bulletin No. 724–12, at 1 (Aug. 1998), *available at http://www.ers.usda.gov/media/564761/aib72412_1_.pdf.*

[146] The Millennial Housing Commission concluded that rural areas are often neglected by major federal housing production programs such as HOME, CDBG, and the Low-Income Housing Tax Credit, and that as a result, USDA programs have been the primary source of rural housing assistance since 1949. *See* Millennial Housing Commission, ''Meeting Our Nation's Housing Challenges—Report of the Bipartisan Millennial Housing Commission Appointed by the Congress of the United States,''

Continued

and benefit from having local agency administrative infrastructure to support the programs. The USDA Section 502 loan program provides very low- and low-income families in rural areas earning no more than 80 percent of area median income up to 100 percent financing to purchase existing or newly constructed dwellings or to purchase sites and construct dwellings in rural areas.

The USDA Section 515 rental housing program provides funding to finance the construction of affordable multifamily rental housing in rural areas for very low-, low-, and moderate-income families, elderly persons, and persons with disabilities. An ongoing challenge is keeping these rental units in rural areas affordable and available for low-income families for two reasons in particular. First, a number of building owners that received Section 515 loans prior to December 15, 1989, are prepaying their mortgages and terminating the government affordability requirements before the end of the original loan term. (Loans made through contracts entered into on or after December 15, 1989 cannot be prepaid).[147] USDA offers incentives to owners not to prepay and continue to restrict the property to low-income occupancy. These incentives include equity loans, reduced interest rates, and additional rental assistance. Second, aging properties financed with Section 515 loans are physically deteriorating. USDA offers preservation assistance to owners or purchasers of Section 515 properties through its Multifamily Housing Preservation and Revitalization (MPR) demonstration program, which provides no-interest loans, grants to non-profit owners, soft second loans, and debt deferral.[148]

ii. Enterprise Activities in Rural Areas

Under the definition of ''rural area'' in this proposed rule, which is discussed below, as of the end of 2009, 12.7 percent of Enterprise total residential mortgage loan purchases were in rural areas. As of the end of 2014, 18.5 percent of loans purchased by the Enterprises were in rural areas, representing a 46 percent increase from 2009. Of these loans, 36 percent were for families with incomes at or below 100 percent of area median income.

Difficulties in underwriting loans for rural areas can arise from slower or seasonal market turnover, widely scattered home sites, large lot sizes, and a general lack of homogeneity in the housing stock.[149] In response, the Enterprises have clarified and developed flexible collateral underwriting guidelines for rural markets in guidance released to creditors and appraisers in 2014.[150] The Enterprise guidelines state that they provide clarifications and dispel common industry misconceptions about acceptable appraisal practices and property eligibility requirements for homes in small towns and rural areas.[151] Consistent with HUD, U.S. Department of Veterans Affairs (VA), and USDA-Rural Development policies, the Enterprises' guidelines remain broad to allow appraisers to accurately observe, analyze and report actual rural market and property conditions. Further, the guidelines allow the appraisers discretion to select comparable sales that may be dated, distant, or dissimilar to a subject property but that best reflect the appraiser's conclusions and opinion of value.[152] This approach recognizes the unique appraisal problems in rural markets discussed above. However, in all cases, the appraisal must contain adequate reasoning and justification for the analysis and conclusions to produce a credible and reliable result.

As part of their Duty to Serve rural markets, the Enterprises would be required to evaluate their current activities in rural areas and identify opportunities to increase those activities. This evaluation could include the Enterprises' working through federal and state programs and with local stakeholders to address liquidity needs in rural markets. At the same time, FHFA recognizes that Enterprise Duty to Serve efforts will not be able to address all housing finance needs in rural markets because of safety and soundness, property eligibility requirements, and other constraints.

b. Regulatory and Additional Activities

The Safety and Soundness Act provides that the Enterprises ''shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas.'' [153] The statutory language is broad and does not enumerate specific activities or programs that the Enterprises must undertake in support of the rural market; as a result, FHFA has specified only one Core Activity for this market, as further described below.

Section 1282.35(b) of the proposed rule would define eligible activities for the rural market as Enterprise activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, or moderate-income families in rural areas. Section 1282.1 of the proposed rule would define ''rural area'' as (1) a census tract outside of a metropolitan statistical area (MSA), as designated by OMB, or (2) a census tract that is in an MSA but outside of the MSA's Urbanized Areas (UAs) and Urban Clusters (UCs), as designated by USDA's RUCA codes. The proposed definition of ''rural area,'' which is further discussed below, is intended to give the Enterprises broad flexibility to undertake and receive Duty to Serve credit for activities in rural markets.

The Enterprises are an important source of liquidity to rural markets. As noted above, the Enterprises have increased their purchases of mortgage loans in rural markets over the past five years and have expanded their outreach to community banks and other rural lenders over the past year. Nevertheless, there continues to be a need for outreach, support and capacity-building

at 78 (May 30, 2002), *available at http://govinfo.library.unt.edu/mhc/MHCReport.pdf.*

[147] *See* Rural Rental Housing Loans (Section 515), September 2002, *available at http://portal.hud.gov/hudportal/documents/huddoc?id=19565_515_RuralRental.pdf.*

[148] *See* Housing Preservation & Revitalization Demonstration Loans & Grants, *available at http://www.rd.usda.gov/programs-services/housing-preservation-revitalization-demonstration-loans-grants.*

[149] *See generally* Kerry D. Vandell, ''Improving Secondary Markets in Rural America,'' Proceedings—Rural and Agricultural Conferences, Federal Reserve Bank of Kansas City, 85–120 (Apr. 1997), *available at https://www.kansascityfed.org/publicat/fra/fra97van.pdf.*

[150] *See* Laurie Redmond, ''Freddie Mac Property and Appraisal Requirements for Properties Located in Rural Market Areas,'' Letter to Freddie Mac Sellers, Freddie Mac Bulletin (Apr. 1, 2014), *available at http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1405.pdf. See also* Carlos T. Perez, ''Property and Appraisal Requirements for Properties Located in Small Towns and Rural Areas,'' Lender Letter LL–2014–02, Letter to All Fannie Mae Single-Family Sellers, Fannie Mae (Mar. 25, 2014), *available at https://www.fanniemae.com/content/announcement/ll1402.pdf.*

[151] *See* Laurie Redmond, ''Freddie Mac Property and Appraisal Requirements for Properties Located in Rural Market Areas,'' Letter to Freddie Mac Sellers, Freddie Mac Bulletin (Apr. 1, 2014), *available at http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1405.pdf. See also,* Carlos T. Perez, ''Lender Letter LL–2014–02,'' Letter to All Fannie Mae Single-Family Sellers, Fannie Mae (Mar. 25, 2014), *available at https://www.fanniemae.com/content/announcement/ll1402.pdf.*

[152] *See* Laurie Redmond, ''Freddie Mac Property and Appraisal Requirements for Properties Located in Rural Market Areas,'' Letter to Freddie Mac Sellers, Freddie Mac Bulletin (Apr. 1, 2014), *available at http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bll1405.pdf. See also,* Carlos T. Perez, ''Lender Letter LL–2014–02,'' Letter to All Fannie Mae Single-Family Sellers, Fannie Mae (Mar. 25, 2014), *available at https://www.fanniemae.com/content/announcement/ll1402.pdf.*

[153] 12 U.S.C. 4565(a)(1)(C).

for rural lenders to facilitate their origination of loans for housing in rural areas, which the Enterprises could purchase. Local lenders may lack expertise, volume, or resources to participate in Enterprise mortgage programs, while larger regional and national lenders that serve as aggregators for Enterprise-eligible loans purchased from smaller financial institutions are often not active in rural markets.

The Enterprises' Underserved Markets Plan Activities could include, for example, modifying their underwriting of guidelines for rural loans eligible for purchase, increasing their rural loan purchases, and developing strategies for extending education, outreach and technical assistance to small and rural lenders and other entities, including nonprofit and for-profit organizations, serving rural markets. Plan Activities could also include Enterprise marketing of their products to lenders in rural areas in an effort to increase the number of approved lenders in those areas, or Enterprise purchases or other assistance with mortgages guaranteed under USDA programs or other residential mortgages in rural areas.

The Enterprises' Underserved Markets Plans may also include Additional Activities that support the financing of residential properties for very low-, low-, or moderate-income families in rural areas, subject to FHFA determination of whether such activities are eligible for Duty to Serve credit.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

68. What types of barriers exist to rural lending for housing and how can the Enterprises best address them?

69. What types of Enterprise activities could help build institutional capacity and expertise among market participants serving rural areas?

Definition of ''Rural Area''

A definition of ''rural area'' is necessary so that FHFA can evaluate the Enterprises' activities in rural markets and measure their performance under their Underserved Markets Plans. There is no single, universally accepted definition of ''rural area'' because varying definitions achieve different policy objectives.[154] The ''rural area'' definitions identify people living in rural locations, but the methodologies for defining ''rural areas'' may be based on differing geographic units that are sometimes combined with population characteristics.

FHFA considered several criteria in developing a ''rural area'' definition. Many rural residents live in the outlying counties of metropolitan areas. Accordingly, FHFA's ''rural area'' definition for Duty to Serve purposes should be broad enough to include such counties. Additionally, because of the effect the definition would have on the Enterprises' three-year Underserved Markets Plans and activities creditable under those Plans, a ''rural area'' definition for the Duty to Serve must allow areas under the definition to remain stable over time. Other agencies' definitions of rural areas may be subject to annual or more frequent changes that may revise the definition and the areas included in the definition, based on policy objectives for particular programs. A ''rural area'' definition suitable for the Duty to Serve should also be census tract-based to allow for customization, ease of implementation and operational use by incorporating existing Enterprise geocoding systems, which use census tracts.

In developing its definition of ''rural area,'' FHFA considered the criteria discussed above, other agency definitions of ''rural,'' and comments received on the 2010 Duty to Serve proposed rule, as discussed below.

USDA Definition of ''Rural''

The Housing Act of 1949 defines ''rural'' and ''rural area'' generally as: Any open country, or any place, town, village, or city which is not part of or associated with an urban area and which: (1) Has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but not in excess of 20,000, and (A) is not contained within a standard MSA, and (B) has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretaries of Agriculture and HUD.[155] Because this definition is implemented and updated by USDA, FHFA would not need to update the areas included in the definition with successive Censuses if the definition were used for the Duty to Serve.

Commenters on the 2010 Duty to Serve proposed rule generally favored using the USDA definition for the Duty to Serve. Several nonprofit organizations stated that the USDA definition is sufficiently broad to cover almost all rural areas, and some stated that it should be used for the sake of consistency. However, one Enterprise commented that the USDA definition presents unacceptable operational risks and recommended consideration of other methodologies, possibly using a combination of classifications. The Enterprise stated that unless the USDA maintains accessible archives, the USDA definition would prohibit replication and verification of results once USDA data are updated.

The Government Accountability Office (GAO) found that because MSAs contain both urban and rural areas and have increased substantially in both size and number in recent decades, they may not be good determinants of urban-rural distinctions.[156] Adoption of the USDA definition would also pose significant implementation challenges for the Enterprises as the definition splits census tracts into rural and urban components, increasing the difficulty of use because the Enterprises' existing geocoding programs use whole census tracts. In addition, the Enterprises would have to automate the coding of urban-rural designations based on information currently available only through the USDA Web site. The USDA Web site is designed for loan underwriters and originators, which deal in much smaller numbers of transactions than the Enterprises. Because of the significantly larger volume of the Enterprises' transactions, the Enterprises would need the capability to automate the rural-urban designations for large numbers of properties. This would be a costly and time-consuming process for the Enterprises. Moreover, USDA revises its rural-designated areas throughout the year at the state and local field office level, which would further complicate the use of USDA's definition in determining Duty to Serve-creditable

[154] *See generally* David A. Fahrenthold, ''What does rural mean? Uncle Sam has more than a dozen answers,'' Washington Post (June 8, 2013), *available at http://www.washingtonpost.com/politics/what-does-rural-mean-uncle-sam-has-more-than-a-dozen-answers/2013/06/08/377469e8-ca26-11e2-9c79-a0917ed76189_story.html.*

[155] 42 U.S.C. 1490. The Agricultural Act of 2014 amended the Housing Act of 1949 definition of ''rural'' so that areas deemed rural between 2000 and 2010 would retain that designation until USDA receives data from the 2020 decennial Census. The amendments also raised the population threshold for eligibility from 25,000 to 35,000 if the area is rural in nature and has a serious lack of mortgage credit for lower- and moderate-income families. *See* Agricultural Act of 2014, Public Law 113–79, § 6208, 128 Stat. 861 (2014), *available at https://www.congress.gov/113/plaws/publ79/PLAW-113publ79.pdf.*

[156] *See* United States Government Accountability Office, GAO–05–110, ''Rural Housing—Changing the Definition of Rural Could Improve Eligibility Determinations'' (Dec. 2004), *available at http://www.gao.gov/new.items/d05110.pdf.*

Enterprise activity in a given Underserved Markets Plan year.

However, one USDA indicator of rurality was found to be particularly useful in constructing FHFA's definition of ''rural area'' in the proposed rule. This is USDA's RUCA codes designation.[157] RUCA designations are census tract-based and classify census tracts using measures of population density, urbanization, and daily commuting. RUCA designations are clear, meaningful, and easy to operationalize. As further discussed below, FHFA has incorporated RUCA codes in its proposed definition of ''rural area.''

CFPB Definition of ''Rural''

FHFA also considered CFPB's definition of ''rural'' used for escrow account requirements on higher-priced mortgage loans. CFPB defines ''rural'' as counties outside of all MSAs and outside of all micropolitan statistical areas that are adjacent to MSAs, as those terms are defined by OMB and as they are currently applied under USDA ''Urban Influence Codes'' (UICs) established by the USDA-Economic Research Service (ERS).[158] Additionally, CFPB considers a rural area a census block that is designated as ''rural'' by the U.S. Census Bureau in the urban-rural classification it completes after each decennial Census.[159]

The first component of the CFPB definition for rural [160] uses counties as the geographic unit. Counties are the most commonly used geographic component of definitions of ''rural.'' [161] They are simple to understand and since county boundaries are stable over time, the definition of ''rural'' remains stable. CFPB maintains a list of counties eligible under its definition of ''rural'' on its Web site and updates the list annually.

The second component of the CFPB definition for rural may pose implementation and operational issues for the Enterprises, as the Enterprises rely on geocoding using census tracts rather than census blocks.

U.S. Census Bureau Definition of ''Rural''

FHFA also considered the U.S. Census Bureau's metropolitan/urban and non-metropolitan/rural areas designations. The U.S. Census Bureau's urban areas designations represent densely developed territory, encompassing residential, commercial and other non-residential urban land uses. The U.S. Census Bureau designates urban areas after each decennial Census by applying specified criteria to decennial Census and other data and identifies two types of urban areas: (i) UAs of 50,000 or more people; and (ii) UCs of at least 2,500 and less than 50,000 people. The U.S. Census Bureau designates rural areas as those areas encompassing all population, housing and territory not included within a UA or UC.[162] The U.S. Census Bureau's designation of rural areas is stable over time, does not require reliance on external Web sites or published lists, and is census tract-based. Its designations of UAs and UCs allow for identification of rural census tracts even within counties located within MSAs, which are based on county information, and are appropriate for purposes of the Duty to Serve.

FHFA Proposed Definition of ''Rural Area''—Proposed § 1282.1

After considering the various criteria, other agencies' definitions of ''rural,'' and the comments received on the 2010 Duty to Serve proposed rule, discussed above, FHFA is proposing to define ''rural area'' in § 1282.1 by combining two different geographic designations that would incorporate nonmetropolitan areas. Specifically, the proposed rule would define ''rural area'' as (1) a census tract outside of an MSA, as designated by OMB, or (2) a census tract that is in an MSA but outside of the MSA's UAs and UCs, as designated by USDA's RUCA codes.[163]

FHFA's proposed definition would be census tract-based, which would be more specific than county-based or MSA-based definitions and should better distinguish between rural areas and non-rural areas without excluding outlying counties of metropolitan areas. As discussed above, USDA's RUCA codes classify census tracts using measures of population density, urbanization, and daily commuting, are clear and meaningful, and would be easy for the Enterprises to incorporate into their current operating infrastructures. In short, the Enterprises should be able to easily implement FHFA's proposed definition using their existing geocoding systems and the proposed definition should provide stability to support the multi-year Underserved Markets Plans.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify each question by the number assigned below):

70. Would one of the four definitions discussed above better serve Duty to Serve objectives, and if so, why?

71. How could operational concerns about Enterprise implementation under each of the definitions be addressed?

High-Needs Rural Regions and High-Needs Rural Populations—Proposed § 1282.35(c)

Section 1282.35(c) of the proposed rule would provide Duty to Serve credit for Enterprise support of financing of income-eligible housing for high-needs rural regions and high-needs rural populations. Under the proposed rule, this activity would constitute a Regulatory Activity which the Enterprises would have to address in their Underserved Markets Plans by indicating how they choose to undertake the activity or the reasons why they will not undertake the activity.

Section 1282.1 of the proposed rule would define a ''high-needs rural region'' as any of the following regions, provided it is located in a rural area as defined in the proposed rule: (i) Middle Appalachia; (ii) The Lower Mississippi Delta; or (iii) a colonia. Section 1282.1 would define a ''high-needs rural population'' as any of the following populations, provided the population is located in a rural area as defined in the proposed rule: (i) members of a Federally recognized Indian tribe located in an Indian area; or (ii) migrant and seasonal agricultural workers. FHFA chose these rural regions and populations because they are characterized by a high concentration of poverty and substandard housing conditions.

The economic distress experienced in these regions and by these populations is evident in their poor housing conditions and unaffordable housing.[164]

[157] *http://www.ers.usda.gov/data-products/rural-urban-commuting-area-codes/documentation.aspx.*

[158] *See* 80 FR 59944, 59968 (Oct. 2, 2015) *to be codified at* 12 CFR 1026.35(b)(2)(iv)(A), effective January 1, 2016.

[159] *Id.*

[160] *See* 80 FR 59944, 59968 (Oct. 2, 2015) *to be codified at* 12 CFR 1026.35(b)(2)(iv)(A)(1), effective January 1, 2016.

[161] *See* Andrew F. Coburn, A. Clinton MacKinney, Timothy D. McBride, Keith J. Mueller, Rebecca T. Slifkin, & Mary K. Wakefield, ''Choosing Rural Definitions: Implications for Health Policy,'' at 2 (Mar. 2007), *available at http://www.rupri.org/Forms/RuralDefinitionsBrief.pdf.*

[162] *See* United States Census Bureau, ''Urban and Rural Classification,'' Web. 20 (Feb. 2015), *available at http://www.census.gov/geo/reference/ua/urban-rural-2010.html.*

[163] Primary RUCA code 1 indicates an UA, and primary RUCA codes 4 and 7 indicate UCs; census tracts with these codes would not be included in the Duty to Serve definition of ''rural area.'' A dataset based on this proposed definition is posted at *www.fhfa.gov.*

[164] *See* Housing Assistance Council, ''Taking Stock: Rural People, Poverty, and Housing at the

Manufactured housing is prevalent in these regions and is a significant option for affordable housing.

While these regions and populations share common housing problems, unique challenges in some regions include: A scarcity of suitable building lots and high costs of site development and access in Middle Appalachia; particular affordability problems in the Lower Mississippi Delta; title issues with contract-for-deed (installment financing) for land purchases in colonias; and title issues on Native American lands, which are tribal-owned. These regions and populations are typically assisted by government agencies, local community development corporations, housing finance agencies, and nonprofit organizations, which have helped promote economic growth and improvements in housing conditions through various projects and programs. However, these regions and populations tend to lack the public-private development and financing infrastructure necessary to sustain improvements in housing conditions. Enterprise focus on these regions and populations could help provide increased financial infrastructure that facilitates improvements in housing conditions and affordability.

The high-need regions in the proposed definition are discussed further below.

a. *Middle Appalachia.* As defined by the Appalachian Regional Commission (ARC), the Appalachia region includes all of West Virginia, and parts of Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia. The Appalachia region is home to more than 25 million people and covers 420 counties and almost 205,000 square miles.[165] Middle Appalachia is a sub-region of Appalachia, which ARC defines as the 230 ARC-designated counties in Kentucky, North Carolina, Ohio, Tennessee, Virginia, and West Virginia.[166] Middle Appalachia is predominantly rural, with over 80 percent of Middle Appalachia's counties being non-metropolitan.[167]

Substandard housing is a particularly prevalent problem in Middle Appalachia. Eighty percent of counties in the region have higher levels of housing units with inadequate plumbing than the national level.[168] Manufactured housing (not on permanent foundations) is also very common in the region, accounting for 18 percent of all housing units. This is due to limited suitable land (*e.g.,* to support foundations and provide wells or septic systems) for site-built homes as well as low incomes that make other types of housing unaffordable.[169]

b. *The Lower Mississippi Delta.* As defined by the Lower Mississippi Delta Development Act and the former Lower Mississippi Delta Development Commission, the Lower Mississippi Delta region is comprised of counties and parishes in portions of Arkansas, Louisiana, Mississippi, Missouri, Illinois, Tennessee, Kentucky, and Alabama.[170] Technically, the region is not a delta but a 200-mile plain that covers more than 90,000 miles of rivers and streams and more than 3 million acres.[171]

In considering the Lower Mississippi Delta Development Act, the U.S. Senate found that the lower Mississippi River valley is the poorest, most underdeveloped region in the United States, ranking lowest by almost every economic and social indicator.[172] It has an overwhelming need for the development of decent, affordable housing.[173] Challenges in assisting this region have included insufficient local capacity to undertake development efforts, the absence of adequate resources and financing mechanisms, and the lack of collaboration among ongoing efforts in the region.[174]

c. *Colonias.* In Latin America, the word ''colonia'' means ''neighborhood'' or ''community.'' The Cranston-Gonzalez National Affordable Housing Act (NAHA) has two definitions of a ''colonia'' depending on the applicable housing program. NAHA defines a ''colonia'' as an ''identifiable community'' that: (A) is in the State of Arizona, California, New Mexico, or Texas; (B) is in an area of the United States within 150 miles of the U.S.-Mexico border (not including any standard MSA with a population exceeding 1 million), or is in the United States-Mexico border region (the applicable criterion depends on the particular housing program); (C) is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe and sanitary housing; and (D) was in existence as a colonia before November 28, 1990.[175] Previous statutory definitions of ''colonia'' also included a requirement that the identifiable community be designated by the state or county in which it is located as a colonia.[176] The definitions used in HUD and USDA programs include criteria from the previous and current statutory definitions, depending on the particular housing program.[177] The NAHA definition as used by HUD and USDA programs also includes other types of colonia communities, such as dense settlements of modular or manufactured homes.[178]

In many cases, state and local jurisdictions play an important role in the level of public controls related to factors such as the initial designation of the colonias, their ongoing conditions, and the political initiative to improve their conditions. Some colonias are incorporated communities under the control of a city, some are unincorporated under the control of the county, and others may be in extra-jurisdictional territories of cities which

Turn of the 21st Century,'' at 37 (2002) [hereinafter ''HAC 2002 Study''], *available at http://www.ruralhome.org/sct-information/mn-hac-research/mn-rrr/245-taking-stock-2000.*

[165] *See* Appalachian Regional Commission, FINANCIAL STATEMENTS—As of And For The Years Ended September 30, 2013 and 2012, Note 1 at 8 (Jan. 29, 2014), *available at http://www.arc.gov/images/aboutarc/members/IG/Report14-09FiscalYear2013FinancialStatementAudit.pdf.*

[166] *See A*ppalachian Regional Commission, Subregions in Appalachia (Nov. 2009), *available at http://www.arc.gov/research/MapsofAppalachia.asp?MAP_ID=31.* Middle Appalachia comprises the North Central, Central and South Central subregions of Appalachia.

[167] *See* HAC 2002 Study, *supra* note 164, at 56.

[168] *See* HAC 2002 Study, *supra* note 164, at 60.

[169] *See Id.*

[170] *See* Lower Mississippi Delta Development Act, Oct. 1, 1988, Public Law 100–460, Title II, § 201; HAC 2002 Study, *supra* note 164, at 87. The State of Alabama was added in 2000 as a provision of the Consolidated Appropriations Act of 2001, Public Law 106–554 (114 Stat. 2763A–252). *See generally* Eugene Boyd, Congressional Research Service, Federal Regional Authorities and Commissions: Their Function and Design, at 15–25 (Order Code RL33076 (Sept. 21, 2006), *available at https://www.hsdl.org/?view&did=467086.* The Lower Mississippi Delta Commission's operations were terminated on September 30, 1990. *See id.* at 16.

[171] *See* HAC 2002 Study, *supra* note 164, at 84.

[172] S. Rep. No. 557, 100th Cong., 2d Sess., at 2 (1988). *See also* The Economist, ''The Hellhound's Trail—A Delta town starts to make good,'' (May 4, 2013), *available at http://www.economist.com/node/21577093/print.*

[173] HAC 2002 Study, *supra* note 164, at 89. *See generally* Chico Harlan, ''An opportunity gamed away—For a county in the Deep South that reaped millions from casino business, poverty is still its spin of the wheel,'' The Washington Post (July 11, 2015), *available at http://www.washingtonpost.com/sf/business/2015/07/11/an-opportunity-gamed-away/.*

[174] *See* HAC 2002 Study, *supra* note 164, at 89. *See generally* Chico Harlan, ''An opportunity gamed away—For a county in the Deep South that reaped millions from casino business, poverty is still its spin of the wheel,'' The Washington Post (July 11, 2015), *available at http://www.washingtonpost.com/sf/business/2015/07/11/an-opportunity-gamed-away/.*

[175] 42 U.S.C. 1479(f)(8); 42 U.S.C. 5306note.

[176] Public Law 101–625, 104 Stat. 4290, 4396.

[177] 24 CFR 570.411, 7 CFR 1777.4.

[178] 24 CFR 570.411, 7 CFR 1777.4. *See* ''Colonias History,'' *available at https://www.hudexchange.info/cdbg-colonias/colonias-history/.*

share some level of control with the county. The political motivation to improve conditions for colonia residents has led to an assortment of projects that combine funding from multiple federal and non-federal sources including local resources.[179] Colonias typically have been formed in response to a need for affordable housing that gives people a sense of ownership.

Lack of decent, affordable single-family and rental housing continues to be a major problem in colonias. While homeownership rates in colonias are similar to national homeownership rates, the percentage of vacant properties in colonias (12 percent) is higher than the percentage of vacant properties nationally (8.4 percent). This may reflect a lack of affordability for acquiring or sustaining ownership by a population characterized by significant poverty, household migration for available farm work, and abandonment of substandard housing. Many colonia residents typically purchase unimproved land rather than improved property, and rely on financing methods such as a contract for deed rather than a traditional mortgage.[180] This may be because traditional lenders are unwilling to make standard mortgages on land without certain infrastructure or on which the improvements may be self-built. Non-traditional lenders may not offer alternatives to contract-for-deed financing even when financing improvements to the land. A contract for deed is a form of installment sale in which the seller does not transfer legal title to the buyer until after the buyer has paid the entire purchase price.[181] As with most installment financing, the homebuyer is usually responsible for maintenance of the property and payment of the taxes and insurance during the contract term and typically loses the right to recover the value of any improvements made to the property. Consequently, a contract for deed lacks some of the borrower protections that a mortgage provides through lengthier default and foreclosure processes and, in some cases, redemption periods. Contracts for deed are also more likely to carry interest rates applicable to consumer loans, such as 12 percent to 18 percent, which are generally much higher than residential mortgage rates.

If the full NAHA definition were applied for the Duty to Serve, the Enterprises would likely be able to receive little or no Duty to Serve credit for colonias. This is because to be eligible for purchase by the Enterprises, mortgages on residential properties must meet the Enterprises' property eligibility requirements, including project access and infrastructure, presence of site utilities, acceptable property condition, and marketability. The NAHA definition of colonia includes a requirement that the community lack a potable water supply and adequate sewage systems. The Enterprises' property eligibility requirements would not permit them to purchase mortgages on properties that lack potable water supplies and adequate sewage systems. A broader definition of ''colonia'' that incorporates some but not all of the elements of the NAHA definitions would provide the broadest scope for Duty to Serve credit for Enterprise purchases of mortgage loans and conducting of other activities in colonias.

Accordingly, FHFA proposes to define ''colonia'' for Duty to Serve purposes as an identifiable community that (A) is designated by a State or county in which it is located as a colonia; (B) is located in the State of Arizona, California, New Mexico, or Texas; and (C) is located in a U.S. census tract with some portion of the tract within 150 miles of the U.S.-Mexico border.

The high-needs populations in the proposed definition are discussed further below.

a. *Members of a Federally Recognized Indian Tribe Located in an Indian Area.* The federal government now recognizes 337 Native American tribes, predominantly in the Plains region and the American Southwest, and 229 Alaska Native Villages.[182] [183] Approximately 70 percent of homes on Native American lands are owner-occupied; however, Native American tribes and Alaska Native Villages generally own the underlying land to ensure the land is not sold to non-tribal members or non-Alaskan Natives. Consequently, the land and improvements may not have the same transfer rights and may function more like a leasehold estate, deterring traditional lenders from financing mortgages for home purchases because they cannot perfect the lien on the collateral. Despite the high rate of homeownership, there is a demand for rental housing on tribal and Alaska Native Villages Land. However, a shortage of decent, affordable rental properties on such land makes renting less common. This shortage is due in part to many villages being located on rivers or in coastal areas subject to erosion and flooding.[184] Coastal area locations prone to flooding may contribute to a lack of incentive to develop rental housing due to higher costs and risks associated with building in such areas. In addition, housing project development may not be cost effective because costs are generally more expensive on tribal and Alaska Native Village lands due to increased costs to transport construction equipment, labor and materials to isolated, rural locations.[185]

Under the proposed rule, Enterprise activities serving members of Native American tribes or Alaska Native Villages (hereafter referred to as Federally recognized Indian tribes to be consistent with the legal definition used by the Bureau of Indian Affairs (BIA)) in an Indian area that is located in a rural area would be a Regulatory Activity. Section 1282.1 would define a ''Federally recognized Indian tribe'' in accordance with the BIA definition. BIA defines a ''Federally recognized Indian tribe'' as ''an entity listed on the Department of Interior's list under the Federally Recognized Indian Tribe List Act of 1994, which the Secretary currently acknowledges as an Indian tribe and with which the United States maintains a government-to-government relationship.'' [186] Section 1282.1 would define ''Indian area'' in accordance with the HUD definition. HUD defines an ''Indian area'' as the area within which an Indian tribe operates affordable housing programs or the area in which a Tribally Designated Housing Entity is authorized by one or more Indian tribes to operate affordable housing programs.[187]

b. *Migrant and Seasonal Agricultural Workers.* The United States has an estimated 1.4 million agricultural

[179] *Id.*

[180] *See* Housing Assistance Council, ''Housing in the Border Colonias'' (Aug. 2013), *available at http://www.ruralhome.org/storage/documents/rpts_pubs/ts10_border_colonias.pdf.*

[181] Peter M. Ward, Heather K. Way & Lucille Wood, ''The Contract for Deed Prevalence Project—A Final Report to the Texas Department of Housing and Community Affairs (TDHCA),'' at IV (Aug. 2012), *available at http://www.tdhca.state.tx.us/housing-center/docs/CFD-Prevalence-Project.pdf.*

[182] *See* U.S. Department of Interior Indian Affairs, ''Tribal Directory,'' *available at http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/index.htm.*

[183] *See* National Conference of State Legislators (NCSL) Web site (Updated Feb. 2015), *available at http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx.*

[184] *See* GAO, Alaska Native Villages Report (Dec. 2003), *available at http://www.gao.gov/products/A08981.*

[185] *See* Housing Assistance Council, ''Housing on Native American Lands'' (Sept. 2013), *available at http://www.ruralhome.org/storage/documents/rpts_pubs/ts10_native_lands.pdf.*

[186] *See* 25 CFR 83.1.

[187] *See* 24 CFR 1000.10.

workers.[188] Approximately 25 percent of agricultural workers have family incomes below the poverty line, which is roughly twice the national rate.[189]

Because of instability in their work situation, many agricultural workers have atypical and significant housing needs.[190] Migrant agricultural workers travel from place to place to work in agriculture and move into temporary housing while working.[191] Seasonal agricultural workers typically live in a permanent community year-round.[192] Today, fewer agricultural workers follow traditional patterns of migration and instead stay in one place year-round.[193] Nevertheless, inadequate and substandard housing conditions for many agricultural workers have remained unchanged over time.[194]

According to HAC, 85 percent of agricultural workers nationwide obtain their housing through the private market rather than through employers or public programs.[195] More than 60 percent of agricultural worker-occupied housing units are rented, and approximately 35 percent are owner-occupied.[196]

Housing arrangements for agricultural workers tend to vary by region, with the majority of East Coast agricultural workers living in employer-provided housing.[197] The housing stock tends to be group quarters, individual homes or manufactured homes provided and controlled by the employer.[198] The housing may be part of the worker's compensation.[199] Concerns about some employer-provided housing have included overcrowding, inadequate or dysfunctional bathroom and shower facilities, leaky roofs, lack of heat or ventilation, inadequate or no laundry facilities, insect or rodent infestations, lack of security (locks), and inadequate cooking facilities.[200] The proximity of the housing to insecticide-laced farm fields, and the exposure to mold and dirty drinking water, can raise health concerns.[201]

Unlike their East Coast counterparts, most agricultural workers in California find their own housing [202] as employers offload the costs of their workers' housing.[203] Increasingly, this housing is located in cities.[204] The workers commute to farms, where they labor year round rather than seasonally.[205] Their housing stock sometimes includes unfinished garages, work sheds, barns, vehicles and shacks.[206] It can also include informal clusters of dwellings on a single lot, typically a main house and one or more ''back houses.'' [207]

Section 1282.1 of the proposed rule would define ''migrant agricultural workers'' and ''seasonal agricultural workers'' in accordance with the U.S. Department of Labor's (DOL) definitions.[208] DOL defines a ''migrant agricultural worker'' generally as an individual with agricultural employment of a seasonal or other temporary nature, who is required to be absent overnight from his permanent place of residence. DOL defines a ''seasonal agricultural worker'' generally as an individual with agricultural employment of a seasonal or other temporary nature, who is not required to be absent overnight from his permanent place of residence when employed on a farm or ranch performing certain specified types of agricultural work, and who is transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

72. Should Enterprise support for housing for high-needs rural regions and high-needs rural populations be a Regulatory Activity?

73. What activities could the Enterprises undertake to provide liquidity and other support to high-needs rural regions and high-needs rural populations?

74. How should FHFA define ''colonia'' for Duty to Serve purposes?

75. How should FHFA define ''member of an Indian tribe,'' ''Federally recognized Indian tribe,'' and ''Indian Area'' for Duty to Serve purposes?

76. What specific actions could the Enterprises take to assist the needs of migrant and seasonal agricultural workers?

77. Are there high-needs rural regions and/or high needs rural populations in addition to those identified above that should be included in this section, and, if so, how should they be defined to receive Duty to Serve credit?

78. How might loan sellers and the Enterprises collect data establishing that housing to be financed would specifically benefit migrant and seasonal agricultural workers?

79. Should FHFA define ''high-needs populations'' to include other categories of agricultural workers with high-needs housing issues in addition to seasonal and migrant agricultural workers? Should FHFA include agricultural workers in permanent annual employment in the definition?

IV. Evaluating and Rating Enterprise Duty To Serve Performance—Proposed § 1282.36

The Safety and Soundness Act requires FHFA to separately evaluate whether each Enterprise has complied with its Duty to Serve each underserved market and to annually ''rate the performance of each [E]nterprise as to the extent of compliance.'' [209]

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[188] *See* Oxfam America & Farm Labor Organizing Committee, ''A state of fear: Human rights abuses in North Carolina's tobacco industry,'' at 17 (2011), *available at http://www.oxfamamerica.org/static/oa3/files/a-state-of-fear.pdf.*

[189] *See* Housing Assistance Council, ''Housing Conditions for Farmworkers,'' Research Report, at 1 (Sept. 2013) [hereinafter ''HAC Farmworker Report''], *available at http://www.ruralhome.org/storage/documents/rpts_pubs/ts10-farmworkers.pdf.*

[190] For a discussion of housing difficulties facing migrant farmworkers, *see, e.g.,* Lauren Mills, ''Poor Housing, Wage Cheats Still Plague Midwest Migrant Farm Workers,'' IowaWatch.org (Dec. 30, 2013), *available at http://iowawatch.org/2013/12/30/poor-housing-wage-hassles-still-plague-midwest-migrant-farm-workers/;* Murrow, ''Harvest of Shame'' (1960) (broadcast), *available at https://www.youtube.com/watch?v=yJTVF_dya7E.*

[191] *See* Student Action with Farmworkers, Home United States Farmworker Factsheet, at 1 (2007), *available at https://saf-unite.org/sites/default/files/usfarmworkerfactsheet.pdf.*

[192] *Id.*

[193] *See* HAC Farmworker Report, *supra* note 189, at 3.

[194] *See* HAC Farmworker Report, *supra* note 189, at 1.

[195] *See* HAC Farmworker Report, *supra* note 189, at 4.

[196] HAC Farmworker Report, *supra* note 189, at 4. This report does not specify the housing types for the remaining 5 percent of farmworkers who are not renters or owner-occupants.

[197] *See* J. Keim-Malpass, C.R. Spears-Johnson, S.A. Quandt, & T.A. Arcury, ''Perceptions of housing conditions among migrant farmworkers and their families: implications for health, safety and social policy,'' Rural and Remote Health 15:3076, at 2 (Feb. 13, 2015) [hereinafter ''Housing Health Study''], *available at http://www.rrh.org.au/publishedarticles/article_print_3076.pdf.*

[198] *Id.*

[199] *Id.*

[200] *See* Housing Health Study, *supra* note 197.

[201] *See* Housing Health Study, *supra* note 197, at 8–11.

[202] *See* Housing Health Study, supra note 197, at 2.

[203] *See* Don Villarejo, ''California's Hired Farm Workers Move to the Cities: The Outsourcing of Responsibility for Farm Labor Housing,'' at 1 (Jan. 24, 2014) [hereinafter ''Move to Cities Study''], *available at http://www.crla.org/sites/all/files/u6/2014/rju0214/VillarejoFrmLbrHsngHlth_CRLA_012414.pdf.*

[204] *See generally* Move to Cities Study, *supra* note 203.

[205] *See* Move to Cities Study, *supra* note 203, at 15, 17, 18, 27.

[206] *See* Don Villarejo, ''The Status of Farm Labor Housing—And the Health of Workers,'' at 12 (Cal. Inst. For Rural Studies, Mar. 6, 2015), *available at http://www.cirsinc.org/phocadownload/uploadrju/housing-status_health_us_hired-farm-workers_2015.pdf.*

[207] *See* Move to Cities Study, *supra* note 203, at 19.

[208] DOL's definitions are at 29 CFR 500.20(p) & (r).

[209] 12 U.S.C. 4565(d).

Under the proposed rule, FHFA's criteria for evaluating an Enterprise's annual Duty to Serve compliance would be set forth in an evaluation guide. FHFA would prepare a separate evaluation guide for each Enterprise for each evaluation year. FHFA would develop the evaluation guide using the contents of the Enterprise's Plan and the assessment factors. FHFA would provide the evaluation guide to the Enterprise at least 30 days before January 1st of the evaluation year for which the guide is applicable, except that the evaluation guide for the first evaluation year after the effective date of this regulation would be delivered on a date to be determined by FHFA. The evaluation guide would be required to be posted on the respective Enterprise's Web site and on FHFA's Web site.

The evaluation guide would allocate a range of potential scoring points, *e.g.,* a maximum of 10 and a minimum of 0, to each Plan activity. The evaluation guide would allocate a higher number of potential scoring points to Plan activities that are expected to require greater Enterprise resources and effort and to have a greater impact on the particular underserved market. The aggregate maximum number of scoring points that would be allocated to all of the Plan activities grouped under a particular underserved market would be 100 points.

At the end of the evaluation period, FHFA would compare the evaluation guide criteria to an Enterprise's actual performance under its Plan and assign a score to each Plan activity. The score could not exceed the number of potential scoring points allocated to the Plan activity in the evaluation guide. For example, for a Plan activity that had been allocated a maximum of 10 points in the evaluation guide, FHFA might award 4 points for modest performance and 8 points for good performance. After FHFA has awarded a score to each Plan activity, FHFA would sum the scoring points for all of the Plan activities that are grouped under each underserved market. The sum of those scores would produce an overall composite score ranging from 0 to 100 for each underserved market. Therefore, each Enterprise would have three overall composite scores, one for each underserved market.

The evaluation guide would contain a table that assigns overall composite score numerical ranges for each underserved market to each of the following four overall ratings: ''Exceeds,'' ''High Satisfactory,'' ''Low Satisfactory,'' and ''Fails.'' The four numerical ranges assigned to the overall ratings would include all whole numbers from 0 to 100 with no overlap. An Enterprise's overall rating for each underserved market would be determined by the numerical range within which the Enterprise's overall composite score falls. For example, if the table provides that an overall composite score of between 90 and 100 corresponds to an ''Exceeds'' rating, then an overall composite score of 93 for a particular underserved market would receive an ''Exceeds'' rating for that underserved market in that evaluation year. The same table range would apply to each underserved market. A rating of ''Exceeds,'' ''High Satisfactory,'' or ''Low Satisfactory'' would constitute compliance with the Duty to Serve the underserved market. A rating of ''Fails'' would constitute noncompliance with the Duty to Serve the underserved market.

The 2010 Duty to Serve proposed rule would have established a two-tier evaluation system of ''In compliance'' or ''Noncompliance'' for Enterprise performance under each underserved market. In addition, it would have required FHFA to annually assign a rating of ''Satisfactory'' or ''Unsatisfactory'' to Enterprise performance for each of the four statutory assessment factors in each of the underserved markets. The evaluation approach in this proposed rule differs from the approach in the 2010 proposed rule. The proposed rule's new approach to evaluations would enhance specificity by providing four distinct rating tiers instead of two, and would give FHFA the flexibility to make necessary refinements to the evaluation guide scoring process. This would enable the Enterprises to better focus their resources on areas of highest Duty to Serve value in a particular evaluation year and better understand FHFA's expectations.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

80. Is there an alternative approach to evaluation of Enterprise Duty to Serve compliance that would enable FHFA to better measure the Enterprises' Duty to Serve compliance?

81. Should FHFA consider a different rating structure (*e.g.,* a rating structure with fewer or more ratings tiers)?

V. Extra Credit for Residential Economic Diversity Activities—Proposed § 1282.37

While FHFA would rely under the proposed rule on the statutory assessment factors for scoring the Enterprises' performance for each underserved market, FHFA would also grade qualifying activities within each of these markets on any activities the Enterprises planned under a non-mandatory residential economic diversity criterion. To qualify for extra credit, an activity first must be an eligible activity that contributes to an Enterprise's Duty to Serve an underserved market. Under this criterion, FHFA would evaluate the Enterprises on the extent to which their qualifying activities promote residential economic diversity in an underserved market in connection with mortgages on: (1) Affordable housing in a high opportunity area; or (2) mixed-income housing in an area of concentrated poverty.

The scoring points awarded for these qualifying activities would be treated as extra credit for an underserved market (extra credit could not move the composite score within such a market above 100 points). FHFA specifically requests comments on how the extra credit should be applied.

In § 1282.1, FHFA proposes to define ''high opportunity area'' as an area designated by HUD as a ''Difficult Development Area'' (DDA).[210] DDAs identify areas where it is difficult to create affordable housing due to high rents relative to area median income. The HUD DDAs are generally seen as a proxy for higher opportunity neighborhoods that offer good schools, access to transportation and labor markets, and other amenities. Beginning in 2016, HUD will define DDAs within metropolitan areas at the zip code level (also known as ''Small Area Difficult Development Areas''), rather than the current practice which identifies them based on larger geographic areas. HUD's DDAs are updated annually and are publicly available on HUD's Web site.

Outside of metropolitan areas, HUD designates DDAs at the county level, which in many instances follow single census tracts. Given the size of many counties and census tracts outside of metropolitan areas, these DDAs often would not be as useful as those in metropolitan areas for purposes of identifying high opportunity areas and are even less useful for counties comprised of multiple census tracts. FHFA specifically requests comments on how to define high opportunity areas outside of metropolitan areas. Analysts have proposed a number of possible definitions that FHFA could utilize, for example, suggesting it may be possible to measure higher opportunity census

[210] 26 U.S.C. 42(d)(5)(B)(iii). For the 2016 DDAs, *see* 80 FR 73201 (Nov. 24, 2015).

tracts or block groups based on their rates of poverty, labor force participation, minority concentration and/or assisted housing concentration.[211] In choosing a definition, FHFA would have to balance the comprehensiveness of a definition with its ease of Enterprise implementation, geographic depth, and ability to be updated regularly.

FHFA also wishes to explore whether the Enterprises can support state efforts to increase affordable housing in high opportunity areas. A number of states define such areas and provide incentives to locate housing in these areas in their Low-Income Housing Tax Credit Qualified Allocation Plans (QAPs),[212] but definitions are not uniform, and incorporating them into an FHFA definition of ''high opportunity area'' may introduce operational challenges for the Enterprises.

In § 1282.1, FHFA proposes to define ''area of concentrated poverty'' as a census tract designated by HUD as a ''Qualified Census Tract'' (QCT) pursuant to 26 U.S.C. 42(d)(5)(B)(ii), which is generally a tract in which 50 percent of households have incomes below 60 percent of the area median income or that has a poverty rate of 25 percent or more.[213] FHFA proposes to consider activities in these areas that facilitate financing of mixed-income housing as addressing residential economic diversity.

In § 1282.1, FHFA proposes to define ''mixed-income housing,'' for purposes of residential economic diversity activities for which extra credit may be available, as a multifamily property or development that may include or comprise single-family units and serves very low-, low-, or moderate-income households where at least 25 percent of the units are affordable only to households with incomes above moderate-income levels.

FHFA also recognizes the benefit of Enterprise support for financing of affordable housing that contributes to the revitalization of areas of concentrated poverty. States are required by the LIHTC statute to give preference to projects located in QCTs when their development ''contributes to a concerted community revitalization plan.'' [214] FHFA considered providing credit for activities as supporting residential economic diversity if they are part of a concerted community revitalization plan in a state QAP. However, few states define such plans and it may be difficult to implement the diverse definitions set out by states.

It may be feasible to utilize other federal definitions or designations of areas with comprehensive revitalization plans. For example, FHFA could award credit for activities in areas that have received Choice Neighborhood Planning or Implementation grants, or in neighborhoods designated by HUD or USDA as Promise Zones, which denotes that they are undertaking comprehensive community revitalization.[215]

Requests for Comments

82. Is FHFA's proposed definition of ''high opportunity area'' the most appropriate? Should the rule use DDAs to define high opportunity areas outside of metropolitan areas, or is there a better definition, such as a factor-based definition, that would be preferable for these areas?

83. How could FHFA incorporate state-defined high opportunity areas (or similar terms) into its definition of high opportunity area? If such state-defined areas are included, how could this be implemented by the Enterprises?

84. Should FHFA consider other or additional definitions of ''area of concentrated poverty?'' For example, should FHFA consider adopting a definition similar to HUD's proposed designation of census tracts by racial and ethnic concentrations of poverty (RCAPs and ECAPs), which are census tracts with a non-white population of 50 percent or more and a poverty rate that exceeds 40 percent or is three times the average tract poverty rate for the metro/micro area (whichever is lower)? [216]

85. Should FHFA consider an alternative definition of ''mixed-income?'' For example, should FHFA incorporate minimum thresholds for the amount of housing affordable to very low-, low-, or moderate-income households in its definition?

86. How should the extra credit activities be evaluated and weighed generally? How should FHFA evaluate and weigh activities related to mixed-income housing in areas of concentrated poverty to incentivize a good mix of such housing?

87. How could FHFA determine whether Enterprise activities are part of or contribute to revitalization plans in areas of concentrated poverty? Are there consistent criteria FHFA could apply to determine what constitutes such a plan and whether such a plan is being implemented in an area of concentrated poverty? Are existing federal designations useful, such as the Promise Zones designation or neighborhoods that receive a CNI grant?

88. Should FHFA incorporate Enterprise efforts supporting CNI as a residential economic diversity activity, rather than as a Regulatory Activity under the affordable housing preservation market?

VI. General Requirements for Credit and General Requirements for Loan Purchases—Proposed §§ 1282.38, 1282.39

Sections 1282.38 and 1282.39 of the proposed rule would set forth general counting requirements for whether and how activities will receive credit under the Duty to Serve regulation. With some exceptions, the counting rules and other requirements would be similar to those in FHFA's housing goals regulation. For example, under appropriate circumstances, a single loan purchase could count toward the achievement of multiple housing goals, and in the same way, a single loan purchase could receive credit under more than one underserved market for Duty to Serve purposes. Also, consistent with the comments received on the 2010 Duty to Serve proposed rule, in most instances, FHFA would measure performance under the loan purchase assessment factor by the number of units financed by the loan purchase.

A. No Credit Under Any Assessment Factor

Enterprise activities under proposed § 1282.38(b) would not receive credit under any assessment factor.

Under proposed § 1282.38(b)(1), contributions to the Housing Trust Fund [217] and the Capital Magnet Fund,[218] and mortgage purchases funded with such grant amounts, would

[211] For examples of definitions, *see* Margery Turner et al., ''Helping Poor Families Gain and Sustain Access to High-Opportunity Neighborhoods,'' (Washington: The Urban Institute, 2011), *available at http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412455-Helping-Poor-Families-Gain-and-Sustain-Access-to-High-Opportunity-Neighborhoods.PDF*; and Kirk McClure, ''Housing Choice Voucher Marketing Opportunity Index: Analysis of Data at the Tract and Block Group Level,'' (Washington: U.S. Department of Housing and Urban Development, 2011), *available at http://www.huduser.gov/portal/publications/pdf/Housing_Choice_Voucher_Report.pdf.*

[212] States create their plans pursuant to 26 U.S.C. 42(m)(1)(B).

[213] HUD designates QCTs on an annual basis. For the 2016 QCTs, see 80 FR 73201 (Nov. 24, 2015).

[214] 26 U.S.C. 42(m)(1)(B)(ii)(III).

[215] *See http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/economicdevelopment/programs/pz/overview.*

[216] This proposed approach is laid out in U.S. Department of Housing and Urban Development, ''AFFH Data Documentation Draft'' (2013), *available at http://www.huduser.gov/portal/publications/pdf/FR-5173-P-01_AFFH_data_documentation.pdf.*

[217] 12 U.S.C. 4568.

[218] 12 U.S.C. 4569.

not receive credit under the Duty to Serve regulation.

Under proposed § 1282.38(b)(2), HOEPA mortgages [219] would not receive credit under the Duty to Serve regulation.

Under proposed § 1282.38(b)(3), mortgages on manufactured homes that are not titled as real property under the laws of the state where the property is located would not receive credit under the Duty to Serve regulation.

The proposed rule is tailored to the unique features of certain specialized activities. As previously discussed, energy efficiency improvement loans for existing multifamily rental properties would be eligible for Duty to Serve credit where there are reliable and verifiable projections or expectations that the financed improvements will reduce energy and water consumption by the tenant by at least 15 percent, the reduced utility costs derived from the reduced consumption are not offset by higher rents or other charges imposed by the property owner, and the reduced utility costs will offset the upfront costs of the improvements within a reasonable time period. Generally, subordinate liens on multifamily properties would not receive credit under the Duty to Serve regulation. However, because subordinate liens for energy efficiency improvements on existing multifamily properties address a specific need, under proposed § 1282.38(b)(4), such liens would receive credit under the Duty to Serve regulation provided they meet all other requirements in the regulation.

Under § 1282.38(b)(5), subordinate liens on single-family properties would not receive credit under the Duty to Serve regulation. This exclusion applies to all single-family subordinate loans including energy efficiency improvement loans.

As previously discussed, shared appreciation loans that meet the requirements of proposed § 1282.34(d)(4) would be eligible for Duty to Serve credit. Proprietary shared appreciation loans, where an investor receives part of the equity in exchange for making the home affordable for a single buyer only, do not preserve affordability of the unit for subsequent buyers and, therefore, would not meet the requirements of proposed § 1282.34(d)(4). Accordingly, under proposed § 1282.38(b)(6), such loans would not receive credit under the Duty to Serve regulation.

Government-insured and government-guaranteed mortgages that are otherwise eligible for inclusion would count towards the Duty to Serve, in light of the specificity of the needs targeted by the Duty to Serve and the desirability of providing the Enterprises with multiple tools to address those needs.

B. No Credit Under Loan Purchase Assessment Factor

Enterprise activities under proposed § 1282.38(c) would not receive credit under the loan purchase assessment factor.

C. General Requirements for Loan Purchases

In order to receive credit for loan purchases, a loan must be on housing affordable to very low-, low-, or moderate income families, regardless of whether the property is owner-occupied or rental. Sections 1282.17, 1282.18 and 1282.19 of part 1282 define ''affordability'' for owner occupied and rental units. The tables in these sections adjust the maximum percentage of area median income based on family size and the size of the dwelling unit, as measured by the number of bedrooms.

Under § 1282.39(c) of the proposed rule, Enterprise mortgage purchases financing owner-occupied, single-family properties would be evaluated based on the income of the mortgagor(s) and the area median income at the time the mortgage was originated. Where the income of the mortgagor(s) is not available, the mortgage purchase would not receive credit under the loan purchase assessment factor.

Under proposed § 1282.39(d)(1), mortgage purchases financing single-family rental units and multifamily rental units would be evaluated based on rent and whether the rent is affordable to the income groups targeted by the Duty to Serve.

Under § 1282.39(d)(2), where a multifamily property is subject to an affordability restriction that establishes the maximum permitted income level for a tenant or a prospective tenant or the maximum permitted rent, the affordability of units in the property may be determined based on the maximum permitted income level or maximum permitted rent established under such housing program for those units.

Under proposed § 1282.39(e), when an Enterprise lacks sufficient information on the rents, the Enterprise's performance regarding the rental units may be evaluated using estimated affordability information. The estimated affordability information would be calculated by multiplying the number of rental units with missing affordability information in properties securing the mortgages purchased by the Enterprise in each census tract by the percentage of all moderate-income rental dwelling units in the respective tracts, as determined by FHFA based on the most recent decennial census. The housing goals regulation [220] applies a 5 percent limit on the number of rental units with missing data for which an Enterprise may estimate affordability of rents. Under the proposed rule, there would not be a limit on the number of rental units for which an Enterprise could estimate affordability each year.

Under proposed § 1282.39(f), FHFA would evaluate an Enterprise's volume of loans purchased on manufactured housing communities using unpaid principal balance instead of the number of dwelling units. As previously discussed, due to the lack of data on manufactured housing community residents' incomes and monthly housing costs, under proposed § 1282.39(f), the affordability of a manufactured housing community would be evaluated based on the median income of the census tract in which the manufactured housing community is located. An Enterprise would receive credit for either the total amount or a percentage of the unpaid principal balance of the mortgage financing the community.

VII. Special Requirements for Loan Purchases—Proposed § 1282.40

Under proposed § 1282.40, activities such as Enterprise purchases or guarantees of mortgage revenue bonds and purchases of participations in mortgages would be treated as mortgage purchases in the same manner as they would be counted under the housing goals regulation.

Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

89. Under the proposed rule, when an Enterprise lacks sufficient information to determine whether a rental unit is affordable, the Enterprise may estimate affordability for the rental unit using the estimation methodology set forth in the proposed rule. Are better methods available for estimating affordability when rent information is missing?

90. Unlike the housing goals regulation, the proposed rule would not limit the number of units with missing data for which an Enterprise could estimate affordability. Should FHFA impose a limit, and if so, what limit should be imposed?

[219] *See* 15 U.S.C. 1602(bb).

[220] 12 CFR 1282.15(e)(3).

VIII. Enforcement of Duty To Serve—Proposed §§ 1282.41, 1282.42

The Safety and Soundness Act provides that the Duty to Serve underserved markets is enforceable to the same extent and under the same enforcement provisions as are applicable to the Enterprise housing goals, except as otherwise provided.[221] Accordingly, under § 1282.41 of the proposed rule, if an Enterprise receives a ''Fails'' rating for a particular underserved market in a given year, or if there is a substantial probability that an Enterprise will receive a ''Fails'' rating for a particular underserved market in a given year, FHFA would determine whether the activities in the Enterprise's Underserved Markets Plan are or were feasible. In determining feasibility, FHFA would consider factors such as market conditions and the financial condition of the Enterprise. If FHFA determines that compliance is or was feasible, FHFA would follow the procedures in 12 U.S.C. 4566(b).

Section 1282.42 of the proposed rule includes requirements for an Enterprise to submit to FHFA a housing plan, in the Director's discretion, if the Director determines that the Enterprise did not comply with its Duty to Serve a particular underserved market.

IX. Enterprise Duty To Serve Reporting to FHFA—Proposed § 1282.66

Section 1282.66 of the proposed rule would require each Enterprise to provide to FHFA two quarterly reports, one semi-annual report, and an annual report on its performance and progress toward meeting its Duty to Serve each undeserved market.

Under the 2010 Duty to Serve proposed rule, each Enterprise would have been required to provide three quarterly reports and one annual report to FHFA on its Duty to Serve performance and progress, consistent with the reporting requirements for the Enterprise housing goals. One Enterprise commented that because reporting on progress toward meeting the Duty to Serve underserved markets will take more time than reporting on the housing goals and will require input from business units throughout the Enterprise, reporting should be limited to annual submissions and the proposed quarterly reporting requirements should be eliminated. The other Enterprise commented that semi-annual reporting on Duty to Serve progress would be appropriate. The Enterprise added that, coupled with the existing quarterly reporting under the housing goals, quarterly reporting under the Duty to Serve would pose significant additional burdens on the Enterprise and its resources.

In consideration of these comments, the proposed rule would require each Enterprise to provide to FHFA two quarterly reports, one semi-annual report, and an annual report. To lessen operational concerns, FHFA would require the quarterly reports to address only performance under the loan purchase assessment factor for each underserved market. The Enterprises already have experience providing similar reports for their performance under the housing goals.

The proposed rule would require an Enterprise to report on its Duty to Serve performance for each underserved market in its semi-annual and annual reports. These two reports would be required to contain both narrative and summary statistical information for the Plan Objectives, supported by appropriate transaction-level data. In addition, an Enterprise's annual report would be required to describe the Enterprise's market opportunities for purchasing loans in each underserved market during the evaluation year, to the extent data is available. These opportunities could include market or regulatory factors that may affect lenders' decisions to retain loans in portfolio or sell them, the availability and pricing of credit enhancements from third parties, and competition from other secondary market participants.

In their comments on the 2010 Duty to Serve proposed rule, both Enterprises requested that the due date for submission of their annual Duty to Serve report to FHFA be at least 30 days later than the due date for submission of their Annual Housing Activities Report for the housing goals to FHFA. One Enterprise commented that the 60-day deadline proposed for year-end reporting on Duty to Serve performance would impact its operations and end-of-year transactions, because the timeline for completing transactions and collecting data would not only be compressed, but would occur at the same time that housing goals reporting and financial reporting are taking place. The other Enterprise commented that a staggered schedule would allow the Enterprise to strengthen the controls and processes that govern both regulatory submissions and efficiently allocate resources between them.

In recognition of these operational concerns, the proposed rule would set the due date for the annual Duty to Serve report as the date 75 days after the end of the calendar year. Because it is important that FHFA monitor the Enterprises' Duty to Serve progress on a timely basis, the proposed rule would provide that the quarterly and semi-annual reports would be due within 60 days of the end of the respective quarter.

X. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

XI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. (5 U.S.C. 605(b)). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because the regulation applies to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4501, 4502, 4511, 4513, 4526, and 4561–4566, FHFA proposes to amend part 1282 of subchapter E of 12 CFR chapter XII, as follows:

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 1. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

■ 2. In § 1282.1(b), add the definitions of ''Area of concentrated poverty'', ''Colonia'', ''Community development financial institution'', ''Community financial institution'', ''Federally insured credit union'', ''Federally recognized Indian tribe'', ''High-needs rural population'', ''High-needs rural

[221] 12 U.S.C. 4566(a)(4).

region'', ''High opportunity area'', ''Indian area'', ''Manufactured home'', ''Manufactured housing community'', ''Migrant agricultural workers'', ''Mixed-income housing'', ''Residential economic diversity activity'', ''Resident-owned manufactured housing community'', ''Rural area'', and ''Seasonal agricultural workers'' in alphabetical order to read as follows:

§ 1282.1 Definitions.

* * * * *

(b) * * *

Area of concentrated poverty, for purposes of subpart C of this part, means a census tract designated by HUD as a Qualified Census Tract pursuant to 26 U.S.C. 42(d)(5)(B)(ii).

* * * * *

Colonia, for purposes of subpart C of this part, means any identifiable community that—

(i) Is designated by the State or county in which it is located as a colonia;

(ii) Is located in the State of Arizona, California, New Mexico, or Texas; and

(iii) Is located in a U.S. census tract with some portion of the tract within 150 miles of the U.S.-Mexico border.

Community development financial institution, for purposes of subpart C of this part, has the meaning in 12 CFR 1263.1.

Community financial institution, for purposes of subpart C of this part, has the meaning in 12 CFR 1263.1.

* * * * *

Federally insured credit union, for purposes of subpart C of this part, has the meaning in 12 U.S.C. 1752(7).

Federally recognized Indian tribe, for purposes of subpart C of this part, has the meaning in 25 CFR 83.1.

* * * * *

High-needs rural population, for purposes of subpart C of this part, means any of the following populations provided the population is located in a rural area:

(i) Members of a Federally recognized Indian tribe located in an Indian area; or

(ii) Migrant and seasonal agricultural workers.

High-needs rural region, for purposes of subpart C of this part, means any of the following regions provided the region is located in a rural area:

(i) Middle Appalachia;

(ii) The Lower Mississippi Delta; or

(iii) A colonia.

High opportunity area, for purposes of subpart C of this part, means an area designated by HUD as a ''Difficult Development Area'' pursuant to 26 U.S.C. 42(d)(5)(B)(iii).

* * * * *

Indian area, for purposes of subpart C of this part, has the meaning in 24 CFR 1000.10.

* * * * *

Manufactured home, for purposes of subpart C of this part, means a manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 *et seq.,* and implementing regulations.

Manufactured housing community, for purposes of subpart C of this part, means a tract of land under unified ownership and developed for the purposes of providing individual rental spaces for the placement of manufactured homes for residential purposes within its boundaries.

Migrant agricultural workers, for purposes of subpart C of this part, has the meaning in 29 CFR 500.20(p).

Mixed-income housing, for purposes of subpart C of this part, means a multifamily property or development that may include or comprise single-family units that serves very low-, low-, or moderate-income households where at least 25 percent of the units are affordable only to households with incomes above moderate-income levels.

* * * * *

Residential economic diversity activity, for purposes of subpart C of this part, means an Enterprise activity in connection with mortgages on:

(i) Affordable housing in a high opportunity area; or

(ii) Mixed-income housing in an area of concentrated poverty.

* * * * *

Resident-owned manufactured housing community, for purposes of subpart C of this part, means a manufactured housing community for which the terms and conditions of residency, policies, operations and management are controlled by at least 50 percent of the residents, either directly or through an entity formed under the laws of the state.

Rural area, for purposes of subpart C of this part, means:

(i) A census tract outside of a metropolitan statistical area as designated by the Office of Management and Budget; or

(ii) A census tract in a metropolitan statistical area as designated by the Office of Management and Budget that is outside of the metropolitan statistical area's Urbanized Areas and Urban Clusters, as designated by the U.S. Department of Agriculture's Rural-Urban Commuting Area codes.

Seasonal agricultural workers, for purposes of subpart C of this part, has the meaning in 29 CFR 500.20(r).

* * * * *

■ 3. Add subpart C to read as follows:

Subpart C—Duty To Serve Underserved Markets

Sec.

§ 1282.31 General.

(a) This subpart sets forth the Enterprise duty to serve three underserved markets as required by section 1335 of the Safety and Soundness Act, 12 U.S.C. 4565. This subpart also establishes standards and procedures for annually evaluating and rating Enterprise compliance with the duty to serve underserved markets.

(b) Nothing in this subpart permits or requires an Enterprise to engage in any activity that would be otherwise inconsistent with its Charter Act or the Safety and Soundness Act.

§ 1282.32 Underserved Markets Plan.

(a) *General.* Each Enterprise must submit to FHFA an Underserved Markets Plan describing the activities and objectives that it will undertake to meet its duty to serve each underserved market.

(b) *Term of Plan.* The Plan must cover a period of three years except for the Enterprise's first Plan which shall have the term as provided for in paragraph (d)(1) of this section.

(c) *Plan content*—(1) *Activities.* The Plan must address how the Enterprise will undertake each statutory and regulatory activity associated with each underserved market, as provided in §§ 1282.33, 1282.34 and 1282.35, or identify reasons for not undertaking the statutory or regulatory activity. Any residential economic diversity activities and objectives that the Enterprise will undertake for extra credit under § 1282.37 must also be described in the Plan. Plans may also include additional eligible activities that serve an underserved market. Activities may cover a single year or multiple years.

(2) *Objectives.* Plan activities must be comprised of objectives, which may cover a single year or multiple years. Objectives must meet all of the following requirements:

(i) *Strategic.* Directly or indirectly maintain or increase liquidity to an underserved market;

(ii) *Measurable.* Provide measureable benchmarks, which may include numerical targets, that enable FHFA to determine whether the Enterprise has achieved the objective;

(iii) *Realistic.* Be calibrated so that the Enterprise has a reasonable chance of meeting the objective with appropriate effort;

(iv) *Time-bound.* Be subject to a specific timeframe for completion by being tied to Plan calendar year evaluation periods; and

(v) *Tied to analysis of market opportunities.* Be based on assessments and analyses of market opportunities in each underserved market, taking into account safety and soundness considerations.

(3) *Assessment Factors.* Each Plan objective must meet one of the assessment factors set forth in § 1282.36(b).

(d) *Plan Procedures*—(1) *Submission of proposed Plans.* Each Enterprise must submit a proposed Plan to FHFA at least 180 days before the termination date of the Enterprise's existing Plan, except that the Enterprise's first proposed Plan must be submitted to FHFA pursuant to the timeframe and procedures established by FHFA after the effective date of this part.

(2) *Posting of proposed Plans and public input.* As soon as practical after an Enterprise submits its proposed Plan to FHFA for review, FHFA will post on FHFA's Web site a public version of the proposed Plan that omits proprietary and confidential data and information. The public will have 45 calendar days from the date the proposed Plan is posted on FHFA's Web site to provide input to FHFA on the proposed Plan.

(3) *Enterprise review.* In its discretion, each Enterprise may make revisions to its proposed Plan based on the public input.

(4) *FHFA review.* FHFA will review each Enterprise's proposed Plan and within 60 days of the end of the public input period, will inform each Enterprise of any FHFA comments on the Enterprise's proposed Plan. The Enterprise must address those comments, as appropriate, through revisions to its proposed Plan pursuant to timeframes and procedures established by FHFA.

(5) *Non-objection to Plans.* After FHFA is satisfied that all of its comments have been addressed, FHFA will issue a non-objection to the Plan.

(e) *Effective date of Plans.* The effective date of the final Plan will be January 1st of the first evaluation year for which the Plan is applicable, except for the Enterprise's first Plan whose term and effective date will be determined by FHFA.

(f) *Posting of final Plans.* Each Enterprise's final Plan will be posted on the respective Enterprise's Web site and on FHFA's Web site. Confidential and proprietary data and information will be omitted from the posted final Plans.

(g) *Modification of final Plans.* At any time after implementation of a final Plan, an Enterprise may request to modify its final Plan, subject to FHFA non-objection, or FHFA may require an Enterprise to modify its final Plan. FHFA and the Enterprise may seek public input on any proposed modifications if FHFA determines that public input would assist its consideration of the proposed modifications. If a final Plan is modified, the modified Plan with confidential and proprietary information omitted will be posted on the Enterprise's and FHFA's Web sites.

§ 1282.33 Manufactured housing market.

(a) *Duty in general.* Each Enterprise must develop loan products and flexible underwriting guidelines to facilitate a secondary market for eligible mortgages on manufactured homes for very low-, low-, and moderate-income families. Enterprise activities under this section must serve each such income group in the year for which the Enterprise is evaluated and rated.

(b) *Eligible activities.* Enterprise activities eligible to be included in an Underserved Markets Plan for the manufactured housing market are activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, or moderate-income families consisting of:

(1) Manufactured homes titled as real property; and

(2) Manufactured housing communities.

(c) *Regulatory activities.* Enterprise activities related to the following will receive credit under the manufactured housing market:

(1) Mortgages on manufactured homes titled as real property under the laws of the state where the home is located; and

(2) Mortgages on manufactured housing communities provided that:

(i) The community has 150 pads or less;

(ii) The community is owned by a governmental unit or instrumentality, owned by a nonprofit, or resident-owned; or

(iii) The community's pad leases have the following pad lease protections at a minimum:

(A) Minimum one-year renewable lease term unless there is good cause for nonrenewal;

(B) Minimum thirty-day written notice of rent increases;

(C) Minimum five-day grace period for rent payments, and right to cure defaults on rent payments;

(D) If a tenant defaults on rent payments, the tenant has the right to: Sell the manufactured home without having to first relocate it out of the community; sublease or assign the pad lease for the unexpired term to the new buyer of the tenant's manufactured home without any unreasonable restraint; post ''For Sale'' signs; and have a reasonable time period after eviction to sell the manufactured home;

(E) Right for tenants to receive at least 120 days advance notice of a planned sale or closure of the community, within which time the tenants, or an organization acting on behalf of a group of tenants, may match any bona fide offer for sale. The community owner shall consider the tenants' offer and negotiate with them in good faith.

(d) *Additional activities.* An Enterprise may include in its Underserved Markets Plan other activities to serve very low-, low-, or moderate-income families in the manufactured housing market consistent with paragraph (b) of this section, subject to FHFA determination of whether such activity is eligible to receive credit.

§ 1282.34 Affordable housing preservation market.

(a) *Duty in general.* Each Enterprise must develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families under eligible housing programs or activities. Enterprise activities under this section must serve each such income group in the year for which the Enterprise is evaluated and rated.

(b) *Eligible activities.* Enterprise activities eligible to be included in an Underserved Markets Plan for the affordable housing preservation market are activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, or moderate-income families consisting of affordable rental housing preservation and affordable homeownership preservation.

(c) *Statutory activities.* Enterprise activities related to housing projects under the following programs will receive credit under the affordable housing preservation market:

(1) The project-based and tenant-based rental assistance housing programs under section 8 of the U.S. Housing Act of 1937, 42 U.S.C. 1437f;

(2) The rental and cooperative housing program for lower income families under section 236 of the National Housing Act, 12 U.S.C. 1715z–1;

(3) The housing program for moderate-income and displaced families under section 221(d)(4) of the National Housing Act, 12 U.S.C. 1715l;

(4) The supportive housing program for the elderly under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q;

(5) The supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 8013;

(6) Permanent supportive housing projects subsidized under Title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11361, *et seq.;*

(7) The rural rental housing program under section 515 of the Housing Act of 1949, 42 U.S.C. 1485;

(8) Low-income housing tax credits under section 42 of the Internal Revenue Code of 1986, 26 U.S.C. 42; and

(9) Other comparable affordable housing programs administered by a state or local government that preserve housing affordable to very low-, low-, and moderate-income families. An Enterprise may include in its Underserved Markets Plan programs pursuant to this paragraph (c)(9), subject to FHFA determination of whether such programs are eligible to receive credit.

(d) *Regulatory activities.* Enterprise activities related to the following will receive credit under the affordable housing preservation market:

(1) Purchasing and securitizing loan pools from a community development financial institution, community financial institution, or federally insured credit union whose total assets are within the asset cap set forth in the definition of ''community financial institution'' in § 1282.1, where the loan pools are backed by existing small multifamily rental properties consisting of five to not more than fifty units;

(2) Energy efficiency improvements on existing multifamily rental properties provided there are verifiable, reliable projections or expectations that the improvements financed by the loan will reduce energy and water consumption by the tenant by at least 15 percent, the reduced utility costs derived from the reduced consumption must not be offset by higher rents or other charges imposed by the property owner, and the reduced utility costs will offset the upfront costs of the improvements within a reasonable time period;

(3) Energy efficiency improvements on existing single-family, first-lien properties, provided that there are verifiable, reliable projections or expectations that the improvements financed by the loan will reduce energy and water consumption by the homeowner or tenant by at least 15 percent, the reduced utility costs derived from the reduced consumption will offset the upfront costs of the improvements within a reasonable time period, and in the case of a single-family rental property, the reduced utility costs must not be offset by higher rents or other charges imposed by the property owner;

(4) Affordable homeownership preservation through shared equity homeownership programs. Shared equity programs include programs administered by community land trusts, other nonprofit organizations, or State or local governments or instrumentalities that:

(i) Ensure affordability for at least 30 years or as long as permitted under state law through a ground lease, deed restriction, subordinate loan or similar legal mechanism that makes residential real property affordable to very low-, low-, or moderate-income families. The legal instrument ensuring affordability must also stipulate a preemptive option to purchase the homeownership unit from the homeowner at resale to preserve the affordability of the unit for successive very low-, low-, or moderate-income families;

(ii) Monitor the homeownership unit to ensure affordability is preserved over resales; and

(iii) Support the homeowners to promote successful homeownership for very low-, low-, or moderate-income families;

(5) Choice Neighborhoods Initiative, as authorized by 42 U.S.C. 1437v; and

(6) HUD's Rental Assistance Demonstration program, as authorized by 42 U.S.C.1437f note.

(e) *Additional activities.* An Enterprise may include in its Underserved Markets Plan other activities to serve very low-, low-, or moderate-income families in the affordable housing preservation market consistent with paragraph (b) of this section, subject to FHFA determination of whether such activities are eligible to receive credit.

§ 1282.35 Rural markets.

(a) *Duty in general.* Each Enterprise must develop loan products and flexible underwriting guidelines to facilitate a secondary market for eligible mortgages on housing for very low-, low-, and moderate-income families in rural areas. Enterprise activities under this section must serve each such income group in the year for which the Enterprise is evaluated and rated.

(b) *Eligible activities.* Enterprise activities eligible to be included in an Underserved Markets Plan for the rural market are activities that facilitate a secondary market for mortgages on residential properties for very low-, low-, or moderate-income families in rural areas.

(c) *Regulatory activities.* Enterprise activities serving high-needs rural regions or high-needs rural populations will receive credit under the rural market.

(d) *Additional activities.* An Enterprise may include in its Underserved Markets Plan other activities to serve very low-, low-, or moderate-income families in rural areas consistent with paragraph (b) of this section, subject to FHFA determination of whether such activities are eligible to receive credit.

§ 1282.36 Evaluations and assigned ratings.

(a) *Evaluation of compliance.* In determining whether an Enterprise has complied with the duty to serve each underserved market, FHFA will annually evaluate and rate the Enterprise's duty to serve performance based on the Enterprise's implementation of its Underserved Markets Plan during the relevant evaluation year. FHFA's evaluation will be in accordance with evaluation criteria set forth in a separate, FHFA-prepared evaluation guide.

(b) *Assessment factors.* (1) FHFA's evaluation of each Enterprise's performance will take into consideration four assessment factors, as provided in paragraphs (b)(2) through (5) of this section.

(2) *Outreach assessment factor.* FHFA will evaluate the Enterprise on the extent of its outreach to qualified loan sellers and other market participants in each underserved market.

(3) *Loan product assessment factor.* FHFA will evaluate the Enterprise on its development of loan products, more flexible underwriting guidelines and other innovative approaches to providing financing in each underserved market.

(4) *Loan purchase assessment factor.* FHFA will evaluate the Enterprise on

the volume of loans it purchases in each underserved market relative to the market opportunities available to the Enterprise.

(5) *Investments and grants assessment factor.* FHFA will evaluate the Enterprise on the amount of its investments and grants in projects that assist in meeting the needs of each underserved market.

(c) *Evaluation guide*—(1) *Annual evaluation guides.* FHFA will prepare a separate evaluation guide for each Enterprise for each evaluation year. FHFA will develop the evaluation guide using the contents of the Enterprise's Plan and the assessment factors provided in paragraph (b) of this section. The evaluation guide will allocate a maximum number of potential scoring points to each Plan activity that an Enterprise will pursue during the evaluation year covered by the evaluation guide. Each evaluation guide will allocate a total of 100 potential scoring points to all of the Plan activities grouped under a particular underserved market.

(2) *Determination of overall composite scores for each underserved market.* At the end of the evaluation year covered by the evaluation guide, FHFA will award a score to each Plan activity covered by the evaluation guide. The score for each Plan activity will be based on FHFA's assessment of how well the Enterprise performed the Plan activity and associated objectives during the evaluation year. FHFA will also award any extra credit it determines is appropriate for qualifying residential economic diversity activities as provided for in § 1282.37. The score cannot exceed the maximum number of potential scoring points allocated to the Plan activity in the evaluation guide. After FHFA has awarded a score to each Plan activity, FHFA will sum the scoring points for all of the Plan activities that are grouped under each underserved market. The sum of those scores will produce an overall composite score ranging from zero to 100 for each underserved market.

(3) *Determination of overall rating and compliance.* The evaluation guide will contain a table that allocates overall composite score numerical ranges to each of the following four overall ratings: ''Exceeds,'' ''High Satisfactory,'' ''Low Satisfactory,'' and ''Fails.'' An Enterprise's overall rating for each underserved market will be determined by the numerical range within which the Enterprise's overall composite score falls. A rating of ''Exceeds,'' ''High Satisfactory'' or ''Low Satisfactory'' will constitute compliance with the duty to serve the underserved market. A rating of ''Fails'' will constitute noncompliance with the duty to serve the underserved market.

(4) *Delivery of evaluation guide.* FHFA will provide the evaluation guide to the Enterprise at least 30 days before January 1st of the evaluation year for which the guide is applicable, except that the evaluation guide for the first evaluation year after the effective date of this part will be provided to the Enterprise on a date to be determined by FHFA.

(5) *Posting of evaluation guide.* The evaluation guide will be posted on the respective Enterprise's Web site and on FHFA's Web site.

§ 1282.37 Extra credit for qualifying residential economic diversity activities.

(a) Where an Enterprise includes a qualifying activity to promote residential economic diversity in its Underserved Markets Plan, FHFA will evaluate the extent to which the activity promotes residential economic diversity in an underserved market in connection with mortgages on: Affordable housing in a high opportunity area; or mixed-income housing in an area of concentrated poverty. This criterion will be considered in connection with activities for which extra credit may be given, but the activities associated with this criterion are not mandatory. To qualify for extra credit, an activity first must be an eligible activity that contributes to an Enterprise's duty to serve an underserved market. Eligible activities in each of the underserved markets may qualify for extra credit for residential economic diversity except for manufactured housing communities activities, energy efficiency improvement activities, and any additional activities determined by FHFA to be ineligible.

(b) FHFA's evaluation of residential economic diversity activities under this section will occur as part of its review under § 1282.36.

§ 1282.38 General requirements for credit.

(a) *General.* FHFA will determine whether an activity will receive credit under the duty to serve underserved markets. In this determination, FHFA will consider whether the activity facilitates a secondary market for financing mortgages: on manufactured homes for very low-, low-, and moderate-income families; to preserve housing affordable to very low-, low-, and moderate-income families; and on housing for very low-, low-, and moderate-income families in rural areas. If FHFA determines that an activity will receive credit or extra credit under the duty to serve underserved markets, the activity will receive such credit under the relevant assessment factor for each underserved market it serves.

(b) *No credit under any assessment factor.* Enterprise activities related to the following will not receive credit under the duty to serve underserved markets under any assessment factor, even if the activity otherwise would receive credit under any other section of this subpart:

(1) Contributions to the Housing Trust Fund (12 U.S.C. 4568) and the Capital Magnet Fund (12 U.S.C. 4569), and mortgage purchases funded with such grant amounts;

(2) HOEPA mortgages;

(3) Mortgages on manufactured homes not titled as real property under the laws of the state where the property is located;

(4) Subordinate liens on multifamily properties, except for subordinate liens originated for energy efficiency improvements on existing multifamily rental properties that meet the requirements in § 1282.34(d)(2);

(5) Subordinate liens on single-family properties;

(6) Shared appreciation loans that do not satisfy all of the requirements in § 1282.34(d)(4) of this part; and

(7) Any combination of factors in paragraphs (b)(1) through (b)(6) of this section.

(c) *No credit under loan purchase assessment factor.* The following activities will not receive credit under the loan purchase assessment factor, even if the activity otherwise would receive credit under § 1282.40:

(1) Purchases of mortgages to the extent they finance any dwelling units that are secondary residences;

(2) Single-family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if the Enterprise already owns or has an interest in the balloon note at the time conversion occurs;

(3) Purchases of mortgages or interests in mortgages that previously received credit under any underserved market within the five years immediately preceding the current performance year;

(4) Purchases of mortgages where the property or any units within the property have not been approved for occupancy;

(5) Any interests in mortgages that the Director determines, in writing, will not be treated as interests in mortgages;

(6) Purchases of State and local government housing bonds except as provided in § 1282.40(h); and

(7) Any combination of factors in paragraphs (c)(1) through (6) of this section.

(d) *FHFA review of activities.* FHFA may determine whether and how any

activity will receive credit under the duty to serve underserved markets, including treatment of missing data. FHFA will notify each Enterprise in writing of any determination regarding the treatment of any activity.

(e) *The year in which an activity will receive credit.* An activity will receive credit under the duty to serve underserved markets in the year in which the activity is completed. FHFA may determine that partial credit is appropriate for an activity that begins in a particular year but is not completed until a subsequent year, except that activities under the loan purchase assessment factor will receive credit in the year in which the Enterprise purchased the mortgage.

(f) *Credit under one assessment factor.* An activity or objective will receive credit only under one assessment factor in a particular underserved market.

(g) *Credit under multiple underserved markets.* An activity, including dwelling units financed by an Enterprise's mortgage purchase, will receive credit for each underserved market for which such activity qualifies in that year.

§ 1282.39 General requirements for loan purchases.

(a) *General.* This section applies to Enterprise mortgage purchases that may receive credit under the loan purchase assessment factor for a particular underserved market. Only dwelling units securing a mortgage purchased by the Enterprise in that year and not specifically excluded under § 1282.38(b) and (c), may receive credit.

(b) *Counting dwelling units.* Except as provided in paragraph (f) of this section, performance under the loan purchase assessment factor will be measured by counting dwelling units affordable to very low-, low-, and moderate-income families.

(c) *Credit for owner-occupied units.* (1) Mortgage purchases financing owner-occupied single-family properties will be evaluated based on the income of the mortgagor(s) and the area median income at the time the mortgage was originated. To determine whether mortgages may receive credit under a particular family income level, *i.e.,* very low-, low-, or moderate-income, the income of the mortgagor(s) is compared to the median income for the area at the time the mortgage was originated, using the appropriate percentage factor provided under § 1282.17.

(2) Mortgage purchases financing owner-occupied single-family properties for which the income of the mortgagor(s) is not available will not receive credit under the loan purchase assessment factor.

(d) *Credit for rental units*—(1) *Use of rent.* Except as provided in paragraph (g) of this section, mortgage purchases financing single-family rental units and multifamily rental units will be evaluated based on rent and whether the rent is affordable to the income groups targeted by the duty to serve. A rent is affordable if the rent does not exceed the maximum levels as provided in § 1282.19.

(2) *Affordability of rents based on housing program requirements.* Where a multifamily property is subject to an affordability restriction under a housing program that establishes the maximum permitted income level for a tenant or a prospective tenant or the maximum permitted rent, the affordability of units in the property may be determined based on the maximum permitted income level or maximum permitted rent established under such housing program for those units. If using income, the maximum income level must be no greater than the maximum income level for each income group targeted by the duty to serve, adjusted for family or unit size as provided in § 1282.17 or § 1282.18, as appropriate. If using rent, the maximum rent level must be no greater than the maximum rent level for each income group targeted by the duty to serve, adjusted for unit size as provided in § 1282.19.

(3) *Unoccupied units.* Anticipated rent for unoccupied units may be the market rent for similar units in the neighborhood as determined by the lender or appraiser for underwriting purposes. A unit in a multifamily property that is unoccupied because it is being used as a model unit or rental office may receive credit only if the Enterprise determines that the number of such units is reasonable and minimal considering the size of the multifamily property.

(4) *Timeliness of information.* In evaluating affordability for single-family rental properties, an Enterprise must use tenant income and area median income available at the time the mortgage was originated. For multifamily rental properties, the Enterprise must use tenant income and area median income available at the time the mortgage was acquired.

(e) *Missing data or information for rental units.* (1) When calculating unit affordability, rental units for which bedroom data are missing will be considered efficiencies.

(2) When an Enterprise lacks sufficient information to determine whether a rental unit in a single-family or multifamily property securing a mortgage purchased by the Enterprise receives credit under the loan purchase assessment factor because rental data are not available, the Enterprise's performance with respect to such unit may be evaluated using estimated affordability information. The estimated affordability information is calculated by multiplying the number of rental units with missing affordability information in properties securing the mortgages purchased by the Enterprise in each census tract by the percentage of all moderate-income rental dwelling units in the respective tracts, as determined by FHFA based on the most recent decennial census.

(f) *Credit for manufactured housing communities.* Performance under the loan purchase assessment factor for manufactured housing communities will be measured based on the unpaid principal balance of the mortgage at the time of acquisition.

(g) *Determining affordability for manufactured housing communities.* Affordability for a manufactured housing community will be evaluated based on the median income of the census tract in which the manufactured housing community is located as provided below.

(1) If the median income of the census tract in which the manufactured housing community is located is less than or equal to area median income, the Enterprise will receive credit for the full unpaid principal balance of the loan.

(2) If the median income of the census tract in which the manufactured housing community is located exceeds the area median income, the Enterprise will receive partial credit for the loan purchase. The percentage of the unpaid principal balance of the loan that will receive credit will be determined by dividing the area median income by the median income of the census tract and multiplying the quotient by the unpaid principal balance of the loan.

(h) *Application of median income.* (1) To determine an area's median income under §§ 1282.17 through 1282.19 and the definitions in § 1282.1, the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State non-metropolitan median income is higher than the county's median income, the area is the State non-metropolitan area.

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise must determine the median income for the split area in the

manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract; or

(ii) A census place code.

(i) *Newly available data.* When an Enterprise uses data to determine whether a dwelling unit receives credit under the loan purchase assessment factor and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.

§ 1282.40 Special requirements for loan purchases.

(a) *General.* Subject to FHFA's determination of whether an activity will receive credit under a particular underserved market, the activities identified in this section will be treated as mortgage purchases as described and receive credit under the loan purchase assessment factor. An activity that is covered by more than one paragraph below must satisfy the requirements of each such paragraph.

(b) *Credit enhancements.* (1) Dwelling units financed under a credit enhancement entered into by an Enterprise will be treated as mortgage purchases only when:

(i) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency); and

(ii) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds.

(2) When an Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such transactions to receive credit under the loan purchase assessment factor for a particular underserved market.

(c) *Risk-sharing.* Mortgages purchased under risk-sharing arrangements between an Enterprise and any federal agency under which the Enterprise is responsible for a substantial amount of the risk will be treated as mortgage purchases.

(d) *Participations.* Participations purchased by an Enterprise will be treated as mortgage purchases only when the Enterprise's participation in the mortgage is 50 percent or more.

(e) *Cooperative housing and condominiums.* (1) The purchase of a mortgage on a cooperative housing unit (''a share loan'') or a mortgage on a condominium unit will be treated as a mortgage purchase. Such a purchase will receive credit in the same manner as a mortgage purchase of single-family owner-occupied units, *i.e.,* affordability is based on the income of the mortgagor(s).

(2) The purchase of a blanket mortgage on a cooperative building or a mortgage on a condominium project will be treated as a mortgage purchase. The purchase of a blanket mortgage on a cooperative building will receive credit in the same manner as a mortgage purchase of a multifamily rental property, except that affordability must be determined based solely on the comparable market rents used in underwriting the blanket loan. If the underwriting rents are not available, the loan will not be treated as a mortgage purchase. The purchase of a mortgage on a condominium project will receive credit in the same manner as a mortgage purchase of a multifamily rental property.

(3) Where an Enterprise purchases both a blanket mortgage on a cooperative building and share loans for units in the same building, both the mortgage on the cooperative building and the share loans will be treated as mortgage purchases. Where an Enterprise purchases both a mortgage on a condominium project and mortgages on individual dwelling units in the same project, both the mortgage on the condominium project and the mortgages on individual dwelling units will be treated as mortgage purchases.

(f) *Seasoned mortgages.* An Enterprise's purchase of a seasoned mortgage will be treated as a mortgage purchase.

(g) *Purchase of refinancing mortgages.* The purchase of a refinancing mortgage by an Enterprise will be treated as a mortgage purchase only if the refinancing is an arms-length transaction that is borrower-driven.

(h) *Mortgage revenue bonds.* The purchase or guarantee by an Enterprise of a mortgage revenue bond issued by a State or local housing finance agency will be treated as a purchase of the underlying mortgages only to the extent the Enterprise has sufficient information to determine whether the underlying mortgages or mortgage-backed securities serve the income groups targeted by the duty to serve.

(i) *Seller dissolution option.* (1) Mortgages acquired through transactions involving seller dissolution options will be treated as mortgage purchases only when:

(i) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(ii) The transaction is not dissolved during the one-year minimum lockout period.

(2) FHFA may grant an exception to the one-year minimum lockout period described in paragraphs (i)(1)(i) and (ii) of this section, in response to a written request from an Enterprise, if FHFA determines that the transaction furthers the purposes of the Enterprise's Charter Act and the Safety and Soundness Act.

(3) For purposes of paragraph (i) of this section, ''seller dissolution option'' means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

§ 1282.41 Failure to comply.

If the Director determines that an Enterprise has not complied with, or there is a substantial probability that an Enterprise will not comply with, the duty to serve a particular underserved market in a given year and the Director determines that such compliance is or was feasible, the Director will follow the procedures in 12 U.S.C. 4566(b).

§ 1282.42 Housing plans.

(a) *General.* If the Director determines that an Enterprise did not comply with, or there is a substantial probability that an Enterprise will not comply with, the duty to serve a particular underserved market in a given year, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) *Nature of housing plan.* If the Director requires a housing plan, the housing plan must:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Enterprise will take:

(i) To comply with the duty to serve a particular underserved market for the next calendar year; or

(ii) To make such improvements and changes in its operations as are reasonable in the remainder of the year, if the Director determines that there is

a substantial probability that the Enterprise will fail to comply with the duty to serve a particular underserved market in such year; and

(4) Address any additional matters relevant to the housing plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Enterprise must submit the housing plan to the Director within 45 days after issuance of a notice requiring the Enterprise to submit a housing plan. The Director may extend the deadline for submission of a housing plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plans.* The Director will review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (5).

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise must submit an amended housing plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial housing plan. The Director may extend the deadline if the Director determines that an extension is in the public interest. If the amended housing plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit a new housing plan.

■ 4. Add § 1282.66 to subpart D to read as follows:

§ 1282.66 Enterprise reports on duty to serve.

(a) *First and third quarter reports.* Each Enterprise must submit to FHFA a first and third quarter report on its activities and objectives in its Underserved Markets Plan for the loan purchase assessment factor for each underserved market. The report must include detailed information on the Enterprise's progress towards meeting the activities and objectives. The Enterprise must submit the first and third quarter reports within 60 days of the end of the respective quarter.

(b) *Semi-annual report.* Each Enterprise must submit to FHFA a semi-annual report on all of the activities and objectives in its Underserved Markets Plan for each underserved market. The report must include detailed information on the Enterprise's progress towards meeting the activities and objectives. The Enterprise must submit the semi-annual report within 60 days of the end of the second quarter.

(c) *Annual report.* To comply with the requirements in sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act and for purposes of FHFA's Annual Housing Report to Congress, each Enterprise must submit to FHFA an annual report on all of the activities and objectives in its Underserved Markets Plan for each underserved market no later than 75 days after the end of each calendar year. For each underserved market, the annual report must include, at a minimum: A description of the Enterprise's market opportunities for loan purchases during the evaluation year to the extent data is available; the volume of qualifying loans purchased by the Enterprise; a comparison of the Enterprise's loan purchases with its loan purchases in prior years; and a comparison of market opportunities with the size of the relevant markets in the past, to the extent data are available.

Dated: December 10, 2015.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

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The President

Executive Order 13714—Strengthening the Senior Executive Service

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Presidential Documents

Title 3—

The President

Executive Order 13714 of December 15, 2015

Strengthening the Senior Executive Service

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to strengthen the recruitment, hiring, and development of the Federal Government's senior executives; I hereby order as follows:

Section 1. *Policy.* It is in the national interest to facilitate career executive continuity between administrations; to increase senior leadership attention to, and involvement in, executive recruitment; to reduce unnecessary burdens on applicants for executive positions; and to efficiently document demonstrated executive experience. Furthermore, it is imperative to periodically explore and promote new selection methods that effectively and efficiently identify the most capable and talented candidates for executive leadership positions to enhance the breadth and diversity of experiences among our Federal executives; to better support, recognize, and reward our executives, especially our top performers; and to strengthen executive accountability, all while maintaining a system that is focused on the public interest and free from improper political influence. An important aspect of strengthening our Senior Executive Service (SES) members is valuing the work they do every day, rewarding excellence, professionalism, and outstanding achievement through special act awards, Presidential Rank Awards, and other nonmonetary and honorary awards. Consistent with the requirements of Executive Order 13583 of August 18, 2011 (Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce), and with merit-based principles, this order continues to support executive departments and agencies (agencies) to develop and implement a comprehensive, integrated, and strategic focus on diversity and inclusion as a key component of the recruitment, hiring, retention, and development of their SES cadre. Pursuing these goals will significantly improve the Federal Government's ability to serve the American people. Unless otherwise noted, this order applies to career members of the SES.

Section 2 of this order establishes, under the President's Management Council (PMC), a Subcommittee to advise the Office of Personnel Management (OPM), the PMC, and the President on senior executive matters, help monitor execution of an important set of executive reforms contained in section 3 of this order, and help keep the Federal Government's executive management practices current and effective. In order to identify and maximize the use of best practices, requirements in sections 3(b)(i)–(iv) of this order will be implemented in three phases, with Phase I consisting of seven agencies, which will execute those reforms in fiscal year (FY) 2016; Phase II consisting of seven agencies, which will execute those reforms in FY 2017; and Phase III consisting of all other agencies, which will execute those reforms in FY 2018.

Sec. 2. *Establishment of PMC Subcommittee to Strengthen the Senior Executive Service.* There is established the PMC Subcommittee to Strengthen the Senior Executive Service (Subcommittee) to inform and support Government-wide priorities for improved management of senior executives identified by the Deputy Director for Management of the Office of Management and Budget (OMB) in consultation with the Director of OPM. The Subcommittee shall consist of five members of the PMC: the Deputy Director for Management of OMB, the Director of OPM, and three other members of the PMC. The Subcommittee will be advised by at least two career members of the SES

to be determined by the members of the Subcommittee, and shall collaborate with the Chief Human Capital Officers Council. Expressions of interest to serve on the Subcommittee will be solicited, and final selections will be made by the Deputy Director for Management of OMB in consultation with the Director of OPM. The Subcommittee will advise OPM, members of the PMC, and the President on ways to strengthen and improve the SES workforce, as outlined in this order. In addition, it will identify any Government-wide obstacles it perceives to executive management, assist OPM in facilitating career executive continuity between administrations, and facilitate communication among the SES cadre.

Sec. 3. *Requirements.* Under the direction, or, in the case of sections 3(a)(i) and 3(b)(ii) of this order, the guidance, of the Director of OPM, and in consultation with OMB and the PMC Subcommittee, agencies shall undertake the following actions:

(a) *Actions for Immediate Government-wide Implementation.*

(i) Starting in FY 2017, agencies should limit their aggregate spending on agency performance awards for SES and Senior Level (SL) and Senior Scientific or Professional (ST) employees to 7.5 percent of aggregate SES and SL/ST salaries respectively. OMB and OPM shall undertake a review of, and revise as appropriate, their current guidance regarding aggregate spending on such awards. In addition, agencies should allocate awards in a manner that provides meaningfully greater rewards to top performers. Within 120 days of the date of this order, OPM shall issue, as appropriate, additional guidance regarding the distribution of such awards.

(ii) The heads of agencies with SES positions that supervise General Schedule (GS) employees shall implement policies, as permitted by and consistent with applicable law and regulation, for initial pay setting and pay adjustments, as appropriate, for career SES appointees to result in compensation exceeding the rates of pay, including locality pay, of their subordinate GS employees. Similar policies shall be implemented by heads of agencies for Senior Professional (i.e., SL or ST) employees that supervise GS employees. Such policies and practices support, recognize, and reward agency executives, especially top performers, in a manner commensurate with their roles, responsibilities, and contributions, and may increase the competitiveness of SES positions with comparable positions outside of Government.

(iii) Within 90 days of the date of this order, OPM shall evaluate the current Qualifications Review Board (QRB) process and issue guidance to agencies about materials that would be acceptable for QRB consideration and that will serve as an alternative or replacement to the current lengthy essay requirement for QRB submission, which may deter qualified applicants for SES positions or put an additional burden on human resources staff. The guidance shall also advise agencies about ways to streamline their initial application requirements for SES positions, including evaluation of options, such as allowing individuals to apply by only submitting a resume-based application and any additional materials necessary to determine relevant qualifications, consistent with the new QRB submission requirements.

(iv) Within 120 days of OPM issuing the guidance described in section 3(a)(iii) of this order, the heads of agencies with SES positions shall examine the agency's career SES hiring process and make changes to the process to make it more efficient, effective, and less burdensome for all participants. Agencies shall simplify the initial application requirements for SES positions consistent with the guidance issued in section 3(a)(iii) of this order, and should only request critically necessary technical qualifications, with the goal of minimizing requirements that may deter qualified applicants from applying. Agencies shall also monitor time to hire of SES positions, and identify appropriate process improvements or other changes that can help reduce time to hire while ensuring high quality of hires.

(v) By May 31, 2016, the heads of agencies with 20 or more SES positions shall develop and submit to OPM a 2-year plan to increase the number of SES members who are rotating to improve talent development, mission delivery and collaboration. While agency specific targets will not be required, this order establishes a Government-wide goal of 15 percent of SES members rotating for a minimum of 120 days (including to different departments, agencies, subcomponents, functional areas, sectors, and non-federal partners) during FY 2017, and thereafter, in order to ensure the mobility of the corps while also maintaining stability of operations. Within 45 days of the date of this order, OPM shall issue guidance for implementation of section 3(a)(v) of this order. OPM shall evaluate the percentages set forth in this subsection on an ongoing basis and make adjustments as necessary and appropriate. These plans shall take into consideration the policy priorities of the agency, agency needs and rules in the context of administration transitions, needs identified in agency hiring plans and succession plans, the development opportunities listed in individuals' Executive Development Plans (EDP), and the Federal Government's interest in cultivating generalist executives with broad and diverse experiences who can lead a variety of organizations. These plans shall build on existing succession management processes and those established in section 3(b)(i) of this order to ensure high potential and top performers have an opportunity to cycle through rotations. These plans shall also incorporate, as appropriate, flexibilities agencies have such as the Intergovernmental Personnel Act (implemented in 5 CFR part 334) to encourage SES members to pursue temporary assignments to State and local governments, colleges and universities, tribal governments, and other eligible organizations, and to better understand the impact of the Federal Government's work on those it serves. Finally, these plans shall include an assessment of the degree to which these rotation assignments achieve the desired goals for the individual and agency.

(b) *Actions for Phased Implementation.* Under the direction, or, in the case of section 3(b)(ii) of this order, the guidance, of the Director of OPM, in consultation with OMB and the PMC Subcommittee, the reforms listed in sections 3(b)(i)–(iv) of this order shall be implemented by agencies on the following schedule: the Secretaries of Defense, Energy, Health and Human Services, Housing and Urban Development, and Veterans Affairs; the Administrator of General Services; and the Director of OPM shall implement these reforms by September 30, 2016; the Secretaries of Agriculture, Education, Labor, and Transportation, and the Administrators of the National Aeronautics and Space Administration, the Environmental Protection Agency, and the Small Business Administration shall implement these reforms by September 30, 2017; the Secretaries of State, the Treasury, the Interior, Commerce, and Homeland Security, the Attorney General, and the Administrator of the U.S. Agency for International Development, as well as the Directors of OMB and the National Science Foundation, shall implement these reforms by September 30, 2018. By October 1 of each year, OPM shall issue additional guidance after each phase of implementation that reflects lessons learned and any adjustments to these reforms based on the agencies that have implemented them. By the respective date specified above, the heads of agencies shall:

(i) Establish an annual talent management and succession planning process to assess the development needs of all SES members, and SL and ST employees as appropriate, to inform readiness decisions about hiring, career development, and executive reassignments and rotations. These assessments shall include input from each executive, as well as the executive's supervisor, and shall be used to recommend development activities and inform the organization's succession planning, decisions about duty assignments, and agency hiring plans;

(ii) Proactively recruit individuals for vacant SES positions and regularly review those recruitment efforts at the Deputy Secretary (or direct designee) level on at least a quarterly basis, consistent with existing rules and

regulations. Establish a mechanism to track, and raise for appropriate senior-level attention, information about each position that agencies are seeking to fill, including, at a minimum, source of the recruitment, number, quality and diversity (as available) of applicants, source of applicants (subcomponent, agency or non-government), and timeliness of the hiring process. Use the talent management and succession planning process described in section 3(b)(i) of this order and agency hiring plans to inform these recruitment efforts; and develop a tailored outreach strategy for proactive recruitment for key strategic positions;

(iii) Require supervisors of executives in their agency to work with their subordinate executives to update EDPs for each executive required by 5 CFR part 412.401, to include at least one developmental activity annually and at least one leadership assessment involving employee feedback (for example, 360 degree-type reviews) every 3 years to inform each executive's developmental needs. In addition, non-career SES and equivalent appointees should also have one leadership assessment during their first 2 years, and additional assessments every 3 years thereafter; and

(iv) Establish a formal Executive Onboarding Program informed by OPM's Enhanced Executive Onboarding Model and Government-Wide Executive Onboarding Framework, which shall provide critical support and guidance to executives through their first year of service in new positions, consistent with guidance to be issued by OPM no later than 60 days after the date of this order. Onboarding shall be provided for career and non-career SES, SL and ST employees, and SES-equivalent positions.

Sec. 4. *Additional Implementation Considerations.* (a) *Actions for Agencies with SES-Equivalent Positions.* Certain agencies have independent authorities enabling them to establish positions that are equivalent to SES or Senior Professional positions, or an executive personnel system that includes such positions. Whether the positions or employment systems are established in title 5 (for example, FBI/DEA SES) or in other titles of the United States Code (for example, Senior Foreign Service, Defense Intelligence SES, Senior National Intelligence Service), the agency head shall determine the extent to which the agency implements policies and processes to support objectives identified in sections 3(a) and 3(b) of this order for such positions consistent with the agency's authorities and purposes for which the law provides them, with such consultation with the Director of OPM, OMB, and the PMC Subcommittee as the agency may require.

(b) *Agency Status and Reporting.* Within 45 days of the date of this order, OPM will issue guidance, concurrent with guidance in section 3(a)(v) of this order, that defines regular reporting on the status of each agency's implementation of the provisions in this order.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
December 15, 2015.

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